



A region without borders? Policy frameworks for regional labour migrations towards South Africa



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July 2013

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Building on over a decade of research experience in migration studies, the African Centre for Migration & Society (ACMS) at Wits University has embarked on a partnership with a range of academic (GovINN, UP; UNU-CRIS; UNESCO Chair on Free Movement), government (Department of Labour; South African Local Government Association; Statistics South Africa), and international (ILO; IOM) partners. This partnership is expressed through the Migrating for Work Research Consortium (MiWORC).

MiWORC is based on a matching fund principle. The European Union, in the framework of the EU-South Africa Dialogue Facility (EuropeAid/132200/L/ACT/ZA), funds 50 per cent of the consortium. Beyond an ambitious scholarly agenda, one of MiWORC's objectives is to avail empirically based evidence to the EU- SA Dialogue facility, a bilateral on-going strategic partnership between the European Union and South Africa, as well as to a range of key stakeholders in government, organised labour, business, and the NGO sector.

Work Package 1: The state of labour, migration and economic development policies between South Africa and its SADC partners

This Work Package provides an overview of migration and labour policies in Southern Africa through a comparative analysis of a sub-set of Southern African countries (Namibia, Botswana, Mozambique, Zimbabwe, Malawi, Swaziland and Lesotho). The study aims to identify replicable best practices within the region, and gauge the extent to which lessons learnt in other regional contexts (including the EU) are taken into account in policy formulation processes.



Table of contents

Table of contents	3
Table of tables	5
Abbreviations and acronyms	7
Executive summary	9
Introduction	13
Global and regional governance of migration: an overview	17
The governance of international migration at the global level	17
Human rights law	18
The ILO	21
UNHCR	22
The IOM, the GFMD and the GMG	23
UNESCO	25
General Agreement on Trade in Services Mode 4	27
The governance of migration at the regional level: provisions for cross-border movement of persons and workers	28
Europe: the European Union	30
South America: the Union of South American Nations (UNASUR)	33
South America: Common Market of the South (Mercosur)	35
South America: the Andean Community	37
Southeast Asia: the Association of Southeast Asian Nations	38
Regional Migration Governance in Africa	41
Building the African Economic Community through RECs: How do the identified African RECs fare?	44
The Economic Community of West African States (ECOWAS)	44
The Common Market for Eastern and Southern Africa (COMESA)	47
The East African Community (EAC)	48
Regional labour mobility regimes and possible implications for regional integration and migration management within Africa	50
The Southern African Development Community: Regional protocols, national policies and bilateral agreements	53
SADC treaty, protocols and migrant labour	54
National legislations of SADC countries and policies on migrant labour	59
Migration and labour: General entry versus entry for purposes of taking up employment in the SADC region	59
Migration and labour: preferred destinations and migration policy	61
Bilateral agreements, memoranda of understanding, joint permanent commissions for co-operation and migrant labour	64
Migration Dialogue of Southern Africa (MIDSA)	74
Discussing the key aspects of labour migration governance in Southern Africa	79
Treaties and protocols to establish regional migration governance systems	79
Commitment to realising the (labour migration) objectives of the treaties	81

Willingness to bring Member States’ and regional labour migration policy and legislations in conformity with regional and international realities and standards..... 84

Conclusions and recommendations87

References91

Annex101

Access to data, correspondence with policy makers, focus groups and interviews.....101

Abstracts.....107



Table of tables

Table 1.	International migrant stock by major area of origin and destination, 2010 (millions)	13
Table 2.	Ratifications of relevant UN, ILO conventions and African charter by SADC countries as of April 2013	19
Table 3.	Number of international migrants to the most preferred destinations in the SADC, 1990 and 2010	62
Table 4.	Formalised Joint Permanent and Bilateral Commissions for Co-operation -- Republic of South Africa and Selected SADC Countries	69



Abbreviations and acronyms

AEC	ASEAN Economic Community
AIS	Andean Integration System
ALM	ASEAN Labour Ministers
ALMM	ASEAN Labour Ministers Meeting
AMIMO	Association for Mozambican Miners
APSC	ASEAN Political-Security Community
ASCC	ASEAN Socio-cultural Community
ASEAN	Association of Southeast Asian Nations
AU	African Union
AUN	ASEAN University Network
BBC	British Broadcasting Corporation
C097	Migration for Employment Convention
C143	Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)
CAN	Comunidad Andina or Andean Community of Nations
CET	Common External Tariff
CFTA	Continental Free Trade Area
CMA	common currency area
CMP	Protocol on the Establishment of the EAC Common Market
CMP	Protocol on the Establishment of the EAC Common Market
COMESA	Common Market for Eastern and Southern Africa
CSR	Convention Relating to the Status of Refugees
DHA	Department of Home Affairs
DIRCO	Department of International Relations and Cooperation
DJEI	Department of Jobs, Enterprise and Innovation
DoL	Department of Labour
DZP	Documentation of Zimbabweans Project
EAC	East African Community
EAC FTA	East African Community Free Trade Area
EC	European Community
ECCAS	Economic Community of Central African States
ECDPM	European Centre for Development Policy Management
ECHR	European Convention on Human Rights
ECOWAS	Economic Community of West African States
EEC	European Economic Community
EU	European Union
Europol	European Police Office
FEMCOM	Federation of National Associations of Women in Business in the Common Market for Eastern and Southern Africa
FLS	Front Line States
FTA	Free Trade Area
GATS	General Agreement on Trade in Services
GFMD	Global Forum for Migration and Development
GMG	Global Migration Group
HLDMD	High-Level Dialogue on Migration and Development
IAML	Andean Labour Migration Instrument
ICCPR	International Covenant on Civil and Political Rights
ICEM	Intergovernmental Committee for European Migration
ICM	Intergovernmental Committee for Migration
ICPRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990 (A/RES/45/158)
IGAD	Inter-Governmental Authority for Development
ILO	International Labour Organization

IOM	International Organisation for Migration
JBCC	Joint Bilateral Commission for Cooperation
JCC	Joint Commission for Cooperation
JPCC	Joint Permanent Commissions for Cooperation
LAFTA	Latin American Free Trade Association
LAIA	Latin American Integration Association
MERCOSUR	Mercado Común del Sur
MIDSA	Migration Dialogue of Southern Africa
MOST	Management of Social Transformations
MOU	Memorandum of Understanding
MPFA	Migration Policy Framework for Africa
NEDLAC	National Economic Development and Labour Council
NEPAD	New Partnership for African Development
NGO	Non Governmental Organisation
NIC	National Identity Cards
NQF	National Qualifications Framework
OAU	Organisation of African Unity
OECD	Organisation for Economic Co-operation and Development
PEIC	Program for Economic Integration and Cooperation
PICMME	Provisional Intergovernmental Committee for the Movement of Migrants from Europe
PTA	Preferential Trade Area
R151	Migrant Workers Recommendation, 1975 (No. 151)
RCRAQ	Regional Convention on the Recognition of Studies, Certificates, Diplomas, Degrees and other Academic Qualifications in Higher Education in the African States
REC	Regional Economic Community
RETOSA	Regional Tourism Organisation of Southern Africa
RQF	Regional Qualifications Framework
SACU	Southern African Customs Union
SADC	Southern African Development Community
SADC RQF	SADC Regional Qualifications Framework
SADCC	Southern African Development Co-ordinating Conference
SANDF	South African National Defence Forces
SAQA	South African Qualifications Authority
SEA	Single European Act
SEAMEO	Southeast Asian Ministers of Education Organization
SWAMMIWA	Swaziland Migrant and Mineworkers Association
TCN	third country nationals
TEBA	the Employment Bureau of Africa
TFEU	Treaty for the functioning of the EU
TICD	Treaty for Integration, Cooperation and Development
TTNF	Tripartite Trade Negotiation Forum
UMA	Union du Maghreb Arabe
UN	United Nations
UNASUR	Union of South American Nations
UNCTAD	United Nations Conference on Trade and Development
UNDESA	United Nations Department of Economic and Social Affairs
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNFPA	United Nations Population Fund
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
UNHDIMD	United Nations High-level Dialogue on International Migration and Development
UNU-CRIS	United Nations University Institute for Comparative Regional Integration Studies
WFP	World Food Programme
WHO	World Health Organisation
WTO	World Trade Organisation



Executive summary

This report focuses on the management of labour migration from countries in the Southern African region to South Africa. With a view to contributing to the current debate on labour migration in the Southern African Development Community (SADC) region, the report reviews:

- The various ways in which international organisations such as the International Labour Organisation (ILO), the United Nations High Commissioner for Refugees (UNHCR), the United Nations Educational, Scientific, and Cultural Organization (UNESCO), the International Organisation for Migration (IOM), the Global Forum on Migration and Development (GFMD) and the Global Migration Group (GMG) and associated international legal frameworks seek to regulate globally or influence the policies and practices of cross border labour migration.
- Scholarly and policy debates answering the question of whether the management of cross border labour movements should be the responsibility of international agencies at the global level, of regional bodies, or handled by bilateral agreements among states. As the focus of the report is on labour migration within the Southern African region, one of its aspects addresses the distinction between policies aimed at intra-regional free movement on the one hand and managed migration on the other hand.
- Current inter and intra-regional labour migration policies and practices within several *regional associations* of countries including the European Union (EU); Latin American groupings such as Mercado Común del Sur, Southern Common Market (MERCOSUR), Community of Andean Nations (CAN); and East Asia 's Union of South American Nations (UNASUR) and the Association of Southeast Asian Nations (ASEAN).
- The existing policies and practices with regard to intra-regional labour migration within Africa including the Economic Community Of West African States (ECOWAS), Economic Commission for Africa (ECA) and the Common Market for Eastern and Southern Africa (COMESA).
- The ways in which these issues play out within SADC, with a particular emphasis on the regional migration of labour to South Africa. Here the relative importance of international standards, SADC protocols, IOM driven dialogues such as Migration Dialogue for Southern Africa (MIDSA) and bilateral agreements or memoranda of understanding (MoU) with South Africa are considered.

This review was undertaken to address the following research questions:

- Does any specific legislation pertaining to labour migration (to South Africa from SADC countries) exist?
- If yes, are there any regional governance components or informal regional considerations in this legislation?
- Alternatively, are legislation and policies driven by bilateral agreements?
- Is there any policy harmonisation with specific international standards?

- Do international actors (e.g. IOM, ILO, EU, etc.) influence existing legislation and debates in the SADC countries under review?

This report is based upon the analysis of global, regional and national policy documents and of relevant scholarly literature, supplemented by interviews with officials within Southern Africa.

The key observations and conclusions of this review are as follows:

1. International norms abound and could be better used. There is a range of international norms and policies embodied in global ILO conventions and recommendations and in human rights instruments, which – among others – attempt to provide a common framework to regulate the rights and duties of labour migrants. There is a range of international norms and policies embodied in global ILO conventions and recommendations and in human rights instruments, which – among others – attempt to provide a common framework to regulate the rights and duties of labour migrants. However, the enforcement of these norms is contingent upon the ratification of governments and their capacity or willingness to adapt local legislation.
2. An African migration policy exists, too, but is not implemented in SADC. The Migration Policy Framework for Africa (MPFA) indicates that the African Union recognizes the critical role migration plays in development and the need for Member States and Africa's Regional Economic Communities (RECs) to formulate migration policies that manage migration and harness it for Africa's development. Though the MPFA is not legally binding, the current absence of a regional migration policy in SADC shows that Member States have not yet implemented the basic MPFA guidelines.
3. Both regional policies and intergovernmental agreements are important for the regulation of labour migration. Whether the regulation of labour migration within a region should be a matter of international, regional or inter-governmental action may depend on the nature of migration flows. For instance, some scholars argue that skilled migration can be addressed entirely through inter-governmental agreements (respecting global and regional norms), as the benefits of such migration are primarily national, although others suggest that skills pools should be addressed at the regional level. By contrast, regional frameworks certainly might best address low skilled and informal migration, as this can be seen as a regional 'good'. In the case of asylum seekers and mixed migration, the concept of global public goods comes into play and therefore international actors at the global level, such as the UNHCR, need to work with regional and national bodies to regulate such border crossing. Furthermore whether regional bodies or inter-governmental agreements dominate depends in part on whether the regional policy goal is intra-regional free movement (in which case regions must be actors) or managed labour migration (in which case regions can play a less proactive role).
4. Lesson learning is critical. There are lessons to be learned from existing regional governance mechanisms around the world, some of which deal specifically with migration issues and have set up dedicated regional dialogues. An example is the staged opening of borders and the free movement of labour within the European Union, whereby access to the labour markets of some higher-income countries by workers from some 'less developed' economies is staggered over several years to permit labour markets to adapt.



5. Non-ratification/implementation of UN conventions in SADC is an issue. Many of the global norms are not yet ratified or respected by South Africa and most SADC countries. Among the more significant omissions are the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990 (A/RES/45/158); the Migration for Employment Convention (Revised), 1949 (No. 97); the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); and the Regional Convention on the Recognition of Studies, Certificates, Diplomas, Degrees and other Academic Qualifications in Higher Education in the African States, 1981 (UN Treaty Series No. 21522).
6. Potential confusion and governance complexity may be caused by the coexistence of three systems: a South Africa-managed bilateral migration policy; de facto but contested informal regional free movement; and the aspiration to establish a formal SADC free movement policy. While SADC has an objective of facilitating movement, the regional reality is a mixed one of informal de facto but contested movement of irregular migration into South Africa (hospitality, construction, agriculture), coexisting with a practice of managed skilled (mining, education, etc.) and low-skilled (agriculture) migration between South Africa and some neighbouring countries. Many of the memoranda of understanding or bilateral agreements are out of date and not given much publicity. Announced shifts in South African immigration policy point towards more bilateralism and a reinforcement of a selective skilled migration policy but do not really offer much scope for the legalisation of low-skilled irregular migrants.
7. Does the Trilateral Free Trade Zone rule out free movement? The emerging trilateral agreement to establish a wider free trade zone between EAC, COMESA and SADC implies that the policy of managed labour migration will prevail in this larger free trade area, as the alternative free movement of persons policy is not even on the agenda of the tripartite body.
8. Could SACU become a free movement zone? A case has been made by the ILO to establish a two-tier policy whereby members of the Southern African Customs Union (SACU) work towards a free movement policy while maintaining a managed migration policy outside SACU, within SADC, or within the tripartite region.
9. Is the draft SADC Labour Migration Action Plan a significant development? The recent proposal of the SADC Joint Technical Tripartite Subcommittees of the Labour and Employment Sector (December 2012) may be a significant development. The proposal builds on the outcomes of the 27-29 August 2012 Migration Dialogue for Southern Africa (MIDSA), which called for a *Migration Road Map for the Region*. This proposal recommended a *Draft Labour Migration Action Plan 2013-2015* to be discussed at the meeting of the SADC Labour partners in April 2013. The action plan calls for improved data collection; improved cross border access to social benefits and health services; improved processing of remittance transfers; and harmonizing SADC's labour migration laws, the rights of migrant workers, pensions and other benefits. It should be noted, however, that MIDSA outcomes and recommendations are not binding and the Labour Migration Action Plan does not represent a commitment on the part of SADC and Member States. It is, rather, a framework for discussing the labour migration issues outlined in the action plan.



Introduction

This report focuses on labour migration policy frameworks in a regional context. It provides an overview of global and regional standards and subsequently focuses on policy evolution in the Southern African regions. In particular, it deals with the set of policy frameworks regulating labour migration towards South Africa from the following neighbouring countries: Botswana, Lesotho, Malawi, Mozambique, Namibia, Swaziland, and Zimbabwe. The report summarises the result of research activities conducted under Work Package 1 of the collaborative project –Migrating for Work Research Consortium (MiWORC) - Regional international migration and its impact on the South African labour market: data, policies and livelihoods. The findings discussed in this report will feed into MiWORC's on-going research activities and provide a useful background for specific work packages dealing with labour migration flows, social security provisions and portability of social rights.

Background

More people are migrating across national borders today than ever before. There were 214 million international migrants in 2010, compared to 155 million in 1990 (UN, 2012). From the total global increase of 59 million international migrants over two decades, the number of migrants living in the so-called Global North increased by 46 million while those in the Global South increased by 13 million (UNDESA, 2012).

Within Africa, a significant proportion of migrants move across the continent. According to UNDESA (2012: 2) a large majority of international migrants in Africa remain in the major area of their birth. Out of the total 214 million international migrants registered in 2010, 29.2 million were Africans, and their major destination was Africa itself (see Table 1). UNDESA (2009) estimated the number of international migrants in Southern Africa in 1990 and 2010 at 1.4 million and 2.2 million, respectively. These represented a proportional increase from 3.4 per cent to 3.7 per cent in the region's total population.

Table 1. International migrant stock by major area of origin and destination, 2010 (millions)

		Destination							
		Africa	Asia	Europe	LAC	North America	Oceania	Total	% origin
Origin	Africa	15.5	4.0	7.7	0.0	1.7	0.4	29.2	53
	Asia	1.0	46.1	19.0	0.3	14.2	2.0	82.6	56
	Europe	0.8	7.8	37.3	1.5	9.0	2.4	58.7	63
	LAC	0.0	0.6	3.9	4.6	23.5	0.1	32.8	14
	North America	0.1	0.5	0.9	1.0	1.4	0.2	4.1	34
	Oceania	0.0	0.1	0.3	0.0	0.3	0.9	1.6	57
	Various	1.8	2.1	0.9	0.2	0.0	0.1	5.1	
	Total	19.3	61.3	69.9	7.7	50.0	6.0	214.2	
	% destination	81	75	53	60	3	15		

Source: UNDESA, 2012.

Note: LAC stands for Latin America and the Caribbean

The increase in the number of international migrants in Southern Africa is partly due to economic liberalisation and the implementation of structural adjustment programmes under the auspices of international financial institutions in the region (Crush and Williams, 2003), as cross-border migrants in the region have been compelled to seek a better economic life (Millard, 2008). Others migrate clandestinely as local herdsmen, and as members of ethnic groups, whose domicile straddles 'artificial' state boundaries in the region.

Objective of the study

This report is based on research that consists of a survey and analysis of legislative and policy frameworks regarding labour migration at the global and regional levels. Specifically, it provides an overview of existing policy frameworks on labour migration in selected regions of the world and then focuses on policy frameworks and legislations in Africa, with a particular emphasis on the Southern African Development Community. Within this overall framework the specific objectives of the report are:

- To provide a brief comparative overview of existing policy frameworks dealing with labour migration in key regions of the world including Europe, Southeast Asia, South America and Africa.
- To investigate existing policies and related similar bilateral or regional frameworks pertaining to labour migration in Southern Africa. In particular, this report investigates labour migration originating from Namibia, Botswana, Lesotho, Swaziland, Zimbabwe, Mozambique, and Malawi and directed towards South Africa.
- To analyse South Africa's 'migration' policy responses to inflows of migrants from the 7 countries mentioned above.

Research questions

The key research questions include:

- What are the most important features of labour migration frameworks at the global level?
- What are the most relevant governance frameworks at the regional level (in Europe, Southeast Asia, South America and Africa in general) and what provisions do they include?
- What are the prevalent forms of labour migration governance in the SADC region and how do they compare to global standards and regional experiences?
- What is the degree of 'regionalism' permeating national labour migration legislation in the SADC region?
- How do specific bilateral agreements between South Africa and neighbouring countries impact labour migration in Southern Africa?
- What is the degree of influence that international actors (e.g. ILO, IOM, EU) exert on existing legislation and policy agendas dealing with labour migration in the SADC region?



Methodology

The analysis contained in this report is based on a review of primary data and secondary sources.

Primary data included a thorough review of relevant global and regional legislations and a set of interviews and correspondence with key policy makers (see Annex 1 for all details). The respondents selected for interviews were chosen on the basis of their policy portfolio and position within the relevant ministries. Secondary data included policy reports and scientific publications on the topic.

The selection of countries was based on geographical proximity and relevance to the South African labour market. All countries included in the study, with the only exception of Malawi, share borders with the receiving country. As Nielson (2002) explains, countries that are inter alia geographically proximate tend to have a more liberal approach to labour mobility. As it relates to South Africa, these countries have also been traditional suppliers of migrant labour, particularly in the mining and agricultural sector. That makes these countries even more relevant from a policy perspective aiming to understand the evolution and prospect of an integrated labour migration governance framework (Wentzel and Tlabela, 2006).

Structure of the report

This report is divided into four sections. Following this introduction, Section 2 provides a discussion of the key features as well as the strengths/weaknesses of labour migration governance at the global and regional levels. This section also presents a review of the regional labour migration policy frameworks in Europe, South America, and Southeast Asia. Section 3 hones in on Southern Africa and reviews policies and other bilateral/regional labour migration frameworks towards South Africa. Finally, Section 4 looks at labour 'migration' policies in South Africa, with a specific emphasis on migrants coming from the seven neighbouring countries included in the study.



Global and regional governance of migration: an overview

With the continued globalisation of the world economy, international migration continues to grow. Migration is a complex phenomenon, with a significant impact on the political economy of the sending and receiving countries. On the one hand, migration can be a propeller of economic development, as it reinforces and diversifies the labour force, which is a key factor of production. From a regional integration point of view, labour migration can facilitate the supply of qualified and skilled human resources for the development of a region, while strengthening the economic ties among neighbouring countries (Crush and Williams, 2003). Historically, these have been important preconditions for the establishment of common markets and free movement of capital and people, for instance, in Europe. On the other hand, migration can exert a strain on social safety nets, as the inflow of migrants stretches the socioeconomic and political infrastructure of the receiving country. Sending states are not immune from potential negative repercussions, as they are at risk of brain drain and loss of critical human capital. Such conditions are especially likely in regions characterised by economic disparities.

This migration conundrum is made even more complex by the fact that migration pressures are a fundamental (and largely inevitable) component of social life, which makes the 'governance' issue extremely crucial. As migration cannot be avoided, the question becomes: how can it be more successfully governed? In this regard, global and regional experiences can provide important pointers and lessons.

The governance of international migration at the global level

Global organisations such as the United Nations (UN) and its agencies have elaborate frameworks, structures and institutions to address various global issues of concern. For instance, global health has been addressed through the World Health Organisation (WHO), and food security through both the World Food Programme (WFP) and the Food and Agriculture Organisation (FAO). Yet, despite its prominence in contemporary international affairs, there is no organisation or agency specifically designed to address international migration. The United Nations High Commission for Refugees (UNHCR), as discussed shortly below, is a specialized agency on refugees mandated to co-ordinate work on protecting refugees and resolving refugee problems. The International Organisation for Migration (IOM) operates outside of the UN framework, albeit in cooperation with several of its agencies. To these two institutions we need to add a network of different intergovernmental organisations focusing on aspects as diverse as labour, trade, social development and the like, each of it which touches on migration, although indirectly. This would mean that the governance of migration at the global level is governance of migration at the global level is (Koser, 2010, p. 301 in Nita, forthcoming). There is no consensus on either the necessity for the global governance of migration or the most appropriate form and development trajectory of such a system (Newland, 2010, p. 331 in Nita, *ibid*). Despite this, Alexander Betts (2011) distinguishes three broad levels of global international migration governance: formal multilateralism; international principles, rules and norms embedded in areas of policy such as international human rights law or international maritime law; and informal networks such as the Global Forum on Migration and Development (GFMD). This complex embryonic global migration governance 'system' is discussed in more detail below.

Two categories of international treaties exist that might affect migration: declarations and conventions. International bodies such as the United Nations General Assembly (UNGA) adopt and make declarations.

Declarations or ‘soft laws’, as they are sometimes referred to, are not legally binding. Conventions, on the other hand, constitute legally binding instruments under international law and, therefore, come with sets of standards meant to monitor implementation. Because they also have political and legal authority, conventions also carry penalties, sanctions, etc. in case of violation. For example, through its judgements, the European Court of Human Rights has regional and supranational influence on Council of Europe Member States in their application of the European Convention on Human Rights (ECHR). The Court can influence the policies and decisions of Member States on immigration and rights of residence of migrants. The Convention and the Court’s decisions affect anyone (indeed any State) within the jurisdiction of the Council’s Member States to the point where the Court, for example, is “able to control states’ freedom in the area of immigration, residence, and integration of aliens through a generous application of the principle of proportionality and a liberal interpretation of provisions of the ECHR” (Lambert, 2007, p. 22). On 23 February 2012 the European Court of Human Rights ordered Italy to pay €15,000 each to 13 Eritrean and 11 Somali migrants, after ruling that Italy had violated Article Three (prohibition of inhuman or degrading treatment) and Article Four of Protocol Four (prohibition of collective expulsions) of the ECHR, when it sent the migrants back to Libya (BBC, 2012).

Human rights law

Most international declarations, treaties, covenants, protocols or laws dealing with fundamental rights also touch upon international migration in a general way. For instance, in Article 13 the Universal Declaration of Human Rights (1948) declares that everyone has the right to freedom of movement and residence within the borders of each State and the freedom to leave any country, including their own, and to return to their country. Likewise the International Covenant on Civil and Political Rights (1966) declares that everyone lawfully within the territory of a state shall, within that territory, have the right to liberty of movement and freedom to choose his residence and shall also be free to leave any country, including their own (Articles 12.1. and 12.2). Only five SADC States, two of which form part of the present study (South Africa and Lesotho) have thus far ratified this Covenant (see Table 2). On the African continent, the African Charter on Human and Peoples’ Rights (1981, enforced in 1986) provides individuals with freedom of movement and residence within the borders of a state and the right to leave any country, including their own, and to return to their country. All SADC states have ratified this Charter (see Table 2).



Table 2. Ratifications of relevant UN, ILO conventions and African charter by SADC countries as of April 2013

Country	ICPRMW*	ICCPR**	ILO's CO97***	CSR****	UNESCO's RCRAQ*****	African Charter
	Date [#]	Date	Date	Date	Date	Date
Angola		10 Jan 1992	X	23 Jun 1981 a ⁺	X	02 Jun 1990
Botswana	8 Sep 2000	X	X	6 Jan 1969 a	X	17 Jul 1986
Democratic Republic of Congo	X	1 Nov 1976	X	19 Jul 1965 a	X	20 Jul 1987
Lesotho	24 Sep 2004	9 Sep 1992	X	14 May 1981 a	13 Sept 1982	10 Jul 1992
Madagascar	X	21 Jun 1971	14 Jun 2001	18 Dec 1967 a	X	09 Jul 1992
Malawi	X	X	22 Mar 1965	10 Dec 1987 a	X	17 Nov 1989
Mauritius	X	X	02 Dec 1969	X	X	19 Jun 1992
Mozambique	X	X	X	16 Dec 1983 a	X	22 Feb 1989
Namibia	X	X	X	17 Feb 1995 a	X	30 Jul 1992
Seychelles	Ratified			23 Apr 1980 a	27 Aug 1998	13 Apr 1992
South Africa	X	10 Dec 1998	X	12 Jan 1996 a	X	09 Jul 1996
Swaziland	X	X	X	14 Feb 2000 a	19 Nov 1998	15 Sep 1995
Tanzania. Zanzibar ^{##}	X	X	22 Jun 1964	X	X	X
United Republic of Tanzania ^{##}	X	X	X	12 May 1964 a	12 Jul 1983	18 Feb 1984
Zambia	X	X	02 Dec 1964	24 Sep 1969 d ⁺⁺	25 Apr 1983	10 Jan 1984
Zimbabwe	X	X	X	25 Aug 1981 a	X	30 May 1986

Source: Various. Compiled by the author.

Notes:

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

** International Covenant on Civil and Political Rights, 1966

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

**** Convention Relating to the Status of Refugees, 1951

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

X Non ratification

Date ratified or deposited

Ratified before Tanzania's unification.

+ Accession

++ Succession

None of the 15 SADC Countries has signed or ratified ILO C143 Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143). None of the SADC Countries has signed or ratified ILO C189 – Domestic Workers Convention, 2011 (No. 189).

Some international declarations on migrants are more specific and have often been crafted in response to gross violations. For example the UN Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country in Which They Live (1985) was established in response to Idi Amin's deportation of Asian people from Uganda (Cholewinski, 1997). The Declaration outlines a number of rights foreign citizens should enjoy in a host state, including – among others – freedom of movement and choice of residence, the freedom to leave, the right to safe working conditions, life and security of person, association, and the power to transfer money abroad.

Although important from a normative respect, the actual impact of these international instruments on labour migration is limited, mainly because of their generality. As Millard (2008, p. 53) points out, international treaties such as the African Charter have an impact only when all states ratify them, and – importantly – when national legislations are effectively redesigned to comply with the treaties. These covenants do not have power on their own: they must be incorporated into and enforced via national laws. In the case of the ECHR, for example, all 47 Member States of the Council of Europe¹ have ratified the instrument. Consequently the ECHR is able to influence policy in each of the 47 signatory countries (Lambert, 2007).

The United Nations Population Fund (UNFPA, 2012) lists the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990 (A/RES/45/158) (ICPRMW) as one of the key international human rights instruments. The Convention was adopted on 18 December 1990 and enforced on 1 July 2003. 46 countries have ratified the Convention and signatories to it currently stand at 35.² Of SADC's 15 Member States, only Botswana, Lesotho and the Seychelles have signed and ratified the ICPRMW while Mozambique has only signed (16 March 2012) and not ratified (see Table 2 and Footnote 2). The ICPRMW undertakes to inter alia not discriminate against migrant workers, uphold migrant workers' human rights including freedom of movement, association, speech, etc. in their host State's territory.

¹ The Member States of the Council of Europe are listed online at: <<http://hub.coe.int/>>. Last accessed 24 October 2012.

² The ratification list for the ICPRMW, is available at:
http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&lang=en.
Last accessed 24 October 2012.



While it seeks to protect migrant workers, ICPRMW also pushes for measures to end clandestine migration especially due to human trafficking and misleading information that encourages irregular migration.

The ILO

Within the current structure of the UN, Grugel and Piper (2007, p. 50) cite the International Labour Organisation (ILO) and the UN Office of the High Commissioner for Human Rights (OHCHR) as the principle UN agencies engaged in setting standards with regard to migrants as workers and non-citizens, respectively. The ILO is committed to setting standards for the protection of migrant workers. It, therefore, explicitly addresses migrant labour issues through the ILO's Multilateral Framework on Labour Migration and in several conventions. Challenges are arising from increasing cross-border movements of persons in search of work opportunities outside their home countries; ILO drafted the Framework on Labour Migration to address these challenges in a globalising world. The challenges addressed range from increasing irregular cross-border migration of persons, to human trafficking, to exploitation of migrants, and beyond. Adopted in 2005, the ILO's Multilateral Framework on Labour Migration is based on non-binding principles and guidelines. Rather, the framework provides a practical guide and set of actions to encourage governments', worker organisations' and employers' compliance and cooperation in the development and formulation of labour migration policies and practices at national, regional or international level (International Labour Organisation (ILO), 2006). The document's aim is for concerned parties to maximize the benefits of labour migration. Specifically, the framework:

- “addresses the major issues faced by migration policy makers at national, regional and international levels.
- is a comprehensive collection of principles, guidelines and best practices on labour migration policy, derived from relevant international instruments and a global review of labour migration policies and practices of ILO constituents.
- addresses the important themes of decent work for all, governance of migration, protection of migrant workers, promoting migration and development linkages, and expanding international cooperation.
- is a nonbinding framework, which clearly recognizes the sovereign right of all nations to determine their own migration policies.
- accepts the crucial role of social partners, social dialogue and tripartism in labour migration policy.
- advocates gender-sensitive migration policies that address the special problems faced by women migrant workers” (ILO, 2006, p. vi).

Unlike its non-binding Multilateral Framework on Labour Migration, the ILO has drawn-up two binding international conventions specifically addressing labour and migration, in addition to the ICPRMW cited above: C097, the Migration for Employment Convention (Revised), 1949 (No. 97) and C143, the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143). Non-binding Recommendations supplement each of these Conventions, namely, R086, the Migration for Employment Recommendation (Revised), 1949 (No. 86) and R151, the Migrant Workers Recommendation, 1975 (No. 151), respectively.

Though written decades ago under different circumstances than today – on the heels of World War II and following the oil crisis in 1973, respectively (ILO, 2004) – the two Conventions are up-to-date.³ Both Conventions are concerned with migration in general, and more specifically: the well being of persons that voluntarily leave their countries of origin in search of employment in other countries; and issues pertaining to migration, immigration, emigration and transit. These Conventions provide comprehensive definitions of the rights of migrant workers, advocating for equal treatment, non-discrimination and equality of opportunity (ILO, 2012). C097 entered into force in 1952. The Convention and its supplement, R086, focus on migration for employment, and address labour migration issues ranging from entry of migrants in a host country to their return or exit from the host country. The Convention also calls on State Parties to treat lawful migrant workers equally (with their own nationals) on work matters ranging from working conditions to benefits and taxes, membership in trade unions, and collective bargaining, etc. R086 supplements C097 and further models a temporary and permanent migration of workers agreement in the Annex.

C143 was enforced in 1978. C143 and R151 focus on irregular or undocumented migrants and their protection, with specific concern for “migrations in abusive conditions and the promotion of equality of opportunity and treatment of migrant workers” (Migration of Employment Convention, YEAR). The ICPRMW, C097 and C143 all generally seek to protect, enhance and guarantee the fundamental rights of migrant workers. They are equally concerned with irregular and clandestine migration and seek to eliminate it. The Conventions represent the international community’s fundamental principles for the protection of migrant workers. The ICPRMW expands on and elaborates the rights of migrants stipulated in C097 and C143 (ILO, 2012). Together, the three Conventions represent a comprehensive charter of the rights of migrants and provide a legal basis for policy and practice in the national arena on migrant workers, according to ILO (ILO, 2012). ILO has historically made the protection of migrant workers part of its overall mandate: its conventions and all fundamental core standards relate to migrant workers (Grugel and Piper, 2007, p. 52). Ideally, Member States would support and ratify these Conventions, affirming their commitment to the rights of migrant workers and to fulfilling the Conventions’ accompanying obligations. In the case of SADC, five states have ratified C 097 and only three have ratified the ICPRMW (see table 2). None of the 15 SADC States, however, has signed or ratified ILO’s C143, the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) and ILO’s C189, Domestic Workers Convention, 2011 (No. 189). This is no surprise, if viewed from a global perspective, as conventions specifically relating to migrants have the least ratification rate in both developed and developing countries (Grugel and Piper, 2007). Grugel and Piper cite studies that suggest that political motivation, such as obstacles to ratification in major regions of the world, are behind this failure.

UNHCR

In addition to ILO and UN Conventions, there are other UN bodies and policies with a bearing on labour migration issues. The UN’s specialized agency on refugees, the United Nations High Commission for Refugees (UNHCR), was established by UNGA in 1950 with a mandate to lead and co-ordinate action aimed at protecting refugees and resolving refugee problems in the world (UNHCR, 2012). Accordingly, UNCHR

³ A full list of ILO’s Up-to-date Conventions and Recommendations is available online at: <http://www.ilo.org/dyn/normlex/en/f?p=1000:12020:0::NO::...>
Accessed 31 October 2012.



aims to safeguard refugee rights and wellbeing and is committed to ensuring that people exercise the right to find safe refuge and seek asylum in another State. Because UNHCR also helps integrate or resettle refugees in third countries, while working to ensure the option for them to voluntarily return home is open (UNHCR, 2012), its work is relevant to migration policy at global, regional and even national levels. Many cross border movers are mixed refugees, i.e. they include people both seeking refugee status (asylum) and work in host countries. The 1951 United Nations Convention Relating to the Status of Refugees (as amended by the 1967 Protocol Relating to the Status of Refugees)⁴ provides the international legal bases for the protection and assisting of refugees. The Convention defines a refugee, refugee rights and legal obligations of States towards refugees. A number of fundamental principles underpin the 1951 Convention Refugee Convention. Notable among these principles are non-discrimination, non-penalization and non-refoulement (UNHCR, 2010). Refugees should not face any penalty for illegal entry, given that they will breach immigration rules as they seek asylum. Neither should there be any discrimination against refugees based on country of origin, race, sex, age, and so on, in the application of the provisions of the Convention. The Convention also requires of host States to accord refugees such rights as access to education, work and travel documentation, among others. As a specialized UN agency dealing with refugees UNHCR supervises the application of the 1951 Convention on Refugees and the 1967 Protocol as it carries out its duties stipulated in its Statute of 1950 (UNHCR, 2007) and resolutions proceeding from the UN General Assembly. The Convention on Refugees was adopted in 1951 and enforced in 1954. It currently has 19 signatories and 145 parties (United Nations Treaty Collection, 2012). All 15 SADC Member States except Mauritius are party to the Convention, having signed and ratified it (see Table 2).

The IOM, the GFMD and the GMG

Unlike ILO, the International Organisation for Migration (IOM) was set up outside the UN system. ILO, however, has to contend with the latter in the area of migration. IOM does not engage in setting norms and standards per se and lacks official mechanisms with which to engage civil society (Grugel and Piper, 2007). According to Grugel and Piper (2007, p. 53), this is why Western governments support IOM more than ILO to the point where these governments wish to reduce the latter's mandate for migrant workers. IOM founding members wanted to have a say on the types and numbers of migrants to allow into their territories while IOM membership was only open to governments that respected freedom of movement of persons (IOM, 2011). IOM has changed its name three times since its creation in 1951 at the International Conference on Migration in Brussels⁵. At its inception IOM primarily sought to ensure orderly movement of people displaced by the Second World War in Europe (IOM, 2011). With 146 member states and 13 observers, today IOM works in the area of migration by collaborating with and providing advice to migrants, governments, intergovernmental institutions and non-governmental organisations (NGOs) (IOM,

⁴ The 1967 Protocol Relating to the Status of Refugees removed geographical and temporal limitations in the 1951 Convention thereby achieving universal coverage for the 1951 Convention to include events occurring after 1951 and persons and territories beyond Europe. Further, developments in disciplines such as international human rights law and refugee and subsidiary protection regimes in various regions of the world such as the EU now supplement the Convention (see "Introductory Note" in Convention and Protocol Relating to the Status of Refugees).

⁵ First called the Provisional Intergovernmental Committee for the Movement of Migrants from Europe (PICMME) in 1951 and renamed Intergovernmental Committee for European Migration (ICEM) in 1952, the Intergovernmental Committee for Migration (ICM) in 1980 and third, the International Organization for Migration (IOM) in 1989.

2012a). IOM recognises the link between migration and socioeconomic and cultural development in its Constitution and, therefore, focuses on four broad areas in its migration work: migration and development, migration facilitation, migration regulation and forced migration. The organisation also recognizes migrants' right of freedom of movement and is thus engaged in inter alia activities that promote international migration law, in debates and guidance on migration policy and in the protection of migrants' rights.

The Global Forum on Migration and Development (GFMD) is a state-led and voluntary process, inaugurated in July 2007 on the heels of the UN organized High-level Dialogue on International Migration and Development (UNHDDIMD) (United Nations Conference on Trade and Development – UNCTAD, 2009). Since 2007 GFMD has provided an annual forum for States in the international community to continue the dialogue on international migration. GFMD thus engages national, regional and global actors in informal, non-binding and outcomes-oriented dialogue on migration and development as it seeks coherent policies on migration and development (GFMD, 2011). Through consultation and follow-up activities, the forum is committed to strengthening State capacities in effectively addressing opportunities and challenges concerning migration and development. It also promotes cooperation among States and cooperation between States and other actors. GFMD also has input from the Global Migration Group (GMG), a pool of heads of agencies that inter alia promotes the application of regional and international norms and instruments relating to migration and encourages the adoption of approaches to international migration that are more coherent, comprehensive and better coordinated (GMG, 2012a). Of particular concern to the GMG is the improvement of members and stakeholders' effectiveness in responding to the challenges and capitalizing on the opportunities that international migration presents. The inter-agency group provides leadership for the UN system and international community's response to these challenges and opportunities that come with international migration. Some of GMG's key priorities and areas of engagement include:

1. Establishing a comprehensive and coherent approach in the overall institutional response to international migration;
2. Working to ensure the full respect for international migrants' human and labour rights so as to promote human security and development and, in particular, provide protection to vulnerable migrants, including asylum-seekers, refugees, stranded migrants and victims of exploitation and trafficking;
3. Contributing to the major initiatives of the international community and GMG members, including the General Assembly High Level Dialogue on Migration and Development, a follow-up to the recommendations of the Global Commission on International Migration;
4. Identifying critical issues, opportunities, challenges, weaknesses, gaps and best practices in relation to international migration and its interrelations with development;
5. Providing system-wide direction and leadership so as to promote interest, dialogue and debate on issues relevant to the governance of international migration, and for its contributions to development, including its interrelations with employment, trade, financial flows, education and the distribution of skills;
6. Contributing to greater consistency in policy formulation and programme implementation;



7. Agreeing on common positions, responses and actions in addressing specific situations or developments;
8. Finding appropriate mechanisms to interact with States;
9. Supporting the efforts of individual States, regional bodies, and regional and global consultative processes to address specific migration issues; and
10. Developing joint activities to improve expertise, including through training programmes, capacity building and inter-agency transfers. (GMG, 2012b)

UNESCO

The United Nations Educational, Scientific and Cultural Organisation (UNESCO) also contributes to international consultative processes on migration. UNESCO fosters scientific cooperation and partnership around the globe. For example, UNESCO participated in supporting the adoption of visa and immigration regulations that facilitate the free movement and exchange of scientists in the 2006 Abuja Declaration on the Dialogue among Civilisations, Cultures and Peoples (UNESCO, 2012a).

UNESCO (2012a) outlines several activities around international migration, including:

1. policy-relevant research focusing on obstacles to the UN Convention on Migrant Workers' Rights to promote the human rights of migrants. Such research should be aimed at understanding the low rate of ratification of the ICPRMW in, for example, Southern and Western Africa, the Asia Pacific, Eastern and Western Europe, North Africa and Canada. Such research helps governments, NGOs and other stakeholders base their decisions and actions on accurate and up-to-date knowledge of migrants' human rights situations in different regions of the world.
2. recognition of higher education studies and qualifications to ensure that students and workers are mobile across international boundaries. This UNESCO activity goes back, to the late 1970s and early 1980s when UNESCO initiated the Conventions on the Recognition of Higher Education Studies and Qualifications. All regions of the world have such Conventions. Table 2 shows the SADC Member States that have ratified the African version of this Convention i.e. the Regional Convention on the Recognition of Studies, Certificates, Diplomas, Degrees and other Academic Qualifications in Higher Education in the African States (1981), enforced 1 January 1983.

These activities reflect UNESCO's functional contribution to UNGA's International Forum on migration (UNESCO, 2012a). Some of UNESCO's functions in this respect include inter alia:

1. generating ideas that address migration issues relating to education, science, communication and culture, as well as identifying strategies and policies to deal with such issues;
2. collecting and sharing information and best practices on international migration and development;
3. setting standards that promote the recognition of academic qualifications for academic purposes, such as further studies, and for purposes of recognising diplomas to find work and for professional purposes (through its Conventions on the Recognition of Qualifications, UNESCO) (UNESCO, 2012b).

Differences in training or educational systems and accompanying qualifications between countries have the potential to impede free movement of persons across borders. This especially applies to persons trained in one country seeking employment or establishment in another, where training or qualifications acquired in the former are not recognised in the host country. The concerned persons would thus be hindered from pursuing a profession in the receiving country. The importance of UNESCO's work and contribution to free movement of persons through the Convention on the Recognition of Qualifications is thus apparent.

The EU has worked around this potential impediment to free movement of persons in the Union through Article 53 of the Treaty for the functioning of the EU (TFEU). The European Parliament and Council are, under TFEU Article 53, authorised to issue directives for mutual recognition of certificates and diplomas, etc. for such professionals as architects, lawyers, doctors and nurses among Member States of the EU (Europedia, 2012a).

Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications establishes a system that mutually recognises professional qualifications between Member States to make it easier for EU citizens entitled to exercise a regulated profession (requiring proof of specific professional qualifications) in their home State to pursue the same profession in another Member State (Europa, 2012a; UK Parliament Website, 2012). The Directive establishes inter alia systems of automatic recognition based on harmonised minimum conditions for training and on professional knowledge and experience for medical professionals such as doctors, nurses, dentists, midwives, etc. and for various commercial and manufacturing activities. A system also exists for recognising regulated professional activities where applicants in a given host State can take aptitude tests if their level of professional training (acquired in their home State) substantially differs from that of the host States.

The Andean Community, discussed below, in Article 13 of the General Framework of Principles and Rules and for Liberalizing the Trade in Services in the Andean Community (1998) also calls on Community Member States to recognise the licenses, certifications, professional degrees and accreditations granted by another Member State for any service activity requiring such documents.

Similarly SADC, as discussed later below, has approved the establishment of a regional qualifications framework meant to inter alia contribute to the mutual recognition of degrees and qualifications in higher education in that region and Africa as a whole. Currently, however, only 5 out of the 15 SADC States have signed and ratified UNESCO's Regional Convention on the Recognition of Studies, Certificates, Diplomas, Degrees and other Academic Qualifications in Higher Education in the African States (Table 2).

Training and professional experience requirements for citizens from other regional Member States can present obstacles to or impede the free movement of persons and, therefore, work against the objectives of integration. Recognition of qualifications by host Member States on the other hand encourages free movement as it allows citizens of a regional group to access, in the host State, the profession for which they qualify in their home State. Professionals may thus be able to pursue their profession in the host Member State under conditions similar to those in the home State.



General Agreement on Trade in Services Mode 4

The World Trade Organisation (WTO) and its various agreements do not provide for labour mobility. The movement of natural persons as suppliers of services is, however, covered under the General Agreement on Trade in Services (GATS) mode 4. The GATS mode 4 defines trade in services, as it relates to movement of natural persons, as the “presence of natural persons of a Member in the territory of any other Member” (WTO, 2013a). GATS entered into force in 1995 and constitutes legally enforceable rules that regulate trade in goods and services. In the international system four modes of service supply define the structure of GATS: Mode 1 on cross-border trade, dealing with the delivery of services between one territory and another by non-residents; Mode 2 on consumption abroad, which relates to residents purchasing or consuming services supplied by providers in another territory; Mode 3 on commercial presence, where service suppliers from abroad set up base in another territory to provide the services there; and, of relevance to this research, Mode 4, which relates to the movement of natural persons to another territory to provide services in that territory. It is notable that suppliers of services in modes 1 and 2 are not present within the territory of a Member State they are supplying the services to and are present in the Member State’s territory in Modes 3 and 4. The movement of persons under mode 4 is temporary. The GATS text does not, however, define ‘temporary movement’. This subjects ‘movement of persons’ to a wide range of definitions and leaves individual governments the freedom to regulate entry and determine the length of stay of temporary workers so long the governments do not invalidate their commitments to GATS. Paragraph 2 of the Annex on movement of natural persons supplying services under the Agreement states that GATS neither applies “to measures affecting natural persons seeking access to the employment market of a Member, nor... to measures regarding citizenship, residence or employment on a permanent basis” (WTO, 2013b). Furthermore according to Paragraph 4 of the Annex GAT does not prevent Members from “applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Member under the terms of a specific commitment” (WTO, 2013b). This provision does not regard discriminatory visa requirements as nullifying or impairing the said benefits.

Three commitments including transparency, market access and most favoured nation (MFN) apply to movement of natural persons under GATS Mode 4. Members are obliged to publish all measures relevant to general applications for trade in services, as a means of transparency. Apart from government services, which are excluded from GATS, Members commit to allow market access to services and service provision by specifying the sectors they wish to liberalise. GATS Article II covers the MFN treatment, which essentially calls for non-discrimination in services and services provision. A Member is not expected to treat services and the supply of services from all Members less favourably than the services or the supply of services from its most favoured partner. Where the services in question are cross-border in nature, therefore, the providers’ country of origin should not cause them to be discriminated against.

Citing the example of the EU, Nielson (2002, p. 5-8) points out that it is not always the case that facilitated movement of people automatically translates into the right to provide specific services. The EU does not require visas or work permits for citizens of Member States and yet exceptions exist “on grounds of public policy, public security or public health” (Nielson, 2002, p. 8). Measures taken in view of such exceptions must weighed by: threats that are serious enough to fundamental interests of society; conformity to the

proportionality principle and provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms; and not adopted to service economic ends. Nielson (2002, p. 15) lists Mercosur among regional agreements that directly replicate the GATS model on access to labour market, permanent migration and the right of Members to regulate entry and stay of foreigners. The only bases of market access are specific commitments that cover movement of all groups of natural persons providing services.

Despite lacking specific labour mobility provision (see below), the coverage of trade in services in the ASEAN Free Trade Area (AFTA) generally includes mode 4 provisions. Provisions for the liberalisation of services and mobility of labour are common in free trade agreements (FTA) concluded in the ASEAN region (Natividad, 2009). Labour receiving countries use such provisions as leverage to secure cooperation from sending countries in the receiving countries' attempt to manage irregular migration. Malaysia and Thailand have, in this respect, signed FTAs with large labour sending countries like Bangladesh, Indonesia, Pakistan, China, etc. (Natividad, 2009, p. 5).

The ILO and UN Conventions discussed in the foregoing section are international and some of their provisions might not be congruent with conditions at regional and national levels. However, regional instruments such as the ECHR or the African Charter cited earlier, or the SADC Charter discussed later, are limited in their application to states within particular geographical regions. The next section, therefore, steps down from the global to investigate the labour and migration regimes that exist at regional and national levels and what precipitates such regimes. Do regions and or nations consider international declarations and conventions on labour and migration in setting up their labour migration and related regimes?

The governance of migration at the regional level: provisions for cross-border movement of persons and workers

Some observers argue that future prospects for setting up a global and regional multilateral agreement on free movement are unfavourable because of: the divergence of interests between the world's sending and receiving countries; the prevalent notion that migration is a security issue; and the unknown social, economic and political effects of an international framework (Nita, forthcoming). In some regards, the complexity of a global governance system for migration makes the region a more viable level of governance for establishing multilateral agreements on migration, as it lies between the national and the international and is likely to enjoy a higher degree of homogeneity and convergence of interests.

We can put forward three arguments in favour of migration governance at the regional level (possibly as a preliminary step towards a global scenario). The first argument is based on the fact that most cross-border movements occur within regions. The World Bank, for instance, reports that intra-regional flows account for more than 60% of all global migration. The second argument is that regional agreements tend to be viewed more favourably by states. Within a specific region, shared interests on issues pertaining to migration, coupled with the smaller number of states involved, as well as similarities in levels of economic development, make it easier to reach comprehensive agreements regionally. The third argument is that regional arrangements provide a better option for migration governance than bilateral agreements because of the lower transaction costs and shift preference. While in bilateral agreements states are usually more concerned about the cost of dealing with immigration, regional frameworks provide a collaborative space



for integrated management of migration, which include the sharing of costs and the institutional capacity to seek win-win solutions. Whereas bilateral agreements pit receiving countries (which are usually in a stronger economic position) against sending countries, regional arrangements are more likely to dilute power imbalances and generate side-payments and other forms of cooperation among weaker countries capable of producing multilateral outcomes.

These arguments are echoed by Betts' (2011) conclusion that regions (or clubs of governments as he calls them) are an important focus of much intergovernmental cooperation in migration management. He too finds an obstacle to improved global migration governance in the North-South opposition but in this case, opposition by the global North to the demands of many in the global South (Betts, 2011, p. 322):

There has been great reluctance among mainly Northern states...to countenance binding, UN-based governance framework in relation to the area of labour migration. The prospects for a coherent, UN-based governance framework...therefore appear[s] remote, primarily because of North-South polarization. Voting at the UN on the GFMD, ratifications of the UN Convention on the Rights of All Migrant Workers and Their Families, and the polarized discussions at the first High-Level Dialogue on Migration and Development (HLDMD), all exemplify the extent to which North-South polarization is inhibiting the emergence of UN-based governance structure ...

Betts' argument in favour of regions is pragmatic. He also underscores that, whereas for refugees seeking asylum there might be a case for their rights and needs being met by a global regime because the meeting of their needs is a global public good (non excludable, non rival) from which all states benefit, this is not the case for "irregular and low skilled labour migration" where he argues "the benefits are largely geographically confined" (Betts, 2011, p. 312). However, in the case of skilled labour migrants, where there is competition among receiving countries, Betts argues that bilateral arrangements may be preferable.

When the UNESCO developed its Management of Social Transformations (MOST) Programme, it focused upon regions as a more fruitful location within which to pursue free movement policies and practices with regard to the mutual recognition of qualifications. UNESCO set up MOST to primarily transfer relevant data and findings from social science research to decision-makers and stakeholders with the aim of efficiently bridging research, policy and practice (UNESCO, 2013a). In Africa – and particularly the SADC region – UNESCO chose to prioritize regional integration processes after consultations with its regional offices in a drive to set up thematic regional priorities for the establishment of MOST Phase II (UNESCO, 2013b). Here a focus was on the recognition of qualifications but only 5 SADC States have so far signed and ratified UNESCO's Regional Convention on the recognition of qualifications, as earlier stated. This is not to say, however, that States here do not recognize foreign qualifications. The South African Qualifications Authority (SAQA), for example, operates within the provisions of South Africa's National Qualifications Framework (NQF) as outlined in the NQF Act No. 67 of 2008 to, with respect to foreign qualifications, *inter alia* provide an evaluation and advisory service consistent with the Act including the evaluation of foreign educational qualifications in order to determine their South African equivalent and recommend possible levels of recognition (SAQA, 2013). SADC States are yet to establish the SADC Regional Qualifications Framework, which is discussed in Section 4.1 below.

A further issue to be reviewed within this context is the distinction between free movement of people and that of labour. Of the 214 million international migrants, the ILO estimates that about 105 million are

economically active. The significance of labour migration, especially in processes of regional integration, cannot be overemphasised. Proponents of this argument hold the harmonisation of policies and standards that provide for good governance in labour migration to be essential to effective regional agreements. Yet the two notions of free movement of labour and of people along with that of international migration governance need clarification before addressing their realities on the ground.

Some international declarations or conventions such as the Universal Declaration of Human Rights provide the right for everyone to leave any country, including their own, and to return to their country. There is concern, amidst discussions among scholars promoting genuine free movement across international borders, that free movement should include such possibilities as a migrant's right to reside in their new destination, the right to take up employment there and to bring along one's family (Nita, forthcoming). To this list of rights we need to add access to basic social rights, education and health care, etc. for migrants. Far from being absolute, free movement should be interpreted within the limits of the laws of any given State and the rights and freedoms of others (Carens, 1987 in Nita, forthcoming). When considered from a regional integration perspective and the implied goal of Common or Single Markets, discussion of freedom of movement connotes one of four freedoms: free movement of goods, services, capital and persons. In the EU, for example, free movement of each of the said factors is enshrined in the EC Treaty and constitutes a fundamental principle of the EU in addition to forming the basis of the Single Market (European Commission, 2012a). However, freedom of movement connotes more the free movement of workers than that of people in general when spoken of in the context of the Single Market (Nita, forthcoming). This is true of the European project, a case in which the use and application of free movement gradually evolved from largely connoting the free movement of workers with the free movement of people in general. European citizenship, which came with the Treaty of Maastricht, lifted most internal border controls between EU Member States and brought with it the right for all EU Member States citizens to live and move freely within the EU.

We now turn to an examination of the major existing policy frameworks dealing with regional labour migration in selected regions of the world. Reviewing and providing brief overviews of migration legislation and policy frameworks in Europe, South America, and Southeast Asia accomplish this. Cognisance is taken of the fact that differences exist between the world's regional organizations. No single regional block in the world can be said to be a universal model for regional labour migration, and the management thereof, for other regions. There are no best practices per se, regarding implementation of regional labour migration regimes. Experiences learned in one region can, however, provide valuable examples for others.

Europe: the European Union

Of all the world's regional groupings, the European Union (EU) has made the most significant strides towards achieving total freedom of movement of persons and labour in a region. The EU exhibits high levels of implementation of protocols, legislations and policies relating to movement of persons. Freedom of movement of persons in the region is enshrined in the EU Treaty and is central to the EU's common market objective.

Hansen (2003, p. 25) presents two frameworks through which labour migration occurred in post-World War II Europe: colonial migration regimes and the 'temporary' guest worker policies. With respect to the former, European colonial powers had at their disposal large supplies of unskilled workers. Unable to



secure workers from Europe, policy makers in colonial powers such as Belgium, France, the Netherlands and the UK looked to colonial migrants to meet their labour needs. Regarding the guest worker policies, the economic recovery that Germany and continental Europe started experiencing in the mid-1950s gave rise to a demand for labour that these countries could not meet domestically. Thus the German government, for example, looked to southern Europe, Turkey and North Africa in the 1960s and negotiated guest-worker schemes – called Gastarbeiter system – with countries such as Italy, Turkey, Morocco, etc. Countries like Austria, Belgium, and Switzerland, etc. also adopted the Gastarbeiter system with variations (Hansen, 2003, p. 26). Migrant workers would remain in their host countries as long as jobs were available and return to their home countries once the host economies were not performing well. Most of these countries ended their labour migration programs by 1973.

The Treaty establishing the European Economic Community dates back to the signing of the Treaty of Rome in 1957. A primary objective in working towards a common European market partly stemmed from the twofold desire to end the long history of animosity between France and Germany that threatened to split Europe, and to build a peaceful and successful Europe after the devastation of World War II. Starting with cooperation between France and Germany in their steel and coal industries, and based on the European Coal and Steel Company (ECSC), the common market would emerge and be established through inter alia functional spill-over of activities, leading to eventual cooperation in other spheres. The ability for capital, goods, services and labour to be mobile was, therefore, critical to the project.

The Schengen Agreement and Schengen Convention of 1990 also deserve mention in discussing free movement in the EU. The origins of these instruments date back to the 1984 Fontainebleau Council of European Communities, which adopted a rule to eliminate customs formalities within the Community area. The Schengen Agreement (originally between Belgium, the Netherlands, Luxembourg (or the Benelux States), France and Germany, and now enlarged to a total 22 EU Member States and 3 associated non-Member States) is designed to control and effect border regulations on the periphery of participating States. Specifically, the Agreement abolishes border checks (within the region of participating States – initially France, Germany and the Benelux States and, now, all States as per enlargement) on one hand and allows citizens of participating states to circulate freely within the region on the other hand. At the same time it effects and maintains tight controls on external borders of the region comprising the 25 participating states. The Agreement also looks at procedural matters in the handling of refugees and people seeking asylum in the EU. Third country nationals are only allowed free movement of up to 90 days to other Schengen participating states. Third country nationals seeking employment can, furthermore, only work in the country where they originally have a work permit. The Schengen Convention of 1990 implemented the Schengen Agreement, as discussed shortly below.

The Single European Act (SEA) closely resembles the Schengen Agreement in its quest to set up a “market without frontiers” in the European Community (EC). SEA introduced an Article 14 into the EC Treaty stipulating that the EC adopt steps to achieve an internal market in the EC. Specifically, Article 14.2 of the Treaty states that “[T]he internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaty” (Single European Act, 1986). SEA came into force in July 1987.

With its 1993 implementation, the Maastricht Treaty of 1991 – or Treaty on European Political and Monetary Union (EU) – established the single market. This reinforced free movement of goods, services and people among participating countries. The notion of European citizenship also came out of the

Maastricht Treaty, as outlined in Article 8 of the Treaty. This bolstered the notion of free movement of persons by giving citizens of the EU personal and fundamental rights to live and move freely into other EU Member States, even if they did not satisfy the previous requirement of being engaged in active or productive economic activity.

Several other legislations, Treaties and court decisions prior to and after the Maastricht Treaty of 1991 have helped advance the free movement and establishment of EU citizens in host Member States. European Council Regulation No. 1612/68, for example, established Free Movement of Workers within the Community in 1968. In the 1990s, about two decades after Regulation No. 1612/68, retirees and economically inactive persons, etc. gained the right of residence in EU host Member States. In 2004, Directive 2004/38/EC replaced Regulation No. 1612/68 and came into force in 2006. Directive 2004/38/EC merged all the legislation regarding right of entry and residence for EU citizens into a single instrument and made it easier for the general public and public authorities to exercise the right of entry (Official Journal of the European Union, 2004; Europa, 2012b). This Directive also aimed to reduce the formalities EU citizens and their families had to complete in order to exercise the right of residence. The Directive gives citizens of the EU and their families the right to free movement for up to 90 days without any conditions. EU citizens need to be engaged in some economic activity or have sufficient funds to sustain themselves during this period, however. Respective national immigration policies of individual EU Member States determine stays longer than 90 days. This notwithstanding, current EU discussions have progressed to now include immigration in relation to non-EU citizens and third country nationals.

The Treaty of Amsterdam, which came into force in 1999, integrated the Schengen Convention of 1990 into the EU framework and thus reinforced free movement of people within the EU. Under the Schengen Convention, EU citizens are allowed free movement across national borders of and through the 25 participating states without the need for their visas or passports to be checked. It is worth noting that before incorporation into the EU framework, and having originated as an agreement among five States (the Benelux, France and Germany), the Schengen operated as an independent and authoritative regime outside EU treaties until the Amsterdam Treaty came into force. Schengen thus had a functional and fully independent bureaucracy with an Executive Committee, a Secretariat, Central Group and Joint Control Authority, among others (den Boer 2001, 300-302 in Gaisbauer, 2010). The EU currently faces the challenge posed by third country nationals (TCNs) in the region in view of the increasingly abolished internal border controls since Schengen in 1985. Additionally, given the increasing relaxation of internal border controls between EU Member States, the question arose whether EU citizens, apart from TCNs, had the right to work in other EU Member States. The next section addresses these two concerns, in addition to the question of whether older EU Member States have the liberty to restrict workers from newer Member States entry into the older members' labour markets (of newer members, Bulgaria and Romania are the remaining countries in the enlargement schedule).

Article 45 of TFEU gives workers and citizens of EU Member States the right to move freely within Member State territories and freedom to take up employment there. A worker can stay for employment and remain a Member State even after leaving employment.

EU Treaties thus specifically provide for free movement of workers apart from the general provisions for free movement of persons. "Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States subject to the limitations and conditions laid down in the EC Treaty and by the measures adopted to give it effect" (Consolidated version of the Treaty on the Functioning of the



European Union (TFEU), 2012). The Treaties also prohibit discrimination based on nationality. Accordingly, Article 45.2 of the Consolidated version of the TFEU (2012) stipulates that freedom of movement for workers in the EU entails “the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment” (C83/67). Workers are also entitled to the same social benefits as host Member State citizens. Workers’ entitlements to free movement, to seek and take up employment and to become established in the EU are subject to the limitations of public policy, public security or public health of a given host Member State.

EU transitional provisions in relevant Treaties of Accession apply to newer Member States as the EU enlarges. The provisions enable the new Members to gradually prepare for the full application of EU law on free movement of workers. The provisions restrict movement of workers from newer to older EU Members for up to seven transitional years after a State joins the Union (European Commission, 2012b). The restrictions do not pertain to general freedom of movement or travel but instead to the migrants’ right to work in the older host countries.

Exceptions to how individual older Member States apply the transitional provisions towards newer States may apply. Ireland’s handling of Bulgaria and Romania (Department of Jobs, Enterprise and Innovation, 2012) provides an illustrative example of this. Bulgaria and Romania joined the EU in 2007, and the Treaties governing their accession to the EU provided a seven-year transition period before their nationals could obtain full access to the labour markets of the other 25 EU States. Ireland, for example, gradually relaxed its rules towards Bulgarian and Romanian migrants and gave certain categories of workers from these countries access to its labour market. By July 2012, long before the 1 January 2014 automatic expiration of all restrictions on Bulgarian and Romanian migrants, Ireland had also granted an annual 350 work permits to these countries’ nationals (Department of Jobs, Enterprise and Innovation, 2012).

Citizens of Non-EU States, or TCNs, who are lawfully in a EU Member State, are also catered for in the principle of the free movement of workers. In the case involving *Raymond Vander Elst v Office des Migrations Internationales*, the European Court of Justice (ECJ) ruled that a firm established in an EU Member State that employs persons who are lawfully and habitually non-member country nationals may post them in another Member State to provide services (Case C-43/93) (European Court Reports 1994). The principle of free movement applies also to all cases of posting of workers occurring in the framework of a transnational provision of services. Similarly, workers of a firm detached to another Member State enjoy at least the terms and conditions compulsory in the host Member State as stipulated by Directive 96/71 (Europedia, 2012b).

South America: the Union of South American Nations (UNASUR)

Latin America is marked by a history of international migration that goes back 500 years. In the modern era, however, the region saw the arrival of colonisers and later the arrival of Africans on forced migration as slaves. Europeans coming in the face of socio-political crisis in Europe (Patarra, 1998) were followed by Asians who would later immigrate to the region in the 19th and 20th centuries. In the latter part of the 20th century Latin America transitioned from a region characterised by immigration to emigration as its people moved within or to the developed world and in large numbers to the US (Patarra, 1998; Pellegrino, 2000). In the post-World War II era and particularly between 1955 and 1965 Latin America experienced changes in two key socioeconomic conditions that impacted on migration: population growth and economic growth.

The growth in population coupled with industrial development and urbanisation led to population mobility (Pellegrino, 2000). Nations in the area witnessed internal and international migration given geographical proximity. Violence resulting from, for instance, dictatorships in Argentina or Chile also triggered international migration in Latin America and forced people to migrate to the US, Europe, etc. Civil wars and guerrillas seeking to take power triggered migration in the 1980's with countries like El Salvador, Guatemala, Honduras and Nicaragua receiving the brunt of such violence (Cemla, 2013). US hegemony has also impacted international migration in Latin America. The US attracts a lot of migrants from the region. Mexicans, for example, constitute one of, if not, the largest community of Latin American migrants to the United States to the point where the issue has consequences for US politics. According to Pellegrino "[f]or large sectors of the Latin American population, the United States has become the centre of gravity and a powerful magnet in terms of personal advancement prospects, including culture and the complex system of values and of mechanisms whereby they are conveyed" (2000, p. 406). Furthermore, US and Multinational Corporation (MNC) investments in Latin America have also contributed to labour migration in Latin America. Pellegrino says the tendency for MNCs to transfer staff between countries in the region has contributed to the regionalisation of the professional and technical labour market there.

Two major regional blocks exist in South America: the "common market of the southern cone" or Mercado Común del Sur (Mercosur) and the Andean Community or Comunidad Andina (CAN). Member States of each of these organisations, along with Chile, Suriname and Guyana, together constitute the Union of South American Nations (UNASUR). Thus UNASUR represents the integration of respective Member States of Mercosur and CAN, as established by the UNASUR Constitutive Treaty.

The UNASUR Treaty was signed at the Third Summit of the Heads of State of South America on 23 May 2008 and came into force on 11 March 2011 after Uruguay became the ninth state to ratify it and give UNASUR full legal status. Brazil, Colombia and Paraguay are yet to ratify the Treaty. UNASUR reflects South American efforts to integrate the continent.

UNASUR's beginnings date back to the Cuzco Declaration (or formally, the Preamble to the Foundation Act of the South American Union) of 2004. In the Cuzco Declaration, 12 South American States⁶ proposed a South American Community of Nations, modelled after the EU (Goodman, 2008), that would inter alia pursue a common passport for citizens of Member States and a common market, currency and parliament for the proposed continental body.

The South American Community of Nations became UNASUR in 2007 with the express objective of achieving cultural, social, economic and political integration and unity among Member States. Three out of the twenty-one specific objectives in the UNASUR Constitutive Treaty stand out in support of free movement of persons in the Union. These three objectives aim to achieve:

- The consolidation of a South American identity through the progressive recognition of the rights of nationals of a Member State resident in any of the other Member States, with the aim of attaining a South American citizenship;
- Universal access to social security and health services;

⁶ Including Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Guyana, Paraguay, Peru, Suriname, Uruguay and Venezuela.



- Cooperation on issues of migration with a holistic approach, based on an unrestricted respect for human and labour rights, for migratory regularisation and harmonisation of policies.

Free movement of labour and persons in the respective regional bodies constituting UNASUR, however, is not as categorically drawn in their constitutive treaties.

South America: Common Market of the South (Mercosur)

Argentina, Brazil, Paraguay, and Uruguay founded Mercosur in 1994. Mercosur originated from efforts between Brazil and Argentina to integrate the two economies through a bilateral agreement called Program for Economic Integration and Cooperation (PEIC) signed in July 1986. The two agreements aimed to set up a common market and two years later, in November 1988, these two countries signed the Treaty for Integration, Cooperation and Development (TICD). Brazil and Argentina also opened participation in this arrangement to other South American countries. The success this arrangement recorded, especially in trade, prompted the Brazilian and Argentinian presidents to enter into and sign the Act of Buenos Aires in July 1990 to accelerate the integration process and eventually establish an FTA by the end of 1994. That same year, 1990, the two countries invited Paraguay and Uruguay to participate in the forthcoming FTA. This led to the 1991 Treaty of Asunción (updated and amended by the 1994 Treaty of Ouro Preto), which created Mercosur. Mercosur's main aim is a common market in which goods, services and factors of production move freely and customs duties and non-tariff trade barriers between Member States are removed. A common external tariff, and macroeconomic, sectoral and labour policy coordination are also part of Mercosur's common market objective. Venezuela joined Mercosur on 31 July 2012, bringing its total membership to five⁷.

Patarra (1998) attributes the formation and cultural diversity of the nations making up Mercosur to their patterns of international migration. The independence movements of the 19th century coupled with the socio-political crisis in Europe encouraged migration to the region, with most migrants preferring Argentina, Brazil, Chile and Uruguay as their destinations. Italians were a major influence in this wave of immigrations. Argentina, Brazil and Venezuela would be the key destinations for the last major wave of immigrations from Europe occurring after World War II. The "country-specific industrialisation processes" in the Mercosur countries reinforces their historical diversity (Patarra, 1998, p. 13). The recent trends in international migration affecting this region are characterised by flows to the US and flows within the region. Rising inequalities between Member States largely account for the latter. The region's Member States characterised by structured industrialisation, such as Argentina, significantly attract migrants from the region, although predominantly agricultural countries like Paraguay have also attracted considerable numbers of unskilled migrants from the region. Higher levels of education as well as expansion of the middle class in sending countries are held to determine the flows of migrants from the Mercosur region towards the US.

Mercosur aims to coordinate Member State's policies on labour migration, training and safety when it comes to labour mobility (Leipziger et al., 1997). Because the Treaty of Asunción does not provide for

⁷ Paraguay is currently suspended from Mercosur following the controversial removal of President Fernando Lugo from office on 22 June 2012 (see, for example, *The Economist*, 2012). Chile, Bolivia, Colombia, Ecuador and Peru participate in Mercosur as Associate Members or Observers.

migration, regional labour movement within Mercosur needed some discussion before arriving at coordinated regional labour policies (Amaral et al., 2005). Nevertheless, Amaral et al argue that the Treaty of Asunción and creation of Mercosur have helped increase cross-border labour migration among the southern cone countries. They credit Mercosur for driving regional migration and in this regard cite Brazil as not only having a strong immigrant presence, but also as being an important and attractive destination for Latin Americans from the region. Although the Treaty of Asunción does not explicitly address labour migration, it does provide for the free movement of factors – which include labour, since labour is a factor of production – as a key objective of the Common Market.

Also, the Montevideo Protocol on Trade in Services of Mercosur makes provisions for the movement of persons in services in the region. The primary objective of this Protocol is to promote free trade of services within Mercosur (Montevideo Protocol, YEAR). The ‘scope of application’ of the Montevideo Protocol states that the Protocol applies to measures adopted by Member States that affect trade in service and also includes measures related to inter alia “the presence, including the business presence, of persons of a Member State [of Mercosur] within the territory of another Member State for supplying a service” (Montevideo Protocol, Article II.1.iv). Furthermore, the Treaty of Asunción established the Common Market Group, an executive organ of Mercosur, to co-ordinate the regional body’s macroeconomic and sectoral policies. The Common Market Group is empowered to set up working groups for purposes of carrying out its duties (Southern Common Market (Mercosur) Agreement). Under this arrangement the Common Market Group tasked Working Group No. 10 to address issues of employment, labour migration and free movement of labour in Mercosur. Out of this working group’s deliberations came the Mercosur Social and Labour Declaration, a set of principles and rights for labour in the region.

Article 4 of this Declaration addresses migrant and cross-border workers issues in stating that “[a]ll migrant workers, irrespective of nationality, are entitled to the same assistance, information, protection and equality of rights and working conditions as recognized for the nationals of the country in which they are engaging in their activities.” In the same Article it states that Member States further “undertake to adopt measures to establish common standards and procedures relating to the movement of workers in border areas and to take necessary action to improve the employment opportunities and working and living conditions of such workers.” The Heads of State of the Parties of Mercosur adopted the Social and Labour Declaration on 19 December 1998.

In 2002 Mercosur also passed the binding Agreement on Free Movement and Residence for State Party Nationals or Residence Agreement for Mercosur Member State nationals. The agreement allows Mercosur citizens (and Bolivian and Chilean nationals too) living in any Mercosur Member State, work and residence in the host State. A Mercosur citizen living in a second Member State thus gains the right to live and work there without discrimination. The International Organisation for Migration (IOM) (2012b) reports that a positive outcome of the Residence Agreement has been an increase in documented immigrants in Argentina, making it [and Venezuela] the top destination for migrants from the region and Peru. Argentina used the Residence Agreement to respond to the irregular migration challenge facing the Mercosur region, included the Agreement in its national migration policy, and through Patria Grande, a regularization programme for migrants living in Argentina, regularized and integrated the region’s many undocumented migrants in the country. Other Mercosur States have also made the Agreement part of their national migration policies. Through the Residence Agreement, Mercosur citizens and Bolivian and Chilean nationals



thus have visa-free entry, an automatic visa and freedom to live and work in second Mercosur Member States. For those intending to provide services, a stay of up to four years is also allowed.

South America: the Andean Community

The earliest attempts to set up a regional scheme in South America predate UNASUR and Mercosur. In 1960 the Treaty of Montevideo established the Latin American Free Trade Association (LAFTA) with an initial membership of six including Argentina, Brazil, Chile, Mexico, Paraguay, and Peru. These were later joined by Uruguay, Colombia, Ecuador and Venezuela so that by 1967 all of Latin America, apart from Guyana, Honduras and Suriname, had become part of LAFTA. LAFTA sought a regional common market within 12 years of its establishment. The organisation, however, performed dismally leading to its dissolution and eventual replacement by the Latin American Integration Association (LAIA) in 1980. LAFTA's failure prompted the creation of several other regional bodies in South America, among which was Comunidad Andina or the Andean Community (CAN). CAN started out as the Andean Pact, established by the 1969 Cartagena Agreement. The Pact comprised Bolivia, Colombia, Ecuador, Peru and Venezuela and aimed to create a customs union and a common market.

The 1996 Amending Protocol of Trujillo introduced changes to the Cartagena Agreement and transformed the Andean Group into CAN. Membership remained the same⁸. CAN accepted Mercosur Member States as Associate Members of CAN in 2005, while Mexico and Panama participate in CAN as Observers. The Amending Protocol of Trujillo also set up an Andean Integration System (AIS), which was purposed to allow for effective coordination of activities, deepen Andean integration and promote the Community to the outside world. AIS comprised bodies and institutions such as the Andean Presidential Council, the Andean Council of Ministers of Foreign Affairs, the Commission of the Andean Community, the General Secretariat of the Andean Community, the Court of Justice of the Andean Community, the Andean Parliament, the Business Advisory Council, the Labour Advisory Council, etc. (Cartagena Agreement, 1969).

The Andean Community has a General Framework of Principles and Rules and for Liberalizing the Trade in Services in the Andean Community (Decision 439, 1998), which carries a provision to facilitate movement of persons in the region. Article 12 in the Framework specifically states that Member States "shall facilitate the free movement and temporary presence of natural or physical persons and of employees of service suppliers from other Member Countries with relation to activities performed within the scope of this General Framework, as agreed in that regard by the Andean Council of Ministers of Foreign Affairs" (General Framework, 2012).

Article 13 of the same Framework goes on to state that each Andean Community Member State shall recognize the licenses, certifications, professional degrees and accreditations granted by another Member State for any service activity requiring such documents. The document establishing the Andean Community, the Cartagena Agreement does not have any specific provision that addresses labour migration in the region. However, the Cartagena Agreement Commission of 1977 made two decisions that created two instruments to address labour migration in the Andean Community. Decision 113 created the Andean Social Security Instrument (ASSI) while Decision 116 (modified by Decision 545 in 2003) created the Andean

⁸ Venezuela formally exited from the Andean Community on 22 April 2011 and gained full acceptance into Mercosur as a Member on 31 July 2012.

Labour Migration Instrument (IAML). IAML or Decision 116 (modified by Decision 545 in 2003) aims “to establish provisions that will progressively and gradually permit the unhampered movement and temporary residence of Andean nationals in the sub region as wage workers” (Decision 545, 2003).

Two years earlier, in 2001, the Andean Community passed two Decisions (Decision 503 and 504): one aimed at recognising national identification documents in the Community and another creating the Andean passport. In establishing the recognition of national passports, Decisions 503 emphasises free movement of people as a precondition for the creation of the Andean Common Market. The preamble to the Decision reads, in part, “[t]he free circulation of people is one of the preconditions for the gradual creation of the Andean Common Market, which should be operational by December 31, 2005, at the latest” (Decision 503). Any Andean Member State citizen can enter another Member State visa-free as a tourist as provided for by this Decision. The Decision also points out that free movement in the Andean region is a right of citizens of the Community as well as by foreigners permanently resident in the region. Decision 503 entered into force on 1 January 2002.

Southeast Asia: the Association of Southeast Asian Nations

Southeast Asia has long witnessed international migration. Chinese and Indians migrated to the region in the late 19th and early 20th Centuries. European encounters with the region included, among other things, colonialism and production for export. Southeast Asia is one of the major players in global migration and the scale, significance and diversity of migration flows in the region has witnessed exponential increase since the 1980s (Kaur, 2009). Kaur says the majority of contemporary international migrants in the region include those who migrate for economic reasons, those forced to move because of war, as well as illegal migrants whom authorities in the region are striving to control. As of 2009 the foreign labour in the major migrant destinations of Malaysia, Singapore and Thailand comprised between 15 and 30 per cent of the labour force (Kaur, 2009, p. 276). In the post-World War II period Southeast Asia came to comprise two groups of countries: the one including the likes of Vietnam, Lao and Cambodia, which fell under Communist or Socialist regimes and the other comprising Indonesia, Malaysia, Singapore, Thailand and the Philippines, which pursued export-led economic policies. Following their inward-looking policies the former group experienced economic stagnation while the latter group of countries became a major destination for migrant labour in the region because of the rapid economic growth they experienced. It was the latter group that started the Association of South East Asian Nations (ASEAN).

ASEAN is, thus far, the most successful attempt at regional integration in East Asia. The ASEAN Declaration (also called the Bangkok Declaration) of 1967 established ASEAN after the organisation’s founding members – Indonesia, Malaysia, Philippines, Singapore and Thailand – appended their signatures to the Declaration. ASEAN Heads of State and Government met on ASEAN’s 30th Anniversary in 1997 to reaffirm the Bangkok Declaration. They also went on to adopt ASEAN Vision 2020, an outward looking, shared vision of the Association and its Member States that envisages peaceful coexistence, stability and prosperity in a community of caring societies (ASEAN Secretariat, 1997). At the 12th ASEAN Summit in 2007, the Heads of State and Government declared their commitment to accelerating the resolve they had made five years earlier; at the 9th ASEAN Summit in 2003, they committed to set up an ASEAN Community. In affirming the resolve to hasten the establishment of a Community, the Heads of State and Government signed the Cebu Declaration on the Acceleration of the Establishment of an ASEAN Community by 2015 (ASEAN Secretariat, 2012).



The Declaration of ASEAN Concorde II (or Bali Concord II), pronounced on 7 October 2003, and its predecessor the Declaration of ASEAN I (Bali Concord I) of 1976 both seek peace, prosperity and regional identity building in Southeast Asia (ASEAN Secretariat, 2003). The circumstances around Bali Concord II, however, differ significantly. First, five more nations have joined ASEAN since Bali Concord I. Second, ASEAN also currently finds itself in an interdependent and increasingly globalising world. The nations of ASEAN are more interdependent than ever with one another and with the rest of the world. These circumstances present inevitable preconditions for ASEAN's transformation into a Community.

Three pillars, including the ASEAN Political-Security Community (APSC), the ASEAN Economic Community (AEC) and the ASEAN Socio-cultural Community (ASCC), make up the ASEAN Community declared in Bali Concord II. The three pillars are mutually reinforcing and closely intertwined to ensure lasting "peace, stability and shared prosperity in the region," according to the ASEAN Heads of State and Government's declaration in Bali Concord II, (ASEAN Secretariat, Op cite, p. 1-2). Each pillar has an accompanying Blueprint adopted at an ASEAN Summit that serves as a guiding master plan for work towards setting up the respective pillar and ultimately the ASEAN Community by 2015. The ASEAN Heads of State and Government adopted the AEC Blueprint at the 13th ASEAN Summit on 20 November 2007 in Singapore. The APSC and ASCC Blueprints on the other hand were adopted on 1 March 2009 at the 14th ASEAN Summit in Cha-am/Hua Hin, Thailand.

The AEC and ASCC are more relevant to the present study because they each touch on issues pertaining to cross-border movement of persons in Southeast Asia. The AEC, according to Bali Concord II, shall bring to fruition the economic integration objective of ASEAN Vision 2020 where goods, services, investment and capital shall flow freely in the region. ASEAN shall, among other things, facilitate the movement of skilled labour, businesspersons and talent as measures towards attaining AEC.

The AEC Blueprint outlines measures ASEAN is undertaking to allow for labour mobility. It is noteworthy that ASEAN earmarks "skilled labour" for free flow in the region and that this labour includes traders in goods, services and investment. Bali Concord II and the AEC Blueprint allude to flows of this kind of labour across ASEAN Member States' borders as "managed or facilitated entry" (ASEAN Secretariat, 2008, p. 15). Section A5.33.(i) of the AEC Blueprint takes cognizance of regulations prevailing in ASEAN's labour receiving countries and undertakes to facilitate the issuance of visas and employment passes for ASEAN professionals and skilled labour engaged in cross-border trade and investment-related activities. Section A5.34.(i) of the same Blueprint aims to increase student and staff mobility within the region by enriching cooperation among ASEAN University Network (AUN) members in a bid to facilitate the free flow of services in ASEAN by 2015.

ASEAN Vision 2020 presents ASCC, on the other hand, as a people-centred and socially responsible Southeast Asia bound together as a community of caring societies (ASEAN Secretariat, 2009). In this respect, Bali Concord II undertakes to inter alia continue encouraging "regional mobility and mutual recognition of professional credentials, talents, and skills development" in the ASEAN region (ASEAN, 2003).

A strategic objective towards advancing and prioritizing education in the ASCC Blueprint includes, among other things, using educational activities to encourage ASEAN youths to establish an ASEAN identity. To this end ASEAN will promote educational networking and support professional interactions and student and staff exchanges in the region's institutions of learning with the assistance of the Southeast Asian Ministers

of Education Organization (SEAMEO) and the ASEAN University Network (AUN) (ASEAN Secretariat, 2009, p. 2).

The ASCC also makes provision for the protection and promotion of migrant workers' rights. The strategic objective towards this provision in the ASCC Blueprint reads: to "[e]nsure fair and comprehensive migration policies and adequate protection for all migrant workers in accordance with the laws, regulations and policies of respective ASEAN Member States and implement the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers" (ASEAN Secretariat, 2009, p. 12). The Declaration on Protection and Promotion of the Rights of Migrant Workers, signed by ASEAN Leaders in 2007, prescribes inter alia decent living and working conditions and employment protection for migrant workers in the ASEAN region. ASEAN also has an ASEAN Labour Ministers (ALM) Work Programme. The ALM Work Programme guides ASEAN's activities geared towards equipping the region's human resources to be competitive in an increasingly globalising world. The region also holds the ASEAN Labour Ministers Meeting (ALMM), a forum for labour cooperation involving ASEAN labour ministers, which has met every two years since 1975.

Apart from existing treaties and forums relating to migration in ASEAN, it is clear from all the above that the region has a reasonably long history of deliberations on regional migration issues. Signed and ratified accords exist for a regional labour regime. Although ASEAN is less formalised than most regional integration blocks, Grugel and Piper (2007, p. 65-66) indicate that Southeast Asia hosts the world's largest exporter of labour – the Philippines. The Philippines ranks third in the world by origin of migrants, deploying over a million migrants a year since 2006 (Sana & Abano, 2010). The foregoing discussion shows that Southeast Asia emphasizes the cross-border movement of professionals and business people as opposed to other categories of migrants. In fact, this is made explicit in the current work plan for advancing further free movement of labour in ASEAN. ASEAN disclosed plans to move to a free regional labour market starting 2015 (Charoensuthipan, 2010) in keeping with moves towards the AEC. ASEAN Member States have thus agreed, under the AEC framework, to a pilot plan for a free labour market that will allow professionals and specialists in select fields including accounting, architecture, nursing, medicine, dentistry, natural resources, geographical exploration, and engineering, to work in any ASEAN country of their choice in 2015. Additionally ASEAN Members are committed, through the Framework Agreement on the ASEAN Investment Area (1998), to promoting the free flow of skilled labour and professionals, capital and technology in the region. ASEAN Secretary General, Surin Pitsuwan, is quoted saying, unlike the European migration model that has free movement of people, ASEAN's ten diverse economies require free movement of skilled labour (Wongsamuth, 2012). However, in practice and as it expands and fully integrates newer members the EU, in its evolution, also prioritises free movement of skilled labour over free movement of people in general (see Section 2.2 above).



Regional Migration Governance in Africa

Africa, like South America, is home to multiple, overlapping regional arrangements involving the same countries, prompting the term ‘spaghetti bowl’ for integration (Bhagwati, 1995). The relationships between different regional integration schemes in Latin America and respective Member States are unique. For example, Mercosur and respective Member States, as discussed, also participate in the Andean Community. This has implications for the labour migration regime in the area.

This section shows that multiple regional integration schemes along with duplicate goals and agendas also exist in Africa. However, hardly any engagement or joint collaboration exists between or among regional organisations in Africa. The exception of late has been the three Southern and Eastern African regional organisations currently seeking a tripartite FTA, as discussed in this section.

The African Union (AU), through the Abuja Treaty, envisages an African Economic Community and, therefore, recognises eight key regional economic communities (RECs)⁹ on the continent as building blocks or pillars for setting up the economic community (AU, 2012). This research does not survey all the regional groups on the continent or their migration policy frameworks. Neither does it give equal narrative treatment of each of the four regional economic communities selected for the overview: the Economic Community of West African States (ECOWAS), the Common Market for Eastern and Southern Africa (COMESA), the East African Community (EAC), and the Southern African Development Community (SADC). Rather the Treaty only highlights the salient features of the respective migration regimes and the legislative and policy frameworks in these regional groups. Apart from SADC, which is the focus of the study, the research thus briefly reviews the other three African RECs to provide an overview and possible lessons to inform the migration regime and formulation and management of migration legislation and policy in SADC. The ECA and ECOWAS, for example, both have effective regional passports, which citizens of the regional Member States use for travel within the respective regions.

Whether forced or voluntary, many factors motivate migration in Africa. Armed conflicts, natural conditions such as droughts and floods, economic downturns and poverty, etc. have influenced people to move across or outside the continent in the recent past. There is also increasing evidence that migration is an essential coping strategy and means of livelihood for communities in sending countries and for the migrants in destination countries (AU, 2006; de Haas, 2007). Two key policy frameworks, namely the Migration Policy Framework for Africa, and the African Common Position on Migration and Development define the African Union’s (AU) approach to migration on the continent. Recognizing the political, socioeconomic and developmental challenges associated with migration, the 2001 Organization of African Unity (OAU) Council of Ministers, at its 74th Ordinary Session in Lusaka, Zambia, asked for the formulation of a Strategic Framework for a policy on migration in Africa (AU, 2006a)¹⁰. The Migration Policy Framework for Africa (MPFA) that resulted from this indicates that the African Union recognizes the critical role migration plays

⁹ These include the Community of Sahel-Saharan States (CEN-SAD), Economic Community of Central African States (ECCAS), Common Market for Eastern and Southern Africa (COMESA), Intergovernmental Authority for Development (IGAD), Southern African Development Community (SADC), Union du Maghreb Arabe (UMA). See <http://www.au.int/en/recs/>. [Accessed 26 November 2012].

¹⁰ Decision CM/Dec 614 (LXXIV), 2001.

in development and the need for AU Member States and Africa's regional economic communities (RECs) to formulate migration policies to manage migration and harness it for Africa's development.

The MPFA, which was adopted in 2006 by the AU's Assembly of Heads of State and Government, provides principles for and serves as a guide to the management of migration and harnessing it for Africa's development. The framework is not legally binding (AU, 2006a). It is rather, a reference document from which RECs and AU Member States can borrow issues they find useful and applicable to the migration situations in their respective regions and countries. The Framework takes cognizance of the efforts of the New Partnership for Africa's Development (NEPAD) to promote socioeconomic and political development in Africa and the potential of such work to provide solutions to the probable root causes of migration (Williams and Carr, 2006). The MPFA covers nine key migration issues including labour migration, border management, irregular migration, forced displacement, the human rights of migrants, internal migration, migration data, migration and development, and inter-state cooperation and partnerships (AU, 2006a).

The African Common Position on Migration and Development came out of a meeting of experts held in Algeria in 2006 and was adopted by the AU Summit held in July of the same year (AU, 2006b)¹¹. The document raises eleven priority migration-related policy issues and recommendations for national, continental and international action. The policy issues raised include Migration and Development, Human Resources and the Brain Drain, Remittances, Trade, Migration and Peace, Security and Stability, Migration and Human Rights, Gender, Regional Initiatives and Access to Social Services. The treaty establishing the African Economic Community (AEC), the Abuja Treaty¹², adopted by African Heads of State and Government in 1991 and enforced in 1994, recognizes the significance of free movement of people. The Treaty encourages AU Member States to adopt employment policies that allow free movement of people within the AEC. Paragraph 2(i) of Article 4 of the Abuja Treaty undertakes to ensure "[t]he gradual removal, among Member States, of obstacles to the free movement of persons, goods, services and capital and the right of residence and establishment." Article 6 of the same Treaty outlines the modalities to be adopted in setting up AEC. These include activities to be completed in six stages, over a period of not more than 34 years. That is to say, Africa shall be an Economic Community in or by 2028. Article 6 seeks to set up an African Common Market and adopt common African policies, all of which are to be completed within a period of up to 4 years. The fifth stage of the modalities in Article 6(e) outlines four activities for the establishment of the Common Market. The third of these activities, 6(e)(iii), is the "application of the principle of free movement of persons as well as the provisions...regarding the rights of residence and establishment." Article 71(e) of the Treaty further undertakes, with AU Member States agreeing to cooperate towards developing, planning and employing their human resources, to "[a]dopt employment policies that shall allow the free movement of persons within the Community by strengthening and establishing labour exchanges aimed at facilitating the employment of available skilled manpower of one Member State in other Member States where there are shortages of skilled manpower."

¹¹ Decision EX.CL/Dec.264 and Decision EX.CL/Dec.305 (IX)

¹² The Treaty establishing the AEC or the Abuja Treaty hails from then Organization of African Unity (OAU), now AU, Extraordinary Summit of 1980 that adopted the Lagos Plan of Action as the means of working towards Africa's integration. The Plan of Action and the Final Act of Lagos would later be concretized in Abuja, Nigeria, in 1991 at the 27th Ordinary Session of the Assembly of OAU Heads of State and Government Summit, when the Heads signed the Treaty establishing the AEC. Since coming into force in 1994, the AEC Treaty has, together with AU Charter, provided the basis of operation for the AU Secretariat.



The African Union envisages achieving the above goals and setting up the Community gradually, in the stipulated 34 years. The Union identifies and views RECs, among which is SADC, as pillars or building blocks and the means of achieving African Economic Community status. The Community objective should be realized through coordination and harmonization of policies and activities in and progressive integration of the regions. This, therefore, means that cooperation and progress in levels of integration in the regions is critical to establishing the Community.

Conscious of the need to thus coordinate and harmonise policies and programs, etc. of Africa's RECs, and realising that these are essential to progressing towards a Common African Market, the AEC and RECs adopted a Protocol on Relations between the African Economic Community and the Regional Economic Communities in 1998. These AEC and RECs included the Common Market for Eastern and Southern Africa (COMESA), the Southern African Development Community (SADC), the Inter-Governmental Authority for Development (IGAD), and the Economic Community of West African States (ECOWAS), and each REC representing respective Member States. The Economic Community of Central African States (ECCAS) signed the Protocol a year later in 1998. Though designated regional pillars or building blocks for the AEC, other RECs such as the Union du Maghreb Arabe (UMA) are yet to sign the Protocol and currently have no relations with the African Economic Community (AU, 2012a).

The Protocol is, nevertheless, instrumental to defining, harmonizing and coordinating policies and programs, etc. between the AEC and RECs that are geared towards realizing the African community. The Protocol also provides a framework for RECs to coordinate and harmonize policies and programs, etc. within the communities. RECs can even cooperate, coordinate and harmonize policies with other RECs on the continent within this framework. The Leaders of Member States of COMESA, the East African Community (EAC) and SADC met in this context at the Tripartite Summit of COMESA, EAC and SADC in Uganda in 2008 and agreed to expedite the setting up of a larger free trade area (FTA) consisting of 26 Member States from the three RECs. The Summit met to "review and agree on a programme of harmonisation of trading arrangements amongst the three RECs, free movement of people¹³, joint implementation of inter-regional infrastructure programmes as well as institutional arrangements on the basis of which the three RECs would foster cooperation" (COMESA-EAC-SADC Tripartite, 2012). The programme under review was an agreement previously entered into at the historic 2005 COMESA-EAC-SADC Tripartite Summit that sought to strengthen and deepen economic integration in eastern and southern Africa. The Summit had constituted a Tripartite Task Force, comprising the Secretariats of the three respective RECs, and directed the Task Force to come up with a roadmap to guide the implementation of the merger of the RECs into a tripartite FTA to be considered at the next Tripartite meeting. The RECs were to also undertake studies aimed at establishing and launching the Tripartite FTA within a stipulated period leading to 2012. Despite appending initial signatures to the FTA, respective Member States are yet to ratify it and there appears to be no date in sight for a meeting towards this end.

Clearly, however, these regions and Member States have launched tripartite meetings and set up a trade-negotiating forum. At the Second Tripartite Summit held in Johannesburg in June 2011, for example, Member States not only agreed on the principles, processes, scope and roadmap for setting up the Tripartite FTA, but also set up the Tripartite Trade Negotiation Forum (TTNF), an institutional framework for negotiations (TradeMark Southern Africa, 2013). The inaugural TTNF meeting held in Kenya in December

¹³ Emphasis added.

2011 came up with draft terms of reference for the TTNF and timetable, format and work plan for negotiations. Issues concerning cross-border movement of persons or labour are evidently absent from tripartite discussions for now.

The idea of a tripartite arrangement that eventually leads into a Customs Union involving the three RECs in eastern and southern Africa is, nonetheless, welcome, especially given the considerable overlap in membership, aims, objectives, functions and activities, etc. among member states of COMESA, EAC and SADC.

In fact the African Union Summit held January 2012 under the theme 'boosting intra-African trade' endorsed the COMESA-EAC-SADC Tripartite FTA. The Summit identified the Tripartite FTA as a critical element in its roadmap for setting up a Continental Free Trade Area (CFTA) by 2017.

Until the AU roadmap is implemented and a continental FTA or indeed the Tripartite FTA established, however, African RECs will remain disparate. To what extent do these disparate RECs contribute to the broader AU goal of integrating the continent? The next section addresses this question in an attempt to reveal how far African RECs have gone in achieving and establishing free movement regimes.

Building the African Economic Community through RECs: How do the identified African RECs fare?

Have African RECs progressed towards achieving free movement of persons and, therefore, realising Africa's integration? As stated earlier, Africa hosts multiple regional groups. The AU envisages a continent-wide economic community to be realised by inter alia using RECs as pillars on whose efforts towards regional integration the AU can extend integration to the continental level (the so-called African Economic Community). Apart from SADC, on which this study focuses, this section briefly reviews existing legislation and policy frameworks on migration and labour in three of the eight RECs the AU has identified as its building blocks. The reviews shed light on the question raised above and suggest the direction Africa is taking (based on the events in these RECs) and the progress it is making towards a continent-wide economic community. An overview of conditions in the three RECs (ECOWAS, COMESA and EAC) should also provide lessons and inform SADC's migration regime, the formulation of policy and legislation, as well as the management of migration there.

The Economic Community of West African States (ECOWAS)

Considerable cross-border migration has historically occurred in West Africa. The kinds of people that have engaged in international migration in the region include refugees, cross-border workers, professionals and clandestine workers (Adepoju, 2006). Some of the factors behind these international movements have included population pressures, poverty and post-independence conflicts in countries like Sierra Leone. During the colonial era West Africans from Mali, Togo and the Upper Volta [now Burkina Faso] were either contracted or the subjects of compulsory recruitment forced to work on plantations, mines and road construction (Ndongka, 1991). Ghana, Côte d'Ivoire and Nigeria, their economies propelled by oil, gold, and cocoa, etc. have traditionally attracted migrants from the region while Benin, the Cape Verde, Ghana, Mali, Togo, etc. have been the traditional suppliers of labour to these economies. With independence from



colonial rule, however, West African States would assert their sovereignty and in a spirit of nationalism inter alia enact migration laws that had consequences for entry, residence and recruitment of foreign nationals in their respective economies. From the late 1950s through the 1960s and early 1970s countries in the region like Nigeria, Cote d'Ivoire, Ghana and Senegal occasionally expelled thousands of people they called 'illegal aliens', 'illegal migrants' or 'non-law abiding' people including fishermen, farmers and traders among others (see Afolayan, 1988, and discussion below).

ECOWAS consists of 15 West African States: Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo. It was established in 1975 under the Treaty of Lagos with the intention of inter alia eventually progressing into a common market. In addition to the Preamble's affirmation to remove barriers to free movement of goods, capital and people in ECOWAS, Article 27 of the ECOWAS Treaty sets out a long-term "freedom of movement and residence" objective for citizens of the organisation's Member States. Citizens of Member States would, under this objective, be considered ECOWAS Community citizens. Member States were accordingly encouraged to mutually agree to exempt citizens of the Community from visitors' visa and residence permit requirements and allow the Community citizens to engage in employment or commercial activities in host countries.

ECOWAS's Protocol on Free Movement of Persons, Residence and Establishment, signed in 1979 and enforced in 1980, defines the objective of free movement of persons of the ECOWAS Treaty.¹⁴ Upon signing, the Protocol had a three-phased implementation schedule to be completed within 15 years. The stages included first, the right of entry and abolition of visas, 1980 to 1985; second, the right of residence, 1985 to 1990; and third, the right of establishment, 1990 to 1995. Member States ratified the first phase in 1980 giving the 90-day visa-free right of entry to Community citizens on condition they possess a valid travel document and international health certificate. The second phase, which allowed ECOWAS citizens freedom to reside, and seek and take up employment in another ECOWAS Member State was ratified by all Member States and came into force in 1986, being implemented by a supplementary protocol. In 1992 ECOWAS revised the 1975 Treaty. A step towards achieving ECOWAS economic and monetary union is Article 55.1(ii) of the revised Treaty, which undertakes to completely abolish all obstacles to free movement of people, goods, capital and services and establish the right of entry, residence and establishment. Article 59, on immigration, reiterates Article 27 of the 1975 Treaty to establish the right of entry, residence and establishment of Community citizens in Member States, and goes on to affirm Member States' commitment to putting all appropriate measures in place to implement and ensure that Community citizens enjoy the said rights.

The ECOWAS Protocol on Free Movement is said to be the most comprehensive and well-implemented protocol on free movement of persons in Africa (Mengelkoch, 2001). The implementation is currently partly

¹⁴ The Protocol is accompanied by four supplementary protocols: 1985 Supplementary Protocol A/SP.1/7/85 on the Code of Conduct for the implementation of the Protocol on Free Movement of Persons, the Right of Residence and Establishment; 1986 Supplementary Protocol A/SP.1/7/86 on the Second Phase (Right of Residence) of the Protocol on Free Movement of Persons, the Right of Residence and Establishment; 1989 Supplementary Protocol A/SP.1/6/89 amending and complementing the provisions of Article 7 of the Protocol on Free Movement, Right of Residence and Establishment; 1990 Supplementary Protocol A/SP.2/5/90 on the implementation of the Third Phase (Right of Establishment) of the Protocol on Free Movement of Persons, Right of Residence and Establishment. The supplementary protocols augment, define, clarify and detail some sections of the Protocol such as Article 7 and aspects relating to the phased implementation of the protocol.

expedited by the ECOWAS Common Approach on Migration, the region's benchmark policy paper on regional and international migration informed by ECOWAS' objective to establish a link between migration and development and adopted in January 2008 (Organisation for Economic Co-operation and Development (OECD), 2012; ECOWAS, 2012). In addition to emphasizing the link between migration and development, the ECOWAS Common Approach on Migration adds an external dimension as well as the issue of refugees to the internal free movement of persons policy framework.

The Common Approach further emphasises the importance of free movement for regional integration and focuses on promoting intra-regional mobility, regular migration to third countries – and the value this holds for ECOWAS, irregular migration, migrants' rights, women migrants and trafficking (European Centre for Development Policy Management (ECDPM), 2010). Through the Common Approach, Member States commit to attaining coherence in policies involving ECOWAS' agreements and bilateral agreements with third countries. The Common Approach further commits to setting up, and making operational, a regional fund to finance cross-border cooperation along with the launch of a regional territorial strategy aimed at developing new growth and development areas. Also outlined in the Common Approach is the harmonization of development and policies related to migration as well as the strengthening of dialogue between ECOWAS, transit countries and host countries. In adopting the Common Approach to Migration, West African countries clearly reflect a commitment to a comprehensive regional approach to migration and management. ECOWAS has the most advanced freedom of movement regime in Africa. Despite the hurdles in implementing phases two and three of the Protocol (arising from economic decline in West Africa and massive human displacements resulting from the wars in Liberia in the 1980s and Sierra Leone in the 1990s (Adepoju et al., n.d.)), all Member States have abolished the visa entry requirement for Community citizens for 90 days. ECOWAS has thus fully implemented phase one of the free movement protocol and ratified phase two. Member States are yet to ratify the third phase of the protocol relating to "Right of Establishment" (ECOWAS, 1990 in Nita, forthcoming), which will give Community citizens the right to inter alia settle or establish, set up enterprises and access economic activities in another Member State as well as enjoy the same conditions as host country nationals. The Authority of the Heads of State and Government of ECOWAS adopted a standardized ECOWAS Travel Certificate and a uniform ECOWAS passport (designed to eventually replace national passports) in 1985 and 2000, respectively, in order to ease cross-border movement and make it cheaper. ECOWAS citizens can now, therefore, use one of three documents when travelling across national borders in the region: the ECOWAS Travel Certificate, the ECOWAS common passport and National Identity Cards (NICs). The regional passport in ECOWAS has contributed to an increase in migration in that region (Adepoju, 2007). Add to this the ECOWAS Brown Card, an instrument of integration aimed at facilitating the free movement of people and goods, which allows insurance policy holders the opportunity to move freely within the ECOWAS region without being detained for the non-provision of evidence to pay compensation should they cause an accident in an ECOWAS Member State they visit (The Insurance Association of the Gambia, 2012).

The ECOWAS Protocol on Free Movement of Persons came into effect at a time when the region and especially countries bordering Nigeria were experiencing economic decline (Adepoju, 2011). Nigeria's oil-fuelled boom at the time attracted skilled and unskilled labour migrants from Cameroon, Chad, Ghana, Mali, etc. Most of these migrants (ranging from 900 000 to 1,3 million) would, however, later be expelled from Nigeria when the government revoked Articles 4 and 27 of the Free Movement Protocol following a slump in Nigeria's oil boom (Adepoju, 2009).



Although it grants the right of entry, residence and carrying out income-earning employment in any ECOWAS Member State to citizens of the region, implementation of the ECOWAS Free Movement Protocol remains weak (Deacon et al., 2011). According to Adepoju (2011) the Protocol on Establishment and Residence remains unimplemented. Such a state of affairs consequently affects operationalization of trade integration and labour mobility in ECOWAS. Despite this, ECOWAS's Protocol on Free Movement is said to have accelerated labour migration (Klavert, 2011). ECOWAS also has a Regional Labour and Employment Policy and a Plan of Action adopted in 2009, which supports labour market flexibility and human capital development (Africa and Europe in Partnership, 2012). Though implementation of this policy remains limited, regional Ministers have committed to promoting the rights of migrant workers, cooperation in labour migration, and geographic and occupational mobility among others.

The Common Market for Eastern and Southern Africa (COMESA)

With 19 Member States¹⁵, COMESA is the largest regional grouping in Africa. Geographically, the organisation stretches from southern Africa to eastern and north Africa. From its inception, as the Preferential Trade Area (PTA), COMESA has promoted trade and investment among its members. The group's vision is to evolve through the stages of integration – PTA, free trade area (FTA), customs union, common market, economic union and total integration – as theorized by Balassa (1961) into a fully integrated body. Free movement of goods, services and labour is, therefore, critical to realising COMESA's goal of integration. The group has adopted a number of protocols and instruments designed to achieve its goal. An example, which relates to free movement of persons, is the Protocol on the Gradual Relaxation and Eventual Elimination of Visa Requirement (also called Visa Protocol) outlined in Article 163 of the COMESA Treaty. The Authority of the Heads of States adopted the Visa Protocol, which is now in force, in Bujumbura, Burundi on 22 December 1984. Compliance to the Protocol among Member States, however, remains uneven (Africa and Europe in Partnership, 2012).

COMESA Member States also adopted 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 free movement of goods, services, labour and the right of establishment within a stipulated implementation period. Specifically, the Protocol's objective is to gradually implement and go through the following five different stages towards establishing the "Right of Residence" of citizens of Member States: (a) Free Movement of Persons, (b) Free Movement of Labour, (c) Free Movement of Services, (d) Right of Establishment and, (e) Right of Residence. Four (Kenya, Burundi, Rwanda and Zimbabwe) out of COMESA's 19 Member States have signed the Protocol and only one (Burundi) out of the required seven has ratified it. The Protocol is not in force until it is fully ratified. Thus COMESA operates on the basis of the Protocol on the Gradual Relaxation and Eventual Elimination of Visa Requirement, which has a 90-day visa-free travel provision and a possibility of extension, depending on national rules of individual Member States. COMESA Member States demonstrate uneven compliance to the organisation's protocol (Nita, forthcoming) despite free movement of persons being integral to COMESA's common market objective and the region's Protocol on Free Movement envisaging "Right of Residence" in the long run. COMESA has, nonetheless, pioneered the one-border post concept in Africa. Immigration officers from

¹⁵ COMESA Member States are: Burundi, Comoros, Congo DR, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia and Zimbabwe.

neighbouring countries sharing a common border are housed under the same roof, harmonise customs procedures and jointly process documents under this arrangement. The Zambia-Zimbabwe one border-post at Chirundu has recorded success and helped significantly cut down on transit time for travellers and commercial traffic by eliminating duplication in the clearing process. More one-stop border posts are under construction in COMESA.

Article 143 of the COMESA Treaty, mandates that COMESA work in several labour related areas including labour laws, vocational training, employment conditions, etc. Despite providing for labour mobility in the text of its treaty COMESA has not made much progress in terms of actual implementation. Progress is further hampered by the non-ratification of the protocol by Member States, as seen above. The group does, however, develop strategies related to employment issues in the framework of the trade agenda (Africa and Europe in Partnership, 2012). The Africa and Europe Partnership cites as examples of this the Cross Border Trade Project and the Federation of National Associations of Women in Business in the Common Market for Eastern and Southern Africa (FEMCOM).

The East African Community (EAC)

The three founding Members of the EAC (Kenya, Uganda and Tanzania) fell under British rule during colonialism and as such formed British East Africa. Migrants moved among these colonies on kinship visits, as livestock herdsman, to take up employment and trade, etc. By 1948 Kenya, Tanzania and Uganda had established an East African High Commission – which later transformed into the EAC – and jointly ran several services like tax, education and agriculture enacted under a Central Legislative Assembly (Nshimbi, 2008). Joint cooperation between these countries dated even further back to the early 1900s. Such relations would continue into the post-independence period and amidst the conflicts in the Horn of Africa region in Sudan, Uganda, Rwanda and Burundi, etc. Among the consequences of the aforementioned conflicts were internal displacements of large populations in the affected respective countries and the migration of refugees to more stable countries like Kenya and Tanzania. Tanzania even contributed to liberation causes in Southern Africa and was instrumental in the formation of SADC's predecessor (Nshimbi, 2008) as discussed later.

The EAC comprises Burundi, Kenya, Uganda, Rwanda and Tanzania. From the three initial members, the EAC was enlarged in November 1999 and it came into force on 7 July 2000. The three founding States have on three previous occasions (or phases including 1948 – 1961, 1962 – 1967, and 1967 – 1977) attempted regional integration prior to the current effort. The 1967 – 1977 attempt to integrate east Africa represented the first formal effort following each of the founding States' independence from colonial rule. This phase had been formalised with the signing of the East African Co-operation Treaty. The current effort to regionalise was revived in 1997 when, on 1 May that year, the original three States agreed to inter alia establish an East African flag and passport. The agreement was borne out of work that followed a directive the East African Heads of State had given in April 1997 to the Permanent Tripartite Commission for East African Co-operation, which comprised the original three States; this directive was to upgrade the Agreement that established the Permanent Tripartite Commission, as the States sought to consolidate regional co-operation (AU, 2012b). The East African passport officially launched 1 April 1999 amidst plans to set up an EAC FTA by July of the same year. Burundi and Rwanda became full members of EAC in July 2007 after acceding to the EAC Treaty on 18 June of the same year. The Treaty establishing the EAC calls for a customs union, a common market and monetary union, with the ultimate objective of establishing a



political federation. The East African Parliament, a joint court of justice and an East African stock exchange are among the region's key institutions. The EAC has passed the Customs Union (2005) and Common Market (2010) phases and now seeks a Monetary Union. The AU (AU, 2012b) cites as concrete measures towards East African integration, a common East African passport, a common flag, freely exchangeable currencies (leading to a single currency), and a double taxation accord.

Generally, EAC citizens are required to present valid travel documents issued by competent authorities in their home country when seeking entry into another Member State. Member States will 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 Partner States are allowed multiple entries over a six-month period if they possess the EAC Passport. Member States generally agree to ensure that citizens of the Community enjoy the right of establishment and residence in the region and have made provisions for the harmonization of labour policies and legislation with respect to employment. Additionally, the Member States agree 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 (IOM, 2007).

The EAC's Protocol on the Establishment of the EAC Common Market (CMP), signed by the East African Heads of State 20 November 2009 and enforced 1 July 2010, allows free movement of goods, services, capital and labour among EAC Member States. The CMP provides for five "freedoms" of movement including goods, persons, workers, services, and capital and two "rights" namely right of establishment and the right of residence, all of which are to be progressively implemented in line with the provisions of Articles 76 and 104 of the region's Treaty (Oucho, forthcoming). The CMP categorises cross-border movers in the EAC region into persons, workers and the self-employed. Different rules and procedures apply to each of these categories of cross-border migrants. The CMP's Annex on the Free Movement of Persons and Labour sets out the rights to inter alia visa-free entry, freedom of movement and stay, and full protection for citizens of EAC Partner States in a Partner territory. The freedom of movement of workers, for example, is set out and elaborated in Annex II of the CMP and specifies 15 regulations including entry, stay and exit; procedure of acquiring as well as denial and cancellation of work permit; expulsion of a worker; deportation where necessary; and equal treatment in employment (EAC, 2009, p. 34-51 in Oucho, forthcoming).

Kenya and Rwanda abolished work permit requirements for EAC citizens after ratifying the Protocol (Klavert, 2011). As mentioned earlier the EAC also issued the EAC passport for travel within EAC; the original three States – Kenya, Uganda and Tanzania, are currently using it. Holders of this passport are entitled to an automatic multiple-entry visa, valid for six months. Holders can enter any member country. 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 Partner States have also initiated various One-Stop Border Posts to facilitate trade and reduce delays at their border crossing points. Additionally, individual Partner States go outside the confines of regional agreements and conclude bilateral agreements with one another. Kenya and Uganda, for example, do not require traveling citizens of the respective countries to necessarily be in possession of passports but require only travel documents from respective immigration authorities (Oucho, forthcoming).

Regional labour mobility regimes and possible implications for regional integration and migration management within Africa

The next section will focus in greater detail on the Southern African Development Community (SADC) and, in particular, on labour migration towards South Africa. From the review of existing regional attempts to manage labour migration in other regions of the world and in other RECs we can mention the following considerations.

- Clearly the level of economic development of a region and the degree of similarity of economic development of neighbouring countries within a region shape the ease with which cross border labour mobility can be handled. Even in cases of similar development levels (e.g. EU) within a region, governments have been allowed to slow the pace at which full integration of labour markets takes place.
- Some policies within a region clearly aim at complete free movement for citizens and others aim at managed migration of specific categories of workers. For instance, the AU RECs' formal policies towards free movement contrast with ASEAN's more restrictive managed migration approach.
- Many regional labour market regimes focus on skilled migration and link this to the recognition of qualification. Separating out policies on free movement of citizens and formal workers from the regulations covering movements of asylum seekers and refugees has clearly enabled the EU and other regions to facilitate labour migration from within, while acting as a regional 'fortress' against third-country nationals. Within a region like SADC (discussed in the next section) where mixed migration coexists with claims of asylum and informal cross-border flows, operationalizing such a distinction is likely to be harder.
- The EU is exceptional in the way it has evolved its regional migration governance policies and system from free movement of labour to EU citizenship and associated benefits and rights to work and establishment. ASEAN is yet to officially implement the region's more restrictive managed migration regime while Mercosur Member States have indigenised their region's 'reactive' labour migration legislation into respective national policies.
- ECOWAS emerges as a best practice for SADC. ECOWAS has the most advanced and best-implemented migration regime in Africa. ECOWAS's categorical legislation and evident commitment to free movement of labour, as an essential element to the Common Market goal, is informative to the SADC.

The African RECs discussed above have clearly designed labour mobility protocols. There is also clear indication of efforts or steps to implement phases of the protocols and to facilitate visits, at least short term, of citizens between Member States of regional groups. ECOWAS serves as an example in this respect. In spite of this, these RECs continue to face practical obstacles in realising the desirable longer-term labour migration. This challenge seems more pronounced in Southern Africa and the SADC, in particular, the only regional group in Africa that has "refused to endorse the general idea of free movement of persons within the community" (Oucho and Crush, 2001, p. 142). Peters (2010) compares the slowness and reluctance with which SADC has been moving on the migration governance front with the relative progress made by



other RECs, such as the EAC, which launched a common passport in 1999 and began negotiations on free movement of labour and goods in 2008, thus transforming the EAC into a Common Market.

We turn to SADC in the next section and probe this assertion by asking:

- What are the regional labour migration regime(s) that have developed in the region for skilled or informal workers;
- What labour migration pacts exist between the group's member states at the bilateral level, the level at which Betts suggested skilled labour migration progress might be better made than at the regional level;
- Where legislation or policies exist on migration and labour at the regional or national level in the SADC, we ask whether in their formulation, such pieces of legislation or policy take into consideration international standards regarding labour and migration;
- At the national level, do legislations and policies on labour and migration build on any SADC framework or do they have any regional considerations in their formulation?



The Southern African Development Community: Regional protocols, national policies and bilateral agreements

International migrants have long circulated the Southern African region, driven by a variety of factors such as work, conflict and trade. The late 1800s, for example, saw Mozambican migrants from Gaza, Inhambane and Lourenço Marques make their way to farms in South Africa's Western Cape to engage in seasonal farm work (Wentzel & Tlabela, 2006). The organised labour migration system that came with the discovery and commencement of gold mining on the Witwatersrand in the 1880s was preceded by large-scale migration to the diamond fields in Kimberly in the 1860s. Thus came the institutionalisation of labour migration (from the rest of Southern Africa to South Africa) orchestrated by the South African Chamber of Mines through the establishment of the Rand Native Labour Association and similar organisations. Again Mozambique, along with inter alia Botswana, Lesotho, Malawi and Swaziland, supplied most of the unskilled labour to South African mines. The South African Government conducted bilateral agreements with its neighbours to meet South African mines and agricultural labour needs. The migrant labour system thus established largely defined patterns of migration in Southern Africa, even in the post-independence era. In the 1960s and 1970s countries like Zambia and Botswana attracted their own share of international migrants from the region to their copper and diamond driven economies. A political dimension, involving liberation struggles and post-independence conflict in some Southern Africa countries, adds to forced migration in Southern Africa. Countries still under colonial rule during the 1960s and early 1970s such as Mozambique, Zimbabwe and Angola produced refugees who migrated to Botswana, Tanzania and Zambia. South Africa, itself still under apartheid, and Namibia had many nationals living in exile in the region and beyond.

With a current membership of 15¹⁶, SADC started out in April 1980 with nine countries as the Southern African Development Co-ordinating Conference (SADCC).¹⁷ Members of the then Front Line States (FLS)¹⁸ movement set up SADCC to inter alia reduce FLS members' economic dependence on apartheid South Africa and to achieve self-reliance for the movement's members. In August 1992 SADCC changed into SADC, when its members signed the SADC Declaration and Treaty in Windhoek, Namibia. South Africa was at this time in the process of abandoning the apartheid system of governing and the policies aimed at destabilising southern Africa. With this development and the Declaration and Treaty, SADC shifted attention from focusing on growth and development for countering and reducing dependency on South Africa to fostering economic and social integration among SADC Member States. Whereas SADCC was largely a solidarity movement supporting independence efforts in minority ruled countries and structured on an ad-hoc, sectoral coordination project basis, SADC was founded on a treaty that clearly aimed at integrated regional development through regional institutions. SADCC was run on a decentralised functional basis with each Member State taking responsibility for implementing specific projects such as infrastructure development, water and energy development, railway transport, etc. SADC aims to work towards an economic union through the successive stages of regional integration – FTA, customs union,

¹⁶ SADC Member States are: Angola, Botswana, the Democratic Republic of Congo (D.R. Congo), Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.

¹⁷ SADCC founding Member States included 5 Frontline States namely Angola, Botswana, Mozambique, Tanzania and Zambia, plus Lesotho, Malawi and Swaziland.

¹⁸ FLS members included the 5 above.

common market, economic union and total integration. This has implications for the movement of actors in the region, especially labour. The extent to which regional Members achieve these integration targets is crucial. It is important for SADC States to realise that a regional economic and social integration outlook requires them to harmonise domestic policies and legislation and align them to regional goals. A harmonised and well-managed regional migration regime, for instance, has potential to enhance cooperation and, therefore, foster integration in inter alia trade and investment in the region.

This section surveys regional frameworks, policies, legislations and bilateral arrangements pertaining to migration and labour in southern Africa. It explores inter alia the development of official regional frameworks in the SADC region that govern labour migration.

SADC treaty, protocols and migrant labour

Overall, SADC aims to enhance economic and social integration among its members. Specifically relevant to this study, the SADC Declaration and Treaty outlines some of the regional body's objectives as to:

- “achieve development and economic growth, alleviate poverty, enhance the standard and quality of life of the people of Southern Africa and support the socially disadvantaged through regional integration;
- evolve common political values, systems and institutions;
- promote self-sustaining development on the basis of collective self-reliance, and the interdependence of Member States;
- achieve complementarity between national and regional strategies and programmes;
- strengthen and consolidate the long standing historical, social and cultural affinities and links among the people of the region” (Declaration and Treaty of SADC, 1992).

The Declaration and Treaty establishing SADC commits SADC to developing “policies aimed at the progressive elimination of obstacles to the free movement of capital and labour, goods and services, and of the people of the Region generally, among Member States” (SADC Treaty, 1992, p. 6). The SADC Draft Protocol on the Facilitation of Movement of Persons was set up as a legal instrument to implement the provisions of the SADC Treaty under Article 10.3 of the Treaty. The Protocol was crafted in view of the need to redress imbalances in large-scale population movements within SADC. The Protocol commits inter alia to support, assist and promote the efforts of the African Union which is encouraging free movement of persons in African Regional Economic Communities as a stepping stone towards free movement of persons in an eventual African Economic Community (Draft Protocol on the Facilitation of Movement of Persons in SADC, 2005, p. 1).

SADC initiatives on free movement go back a little earlier than the Protocol on Facilitation of Movement of Persons. A SADC Secretariat sponsored workshop held in Harare in 1993 had led to the SADC Council of Ministers' meeting of 1994 commissioning a team of consultants to draw up a protocol on free movement for the region (Ouchou & Crush, 2001). The 1995 Draft Protocol on Free Movement of Persons in SADC that the consultants submitted aimed to realize free movement in SADC, for SADC citizens, over a period of 10



years. Specifically, the 1995 Draft Protocol (p. 6) sought “to confer, promote and protect [on SADC citizens] (a) the right to enter freely and without a visa the territory of another Member State for a short visit; (b) the right to reside in the territory of another Member State; and (c) the right to establish oneself and work in the territory of another Member State.” SADC citizens would, therefore, be able to move freely (or visa-free) between and within SADC Member States while non-SADC citizens would have their movements regulated. The prospect of complete abolition of border controls on people’s movements within SADC did not bode well with some SADC Member States. The economic disparities between SADC States, it was argued, were such that the region was not yet ready for free movement of people (Williams & Carr, 2006). Free movement would also compromise respective national immigration policies (Oucho & Crush, 2001) and bring an “additional burden on the socio-economic infrastructure which would, in turn, spill over into the political sphere” of migrant receiving countries (Solomon, 2003, p. 130). With such concerns South Africa, Botswana and Namibia opted not to support the 1995 Draft Protocol. The Draft was consequently dropped.

In their review of SADC’s efforts to establish a protocol on free movement of people in Southern Africa, Oucho and Crush detail South Africa’s role, allied by Botswana and Namibia, “in aborting the Community’s efforts at instituting freer movement of citizens of member states” (2001, p. 140). Having “blocked” and “stymied” SADC’s efforts to initiate a regional approach to the management of migration, South Africa through the Department of Home Affairs (DHA) produced a cautious alternative to the Free Movement Protocol in 1997 and called it the Draft Protocol on the Facilitation of Movement. South Africa’s protocol aimed to first, assert the sovereignty of national interests over regional consideration and place the emphasis back on policing and the control of national borders. Second, the ‘Facilitation Protocol’ sought to halt the process of freeing movement across regional borders at the first stage (visa-free entry), and to avoid any further commitment particularly in regard to rights of residence and establishment. Third, it aimed to avoid committing the South African government to a phased implementation and a fixed timetable, as well as to provide exit options if government did not agree with any proposal under the Protocol (Oucho & Crush, p. 149). SADC’s Secretariat declined South Africa’s version and redrafted one that accommodated the concerns the region’s governments had raised over the 1995 Draft Protocol. The redrafted protocol, however, adopted the name South Africa’s version had carried, the Draft Protocol on the Facilitation of Movement of Persons in the SADC. SADC approved this version as an alternative to and replacement for the Free Movement Protocol. Overall, the objective of the Facilitation Protocol is “to develop policies aimed at the progressive elimination of obstacles to the movement of persons of the region generally into and within the territories of State Parties—[State Parties being SADC member states]” (Draft Protocol on the Facilitation of Movement of Persons in SADC, 2005, p. 3). The Protocol particularly aims to facilitate SADC citizens’ entry into second SADC countries visa-free, for lawful purposes and for a maximum period of three months, and in keeping with the laws of the Member State a citizen of the region is entering (SADC, 2012). These objectives fall within SADC’s commitment, via the Establishing Treaty, to frame policies that will progressively eliminate obstacles to the free flow of factors and the people of SADC among member countries. Furthermore, even if it does not make direct reference to the mobility of migrant workers, the Charter of Fundamental Social Rights in SADC supports the Facilitation Protocol in as far as Article 2.1.(c) of the Charter is concerned. The said Article seeks to facilitate the promotion of “labour policies, practices and measures, which facilitate labour mobility, remove distortions in labour markets and enhance industrial harmony and increase productivity, in [SADC] Member States” (Charter of Fundamental Social Rights in SADC, 2003, p. 3).

Except for Madagascar and the Seychelles, all 15 Member States of SADC have adopted and signed the Protocol on the Facilitation of Movement of Persons. Of the thirteen that have signed the 2005 Protocol only five namely, Botswana, Lesotho, Mozambique, South Africa and Swaziland, have ratified it (Klavert, 2011; Africa and Europe in Partnership, 2012). The Protocol is, however, not in force because of the required minimum of two-thirds of ratifications. The latest country to ratify the Facilitation of Movement Protocol was Zambia on 26 March 2013 (Lusaka Times, 2013). Apart from this, however, the process around this protocol has stalled for the past few years.

Perceptions of migration between individual SADC Member States differ, as do their respective policies on migration. Also, most SADC countries do not incorporate much of the existing multilateral international instruments in their migration regimes. Klaaren and Rutinwa (2004, p. 53), for instance, cite as an example of this, the ICPRMW¹⁹. Globally, 46 countries have ratified this Convention as earlier discussed (see also Table 2). Of all 15 SADC Member States only Botswana, the Seychelles and Lesotho have ratified the Convention, while Mozambique has signed (see Table 2). To this can also be added the limited recognition of the International Labour Organisation (ILO) convention C097 Migration for Employment Convention, Revised and the R86 Migration for Employment Recommendation, Revised (1949).

Although SADC has adopted the Facilitation Protocol, because the Protocol is not yet ratified by two-thirds of Member States and is therefore not in force, national laws continue to regulate cross-border and labour migration throughout the SADC territories. If and when ratified and translated into Member States' national legislations and policies, the Facilitation Protocol will have various impacts there. Williams and Carr (2006) list seven considerations and three significant implications of the protocol on Member States. We briefly discuss some of these considerations and their implications below.

First, on security, the protocol places this task and function in the custody of a Committee of Ministers responsible for Public Security, along with any other committee appointed by the Ministerial Committee of the Organ of Defence, Politics and Security. Reading this in conjunction with Article 11 of the protocol, which calls Member States to exchange information on security, crime and intelligence, suggests that States are substantially concerned about security risks that come with migration. Second, on facilitation, Williams and Carr find it counter-intuitive that despite the Protocol's aims to facilitate movement it also calls for the management of the movement of persons by increasing infrastructure and personnel. The Protocol apparently places more emphasis on controlling or managing movement than facilitating it. Third, with regard to the significance of the Protocol, Williams and Carr do not see the Protocol as representing "any 'radical departure'", content-wise, from the status quo. Rather the contents of the Protocol affirm what is happening in the SADC region – domestic legislations of Member States and the bilateral and multilateral agreements between Member States. The Protocol "largely elevates to a regional level" (Williams and Carr, 2006, p. 10) what is already obtained in domestic legislations of individual Member States. It is worth noting, without undermining the importance of such a Protocol for the region, that the SADC region is unlikely to witness a significant policy and legislative shift in the short and medium terms. Fourth, despite making provisions for legislative, policy and logistical adjustments, the Protocol does not state clearly the extents of Member States' obligations to comply with the Protocol, or how to enforce the Protocol domestically. No mechanisms exist through which Member States should amend their respective

¹⁹ General Assembly resolution 45/158 of 18 December 1990.



legislations in line with the Protocol. All the Protocol's provisions are subject to Member States' domestic legislation.

For now, however, SADC as it is lacks a regional framework governing the movement of people. Each of the seven countries in the study has migration laws and regulations along with provisions in their respective national constitutions that affect migration and might, therefore, have consequences for labour migrants in and entering their territories. Also, SADC States continue to enter into bilateral agreements with one another that relate to inter alia labour migration as discussed later below (Oucho and Crush, 2001). Such agreements may dampen prospects of ratifying the Protocol on Facilitation of Movement as some SADC Member States might find the agreements a desirable alternative to the regional migration regime the Facilitation of Movement Protocol seeks to establish. It has been argued (Segatti 2008, 2012) that even if the protocol were ratified it would still lead to an emphasis on bilateral agreements because South Africa was pushing for such a bilateral instead of a regional approach.

Apart from the Facilitation Protocol, other SADC protocols also bear on the SADC regional and Member States' migration regimes. The SADC Protocol on Immunities and Privileges, for example, bestows visa-free entry privileges on SADC officials into all SADC member states through the SADC Laissez-Passer. Article 2.10 of the Protocol on the Development of Tourism in the SADC (hereafter Protocol on Tourism) presents the Protocol's aim as to "facilitate intra-regional travel for the development of tourism through the easing or removal of travel and visa restrictions and harmonisation of immigration procedures" (Protocol on Tourism, 1998, p. 6). In Article 5 of the same Protocol SADC Member States commit, concerning travel facilitation, to endeavour to ensure smooth entry and travel for visitors, and to remove practices that are likely to present obstacles to the development of regional and international tourism. The Member States hope to achieve this by committing to abolishing visa requirements for regional tourists who wish to enter Member State territories as visitors. Additionally, they seek to institute a Univisa to facilitate movement of international tourists in the region (Protocol on Tourism, 1998, Article 5.1(b) and 5.1(c)). Article 7 of the Protocol on Tourism identifies the Regional Tourism Organisation of Southern Africa (RETOSA), a permanent and legal entity of SADC established by the RETOSA Charter, as the marketer and promoter of the SADC region's tourism sector. RETOSA defines its role as being the promotion, to the relevant sectors in the SADC region, of Article 5.1(b) and 5.1(c) of the Protocol on Tourism stated above (RETOSA, 2012). RETOSA's efforts to achieve its strategic objective of visa exemption for regional tourists faced a setback in early 2012 when South Africa denied entry to Zambians that allegedly carried false yellow fever vaccination certificates (Zambia Daily Mail, 2012a). South Africa had earlier announced that it required citizens of all countries affected by yellow fever to be vaccinated against the disease if they are to be allowed into South Africa. Zambia's Foreign Affairs and Tourism Minister reacted to this by expressing concern that yellow fever travel restrictions had negative effects on the growth of tourism in Southern Africa (Zambia Daily Mail, 2012b). The Minister later went on to raise the issue at the RETOSA 48th Conference in Mauritius (Times Live, 2012).

The Protocol on Transport, Communication and Meteorology of SADC sets a strategic goal for Member States in Article 2.4(b), to eliminate or reduce hindrances and impediments to the movement of persons, goods, equipment and services. Article 6.10 of the Transport Protocol on Driving Licences seeks adoption of a harmonised format for driving licences (Paragraph 2) in the SADC region among other things. Paragraph 3 of the same Article further states that [e]ach Member State shall recognise driving licences issued according to the agreed SADC codes and format by other Member States or an International Driving Permit as corresponding and equal to its own, and for this purpose, a licence issued in one Member State shall be

valid for the driving of a vehicle in respect of which it has been issued in any other Member State. The SADC Driving Licence has since been adopted and is recognised in Member States. The SADC Protocol on Education and Training too, in Article 3(a) aims to facilitate freer movement of students and staff within the SADC region for study, teaching, research and any other pursuits that relate to education and training and, to this end, seeks to work at relaxing and eventually eliminating immigration formalities. South African institutions of learning in fact favour applicants from the SADC region in admission of foreigners to the institutions (Director of the Department of International Relations and Cooperation, Africa Bilateral, personal interview, 16 November 2012). The largest number of foreign students in South Africa thus comprises SADC region citizens and, as part of South Africa's contribution to the region's education, such students benefit from a "special dispensation for SADC students" wherein they pay fees that are lower than the standard international fees other foreign students pay (Director of the Department of International Relations and Cooperation, Africa Bilateral, personal interview, 16 November, 2012). At the bilateral level South Africa, through the Department of Science and Technology, provides funding for postgraduate study associated with the Square Kilometre Array (SKA) project to students from SADC countries partnering in the project.

Article 7 of the SADC Protocol on Education and Training deals with cooperation in higher education and training, in which Member States agree to encourage universities to devise mechanisms to facilitate credit transfer from one university to another within the SADC region in order to prevent costly repetition of courses taken at universities within the region and in order to contribute towards the mutual recognition of qualifications throughout the region. On 23 September 2011, SADC Ministers responsible for education and training approved the SADC Regional Qualifications Framework (RQF), which is expected to contribute to the development of a continental qualifications framework for mutual recognition of degrees and qualifications in higher education (South African Qualifications Authority, 2012). The SADC RQF was borne out of a SADC Ministerial call in 2001 for a regional qualifications framework to contribute to enhancing mobility, harmonization and recognition of qualifications across the region. As a reference framework, the SADC RQF will comprise level descriptors with quality assurance guidelines that will set minimum regional standards for quality assurance in the SADC. It will have a SADC Qualifications Portal incorporating formally recognized qualifications in SADC Member States. As seen when discussing UNESCO's Convention on the Recognition of Qualifications, the SADC RQF will provide a platform for recording equivalences for all qualifications in the region (Utlwang, 2012). The framework will facilitate qualified SADC citizens' cross-border search for education, training and work opportunities.

Trade in services also generally requires people to move or set up and or a maintain business presence abroad. The SADC Protocol on Trade apparently takes this into account as seen from Article 11.2, for example, which states that SADC "Member States undertake to permit and facilitate the establishment of cargo, clearing and forwarding offices in their territories by persons, organisations or associations of other Member States or their authorised agents, for the purpose of facilitating transit traffic in accordance with their national laws and regulations" (Protocol on Trade). SADC member states also accommodate, to some extent, such agreements in their respective national migration frameworks and regimes. Thus South Africa's Immigration Act, for example, aims to "regulate the influx [into South Africa] of foreigners and residents to promote economic growth by facilitating the movement of students and academic staff within the SADC for study, teaching and research" (Immigration Act, in Klaaren and Rutinwa, 2004, p. 54, see also footnote 159 on p. 109).



The movement of persons even in the Southern African Customs Union (SACU) is not particularly easy from an institutional and legal point of view. SACU, whose membership comprises Botswana, Lesotho, Swaziland and South Africa, boasts of a deeper level of integration than SADC. A common external tariff (CET) towards non-members exists for SACU States. Its members, except Botswana, participate in a common currency area (CMA). Despite such deep level of integration, however, the labour market in the area is not liberalised. No provision for the free movement of persons or labour between Member States exists in the SACU Agreement. Alternative instruments such as respective States' immigration acts, joint commissions of cooperation, bilateral agreements and memoranda of understanding (discussed in 4.3 below) between South Africa and respective SACU Member States determine and stipulate the movement of labour in SACU.

National legislations of SADC countries and policies on migrant labour

The immigration laws of individual SADC states reflect preoccupations with respective national interests as opposed to regional interests. Foreigners from the SADC region need to have work permits for them to engage in work in neighbouring SADC states. Immigration legislation in these countries protects national interests while helping keep unwanted elements out of the country. A Namibian government spokesperson, for instance, once defended that country's Immigration Act of 1993 "as assisting, inter alia, to keep criminals out of the country or to expel them" (Hough, 1996, p. 53). Moreover, the Namibian Immigration Control Act, in Section 26.3(e) only allows for non-Namibian nationals to get employment in the country on condition that such foreigners do "not and ... [are]...not likely to pursue any employment, business, profession or occupation in which a sufficient number of persons are already engaged" (cited in Mengelkoch, 2001, p. 29). In Botswana, Section 19.4 of that country's Immigration Act states, "in determining an application for a resident permit, the Board shall have primary regard to the interests of Botswana." Whether originating from a SADC country or not, therefore, foreigners need to obtain a work permit before they can engage in work in a host country. Zimbabwe's Immigration Act in Section 41.3(a)(ii) requires such migrant workers to actually secure employment before arriving in the country. South Africa's Immigration Act (No. 13 of 2002) in Section 27(a) provides for a foreigner to be issued permanent residence upon receipt of an offer of permanent employment among other conditions.

Migration and labour: General entry versus entry for purposes of taking up employment in the SADC region

Southern Africa has a long history of migration. This predates the advent of colonialism and demarcation of Africa into modern states at the Berlin Conference of 1886. Many have observed that a considerable amount of the current cross-border labour migration in Southern Africa consists of undocumented or illegal migrants (Mengelkoch, 2001; Oucho, 2007; Oucho & Crush, 2001; Kotze and Hill, 1997; etc.). That considerable cross-border migration here consists of undocumented migrants is at odds with SADC's declared goal to progressively eliminate obstacles to free flow of inter alia labour. It is precisely because there is no free movement in the region that there are so many irregular movers.

Some variations exist regarding visa-free entry and stipulated periods of stay for SADC citizens in other countries in the region. South Africa, for instance, does not require passport holders and citizens of Botswana and Zimbabwe and ordinary passport holders from Namibia to hold visas that may require

issuance of a visitor's permit for the intended stays of 90 days or less in and when transiting through South Africa (Department of Home Affairs, 2012). Passport bearing citizens of Lesotho, Malawi, Mozambique, Namibia and Swaziland qualify for stays of 30 days or less under the same condition. This, however, reflects a move on the part of South Africa towards bilateralism with its neighbours and does not in any way constitute part of a SADC regional or multilateral agreement.

Conditions for entering South Africa for stays exceeding 90 days and for purposes of taking up employment in particular differ, however. The Immigration Act (Act No. 13 of 2002) sets out conditions for temporary and permanent residence in the Republic. 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 (Segatti, 2011b, p. 44-45). That might not have been the last of the Act's amendment processes. In September 2010 then Home Affairs Minister, Dr. Nkosazana Dlamini-Zuma, tabled the Immigration Amendment Bill in South African Parliament and on 22 March 2011 presented it to National Assembly, which approved it. The Bill was then referred to the Cabinet for assent in June 2011. Once promulgated, the Immigration Amendment Bill will amend the Immigration Act No. 13 of 2002.

Dr. 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 (SabinetLaw, 2011). In the Bill, some categories of temporary permits are changed to visas. The types of work permit the Bill proposes to issue have also been revised and a new category of permit created called critical skills. The Minister of Home Affairs shall decide on which skills are critical, according to the proposed Bill. The Memorandum on the Objectives of the Immigration Amendment Bill, 2010, specifies the objectives of the Bill as:

- "1.1 The Immigration Amendment Bill ("the Bill") seeks to rationalise the permitting system by changing of all temporary residence permits to visas. The Bill also seeks to provide that the change of status attached to a visitor's or medical treatment visa must only be made in exceptional circumstances and must be approved by the Minister.
- 1.2 Furthermore, the Bill seeks to revise the issuing of work visas and to create a new
- category of visa, being the critical skills work visa. It also revises the requirements for the issuing of a business visa to a foreigner who intends to establish or invest in a business in the Republic" (Republic of South Africa, 2010, p. 16).

Some specific highlights of the Bill affecting migrant labour include inter alia:

- ensuring that foreign nationals apply in person for visas/permits;
- ensuring that a foreign national issued with a visitor and/or medical treatment visa returns to his/her country of origin before applying for a change in the status of the document concerned in order to remain in South Africa longer;



- the introduction of a critical skills work permit which the director general may issue to a foreign individual possessing such skills or qualifications determined to be critical for South Africa, as gazetted by the minister from time to time;
- a foreign individual employed in terms of a general work permit may be employed in a different capacity or role if his/her employer can satisfy the director general that he/she has been unable to employ a South African citizen with the qualifications, skills or experience equivalent to those of the foreign employee;
- in such circumstances, the terms and conditions under which a foreign individual is redeployed – including salary and benefits – should be in keeping with prevailing terms and conditions for South African citizens in the market segment concerned. They should also take into account relevant collective bargaining agreements and other applicable standards;
- changing the way in which asylum seekers are managed; and
- significantly reducing the number of days in which such people should report to the refugee reception office closest to their port of entry (SabinetLaw, 2010).

The President assented to the Immigration Amendment Act (No. 13 of 2011) as notified by the Government Gazette on 26 August 2011. The Immigration Amendment Act (2011) is, therefore, now law. The President is yet to determine its commencement date. The Immigration Act No. 13 of 2002, as amended in 2004, provides for 13 types of temporary residence permits including: 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 permits. Among the permit categories listed above, notable to this study are the permits for migrants including work permit (constituting four types—general, quota, intra-company transfer and exceptional skills), corporate permit (allowing companies to source foreign labour and employ foreigners), business permit (allowing foreigners to invest or set up business in South Africa) and treaty permit. Spouses or children of South African citizens or permanent residents qualify for acquisition of permanent residence, as do individuals that have either invested in businesses in the country considered in the national interest or have certain amounts of capital.

Migration and labour: preferred destinations and migration policy

Oucho (2007) indicates that South Africa, Botswana and Namibia are favoured destinations for migrants in the SADC region. Table 3 shows the number of international migrants from the SADC region into these most favoured destinations. Data for international migrants from most of the SADC region to Namibia was not available from the source. South Africa, Botswana and Namibia hosted approximately 501 000, 10 000 and 35 000 migrants, respectively, in 1990. The number of migrants South Africa, Botswana and Namibia hosted from the region in 2010 rose to approximately 1,2 million, 76 000 and 76 000, respectively. It is also noteworthy that each of these countries hosts a larger number of migrants from the rest of the world (though not disaggregated into individual countries) than from the SADC. Thus South Africa, for example, was host to approximately 1,9 million migrants from the rest of the world in 2010 compared to approximately 1,2 million from the SADC region. Among international migrants from within Africa,

however, the SADC region dominates. Out of the approximately 77 000 temporary residence permits processed and analysed by Statistics South Africa for migrants from within Africa in 2012, approximately 46 000 were issued to SADC citizens (Statistics South Africa, 2013, p. 16). Oucho and Crush (2001, p. 154) say that migrant-receiving countries in the SADC region have systematically opposed free movement. This contributes to explaining SADC's failure to arrive at a harmonised approach on cross-border migration when the 1995 SADC Draft Protocol on Free Movement of Persons was introduced, as explained earlier. South Africa, Namibia and Botswana "were opposed to a Protocol to progressively dismantle borders within the SADC region" (Oucho & Crush, 2001, p. 143). SADC, therefore, shied away from free movement and toward facilitation of movement of persons in the region, which led to redrafting and, later, adoption of the Draft Protocol on Facilitation of Movement SADC.

Table 3. Number of international migrants to the most preferred destinations in the SADC, 1990 and 2010

Year		1990			2010		
Destination		South Africa	Botswana	Namibia	South Africa	Botswana	Namibia
Origin							
World		767,466	16,614	59,826	1,862,889	114,838	138,870
SADC	Angola	4,110	289	21,617	20,157	2,538	43,650
	Botswana	24,162		662	34,867		1,772
	DRC	890	281	-	15,559	2,424	-
	Lesotho	151,011	249	-	224,241	2,329	-
	Madagascar	55	60	-	315	458	-
	Malawi	11,580	444	-	43,697	3,285	-
	Mauritius	2,559	172	-	6,740	1,345	-
	Mozambique	145,195	99	-	458,798	847	-
	Namibia	40,446	158		87,764	1,319	
	Seychelles	80	45	-	484	190	-
	South Africa		3,791	8,744		26,639	22,774
	Swaziland	46,219	62	-	66,175	498	-
	Tanzania	1,811	257	-	6,869	2,121	-
	Zambia	11,467	1,099	4,145	42,060	9,174	8,125
	Zimbabwe	61,757	2,928	-	155,594	22,607	-
Total	SADC	501,342	9,934	35,168	1,163,320	75,774	76,321
	SADC + World	1,268,808	26,548	94,994	3,026,209	190,612	215,191

Source: United Nations, Department of Economic and Social Affairs, 2012. Compiled by author.

Note: Data spaces marked "–" indicate data was unavailable from the source.

Crush and Williams (2003) argue that migrant receiving countries exhibit three general policy responses to migration. These responses include restricting migrants from entering or moving into the potential host country, containing migrants who would have already found their way into the host country, and selectively allowing entry to migrants based on set criteria. Policies that restrict entry and movement of migrants are plagued with challenges. Migrants try to circumvent the restrictive measures by seeking asylum or amnesty, for example. Governments, on their part might respond by tightening legislation that regulates



asylum. Where people have already entered a country, containment policies are designed to keep the migrants within specified regions such as refugee camps, etc. Post-apartheid South Africa's deportation scheme is perhaps one of the world's largest. The post-apartheid regime adopted a 'detain and deport' strategy for undocumented migrants, which achieved 180 000 deportations per annum in 1999 and by 2007 had over 1,5 million deportees (Crush & Dodson, 2007, p. 446). Between 1988 and 2010 South Africa deported approximately 2,5 million people prompting some to call the country's deportation policy systematic (Segatti, 2011b). The majority of those deported consisted of SADC citizens and especially Mozambicans and Zimbabweans.

Receiving countries may also be selective by only accepting foreigners skilled in and needed to fill up skill deficits in specific skill areas in the host country. The migration policies of countries that especially attract large numbers of migrants may equally be reactive at times, being driven by crises. Such countries may respond to large migrant inflows by repatriating the migrants to their countries. They might also design policies to keep migrants out of the country on one hand and to legalize those already in the country on the other hand.

Changes in migration-related policies in a migrant-receiving country can sometimes facilitate the formalization of undocumented/illegal migrants in that country, as the case has been for undocumented Mozambican and Zimbabwean migrants in South Africa. Convey and Kupiszewsk (1995) point to the inescapable relationship between migration movements and the policies adopted, as a consequence of the movements, by authorities in migrant-receiving countries in attempts to encourage, reduce or control such movements. The economic and political crisis in Zimbabwe precipitated an exodus of all kinds of human resources from the country ranging from unskilled to highly skilled and educated professionals. South Africa provided the most promising destination for most of these personnel. The crisis resulting from the influx of Zimbabwean migrants to South Africa prompted South Africa to come up with the Documentation of Zimbabweans Project (DZP). The measure was an attempt to legalize the many Zimbabwean migrants that had illegally entered South Africa. South Africa's Department of Home Affairs (2011, p. 42) reports in its 2010/2011 Annual Report that it deviated from achieving its targeted 224 000 deportations over the period to an actual 58 825 deportations because of "the special dispensation introduced for Zimbabweans in terms of the DZP, who previously constituted the bulk of deportations" (in excess of 16 000). The number of temporary and permanent residence permits issued over the same period equally deviated from the target 80 000 to 239 992²⁰, with the deviation being attributed to the DZP (Department of Home Affairs, 2011, p. 42). Many Mozambicans entered South Africa in the 1980s during the civil war in Mozambique. They, however, remained largely unclassified prior to 1993 because South Africa did not officially recognize refugees until 1993 (Schachter, 2009, p. 6). With the change in policy relating to refugees, the Mozambicans that had entered South Africa prior to 1990, therefore, became regularized in 2000. Mozambican and Zimbabwean nationals have benefited from at least one of the four amnesties South Africa has initiated for undocumented migrants from SADC and neighbouring countries since 1994. Segatti (2011b) suggests that the amnesties are evidence of South Africa's goodwill in the face of the country's incorporation into SADC. The latest of such amnesties, announced in 2010, was specific to and sought to regularize undocumented Zimbabweans. Segatti, however, suggests that the unsatisfactorily implemented DZP is reflective of DHA's inadequacies as well as the non-transparent bilateralism the SADC region

²⁰ The number does not reflect all permits issued in the reporting period, but those in the Track and Trace System which became fully utilised from July 2010" (DHA, 2011, p. 42 Footnote).

governments favour over open and inclusive mechanisms for solving crises. Moreover, the DHA measures address the issue at the heart of regional migration flows – the provision of low skilled migrants workers with legal access to South Africa’s labour market (Segatti, 2011b, p. 55). The amnesty initiated in 1996 was broader, catering for all SADC citizens living in South Africa then and who had been there prior to 1 July 1991 (Mengelkoch, 2001). SADC citizens meeting this condition further had to be engaged in meaningful economic activity in South Africa, or be in a permanent relationship with or married to a South African citizen, or have dependents born and lawfully resident in South Africa, in order to qualify for permanent residency under the amnesty. South Africa also initiated an amnesty within this period specifically for Mozambicans who had arrived in the country during the civil war in Mozambique but could not apply because they did not qualify for the SADC amnesty (Peberdy, 2009). Such South African Government initiated amnesties enabled qualifying applicants to become permanent residents by regularizing their status.

South African immigration regulations today, however, put more stringent restrictions on and discourage (especially unskilled) illegal immigration into South Africa. Migrants seeking permanent residence or citizenship through marriage to, or a permanent relationship with a South African citizen, for example, should have been married to such a person for five years for them to be considered for citizenship (Segatti, op cite, 2011b). In spite of this, South Africa seems to be pursuing a less exclusionary policy towards especially skilled migrants than before. This is reflected in the passing of the country’s 2002 Immigration Act, for example. In this respect, Peberdy argues that, “[r]eflecting increasing concern over skills shortages and high rates of emigration of professionals, the 2002 and 2004 Acts were intended to facilitate the entry of skilled migrants and immigrants to boost South Africa’s economy” (2009, p. 150). However, the actual number of work and business permits issued apparently fall short of the intentions of the Act. According to Ellis and Segatti (2011, p. 73–74) against the 1 011 new economically active immigrants the South African government recorded in 2003, the nation witnessed a net loss of 9 529 economically active people, who included among other professionals, 703 accountants, 693 medical personnel, 547 industrial and production engineers and 542 natural scientists. Of the 141 550 temporary residence permits issued and processed by Statistics South Africa in 2012, 33 250 (23,5 per cent) included work permits and 1 585 (1,1 per cent) were business permits (Statistics South Africa, 2013, p. 14). 206 (0,1 per cent of) Treaty permits were issued the same year. Out of a total 1 283 permanent resident permits Statistics South Africa processed for 2012, 441 (34,4 per cent) and 94 (7,3 per cent) fell in the work and business and finance categories, respectively.

Bilateral agreements, memoranda of understanding, joint permanent commissions for co-operation and migrant labour

Several bilateral international agreements between South Africa and surrounding countries such as Botswana, Lesotho, Mozambique, Lesotho and Swaziland provide important instruments that govern migration in the SADC region. Examples of such agreements include Joint Commissions and Memoranda of Understanding. Before discussing these further, it is worth briefly explaining what are Joint Commissions and Memoranda of Understanding between countries? How do Joint Commissions and Memoranda of Understanding work?



Generally Joint Permanent Commissions for Cooperation (JPCC) serve two primary purposes: provide a channel for promoting and enhancing co-operation between countries in various sectors of government, and coordinate cooperation initiatives and facilitate contact between the public and private sectors of the cooperating countries. The Presidents of the cooperating countries mostly jointly chair the Commissions, which also comprise Ministers and senior government representatives from the cooperating countries or bilateral partners. The partners decide the various sectors of cooperation in which they seek to achieve common objectives. The partners may, further, establish Sectoral Committees within the JPCC to deal with thematic issues. The Sectoral Committees in turn may set up specialized sub- and ad-hoc committees, working groups or clusters of experts in specific sectors such as labour, agriculture, science and technology, defence and security, etc. to execute the Commission's duties and ensure smooth and proper implementation of the Commissions' decisions and recommendations.

The JPCCs provide the framework in which bilateral cooperation is entrenched and through which the countries strengthen economic, political, social, cultural and other forms of bilateral cooperation. JPCCs guide and operationalize bilateral cooperation. The bilateral partners formulate the structure of the JPCCs, including the frequency of Commission meetings, levels and areas of government involved and the areas the cooperation will cover (See Table 4, for example). The partners hold joint meetings, they exchange visits, and share skills and experiences, etc. within the JPCC framework to strengthen mutually beneficial cooperation.

South Africa holds Joint Permanent or Bi-National Commissions with each of the seven countries selected for this study (Table 4). Unless otherwise stated, these agreements generally span five years and are renewable for another five. The Joint Bilateral Commission of Cooperation agreement between South Africa and Lesotho categorically stipulates among its objectives the facilitation of movement of people, goods and services between the partner countries in view of Lesotho's unique geographic position. That between Swaziland and South Africa seeks to inter alia "facilitate movement of people, goods and services between the two countries by ensuring user-friendly border posts" (Agreement between the Government of the Republic of South Africa and the Government of the Kingdom of Swaziland on the Establishment of a Joint Bilateral Commission for Cooperation, Article 2(6)). The JPCC between South Africa and Botswana cites migration among the areas of common interest where the bilateral partners aim to further co-operation and undertake or commission studies and surveys if necessary.

The Commission agreements between South Africa and Malawi, Mozambique, Zimbabwe and Namibia do not categorically specify migration or facilitation of movement of people among outlined objectives or areas of common interest. The historical relationship between South Africa and Lesotho, Swaziland and Botswana in the Southern African Customs Union (SACU) might explain the difference. Nonetheless, cooperation in migration and facilitation of movement is implied in the general objectives, functions or purposes of the agreements between South Africa and Namibia, and each of the non SACU States under study. The Bi-National Commission agreement between South Africa and Mozambique or that with Namibia, for example, purpose to promote and enhance co-operation in various sectors of government without specifying the sectors in question. The Joint Commission for Economic, Social, Scientific, Technical and Cultural Co-operation between Zimbabwe and South Africa too does not specify labour or cross-border movement of persons. However, the bilateral partners have under the JPCC framework, memoranda of understanding (MOUs) on Employment and Labour and on Cooperation and Mutual Assistance on Immigration Matters, each of which address cross-border movements of persons, labour and related

matters. In its preamble, the bilateral MOU on Cooperation in the Fields of Employment and Labour between South Africa and Zimbabwe, for example, considers it necessary to establish the MOU between the parties within the framework of the South Africa – Zimbabwe Joint Commission for Economic, Technical, Scientific and Cultural Co-operation.

JPCCs, therefore, not only provide but also leave room for cooperating partners and respective agencies to engage in sector specific bilateral cooperation within the framework. South Africa's Department of International Relations and Cooperation (DIRCO) concludes JPCCs with respective bilateral partners in the SADC region. Individual government or private sector agencies, etc. in the country are free to identify and undertake mutually beneficial bilateral programs of cooperation in specific sectors or areas of interest with sister agencies in the partner country within JPCC frameworks (Director, DIRCO, Africa Bilateral, personal interview 16 November, 2012).

South Africa has long established MOUs on employment and labour with neighbours in the SADC region. The preamble to the MOU between South Africa and Botswana signed 24 December 1973, acknowledges certain arrangements existed from 1 July 1963 that govern the employment of citizens of Botswana in South Africa, along with the movement of persons across the common international border between the partner countries. The MOU between the two countries relates "to the establishment of an office for a Botswana Government Labour Representative in South Africa, Botswana citizens in the Republic of South Africa and the movement of such persons across the international border" (Republic of South Africa Treaty Series No. 3, 1973, p. 2). The agreement establishes a Botswana Government Labour Office in South Africa. The functions of the Labour Office include inter alia consulting on conditions and matters pertaining to employment of Batswana in South Africa; compliance with entry, identification and documentation requirements; welfare and housing of Batswana; administration of taxes, deferred pay, remittances and workers' welfare funds in respect of Batswana employed in South Africa; assisting with the repatriation of sick, injured or destitute Batswana formerly employed in South Africa and other Batswana unlawfully present in South Africa; and liaising with South African authorities on behalf of Batswana employed in South Africa or their dependants on workmen's compensation and pneumoconiosis claims by or on behalf of such citizens (ibid, Article III).

An Addendum to the 1973 Labour Office MOU between South Africa and Botswana stipulates the conditions Batswana should meet to engage in employment in South Africa. Batswana entering South Africa to take up employment should possess a valid passport or travel document and an attested written contract of employment of a period of employment not exceeding two years, and should have a completed set of fingerprints. The Addendum to the Labour Office MOU further stipulates that, apart from gold and coalmines represented by one of three organisations²¹, South African employers wishing to recruit Batswana can only do so upon obtaining a certificate to that effect from South African authorities. The agreement does not specify the particular authority from which to obtain such a certificate. Where a South African recruiter enters Botswana to recruit for employment in South Africa, the South African should notify the appropriate Botswana authorities about the place they intend to recruit Botswana citizens from and obtain permission from and pay the Botswana authorities a fee to engage the Botswana citizens

²¹ These organisations include the Mines Labour Organization, the Natal Coal Owners Native Labour Organization and the Anglo Collieries Recruiting Organization.



concerned. Again, the agreement does not specify here the authority from which permission should be obtained.

Like the Labour Office MOU between South Africa and Mozambique, that between Swaziland and the former also acknowledges the existence of certain arrangements dating back to 1 July, 1963, governing the employment of citizens of Swaziland in South Africa, the movement of such persons across the common border, the documentation of citizens of Swaziland and the establishment of Passport Control Posts along the common border between the bilateral partners. South Africa and Swaziland signed their “Agreement relating to the establishment of an office for a Swaziland government Labour Representative in the Republic of South Africa, certain Swaziland citizens in the Republic of South Africa, the movement of such persons across the common border and the movement of certain South African citizens across the common border, and addendum thereto” in 1975 (Republic of South Africa Treaty Series No. 3, 1986). The provisions and stipulations of this provision are similar to those in the agreement between South Africa and Botswana.

Bilateral agreements between South Africa and sending countries, such as the ones establishing Labour Offices cited above, have guided labour migration in the region from the time they were signed. Newer memoranda of understanding between South Africa and neighbours achieve similar effects. In a focus group discussion, the presidents of the ex- and migrant miners associations of Lesotho, Mozambique and Swaziland pointed out that memoranda of understanding between South Africa and each of their respective countries were signed to regulate migration for labour (Focus group discussion with: Mr. Vama Jele, President, Swaziland Migrant and Mineworkers Association; Mr. Rantso Mantsi, President, Ex-Miners Association of the Mountain Kingdom of Lesotho; and Mr. Moises Uamusse, President, Association for Mozambican Miners (AMIMO), Protea Hotel Hatfield; 17 January 2013). The discussants claimed that even if workers are not allowed to know the contents of memoranda of understanding, and hence do not know their rights, recruitment of workers into South African mines is facilitated by the memoranda of understanding. A memorandum of understanding (MOU) exists between South Africa and Zimbabwe on cooperation in employment and labour under their Joint Commission for Economic, Technical, Scientific and Cultural Co-operation. Signed in August 2009, the MOU defines the forms of cooperation to be undertaken by the Commission in Article 3 to include inter alia joint co-operation between the countries’ Ministry and Department of Labour, respectively, and cooperation and dialogue in areas such as labour dispute resolutions, labour law reform, employment services and the Beitbridge labour migration centre. The MOU undertakes, under Article 3(b)(vii), to develop cooperation ties between the two countries in the “facilitation of the interface between the ex-Zimbabwean migrant workers in gold mines of the Republic of South Africa and their previous employers or the ex-employing agencies.”

The South African mining industry has used such agreements the most. Similar agreements in other sectors such as agriculture and domestic work are absent, although Minaar (1996, p. 121) reports that South African farmers in the country’s Northern Province were allowed to continue employing Zimbabwean labourers on their farms under “the special agricultural permits” in 1994 and corporate permits. South Africa’s Immigration Act also provides for corporate permits through companies that source foreign labour and employ foreigners, as seen earlier. Men seeking work in mines and commercial farms constitute the most long-standing cross-border labour migrants within Southern Africa and to South Africa. Migration in these categories enjoys high levels of regulation and institutionalisation because of established recruitment systems and the involvement of the Employment Bureau of Africa (TEBA). In fact, from an institutional point of view, a formal and well-regulated contract-labour system has existed in the mining industry since

the early 20th century. These agreements allowed for foreign labour recruitment outside the stipulations of South Africa's immigration law.

Bilateral agreements not only regulate labour migration but also the movement of people, especially during crises. During the civil war in Mozambique (1980s to the 1990s) many Mozambicans fled to neighbouring countries. Zimbabwe, in cooperation with Mozambique, instituted a formal transit border pass mechanism at their common borders to help regulate the flows of Mozambicans into Zimbabwe (Minaar, 1996). South African National Defence Forces (SANDF) and Mozambican authorities too run a special joint anti-border crossing operation in 1995 to curb the flow of undocumented migrants between the two countries (Minaar & Hough, 1996). In 2005 South Africa and Mozambique signed the Waiver of Visa Requirements for Holders of Ordinary Passports Agreement, which gave Mozambicans 30-day visiting visa status. The agreement helped reduce the number of deportees from South Africa because Mozambicans now entered South Africa legally.

The Mozambican government also sits on committees with its neighbours that have a bearing on labour movements between Mozambique and neighbouring countries. Examples of such bilateral committees include the Sub-Committee on Defence, Security and Migration between the Republic of Mozambique and the Kingdom of Swaziland, the Sub-Committee on Migration and Labour between the Republic of Mozambique and South Africa, and the Sub-Committee on Migration, Security and Labour between the Republic of Mozambique and Zimbabwe (Klaaren & Rutinwa, 2004). The committees discuss inter alia matters pertaining to legislation on labour migration and deportations of migrant workers, complaints about deportation processes and so on.

In this respect JPCCs, and specifically labour and facilitation of movement MOUs, indeed do facilitate cross-border movements. For instance, the above-mentioned 2005 Waiver of Visa Requirements for Holders of Ordinary Passports Agreement between South Africa and Mozambique helped reduce deportations of Mozambicans said to have illegally entered South Africa.

Table 4 lists some Joint Commissions and Bilateral Agreements that exist between South Africa and each of the 7 countries included in this study. The Agreements have a bearing on labour and migration between South Africa and each of these countries. Some of these agreements attempt to regulate, among other things, irregular entry and the migration of labour between the contracting countries. For example, the bilateral labour agreements between South Africa and Botswana, Lesotho and Swaziland, respectively, include labour and regulations for repatriation of former migrant workers as discussed in this section.



**Table 4. Formalised Joint Permanent and Bilateral Commissions for Co-operation --
Republic of South Africa and Selected SADC Countries**

Country	Name of Commission or Bi-National Agreement	Year established	Objectives and Functions or Purpose	Fields of common interest	Frequency of Commission meetings
Botswana	Joint Permanent Commission for Cooperation	March 2003	<ol style="list-style-type: none"> 1) Exchanging ideas and consulting on bilateral and multilateral issues of mutual interest to both Parties; 2) planning and implementation of bilateral programmes of co-operation; and 3) furthering co-operation and, where necessary undertaking or commissioning studies and surveys in fields of common interest. 	<ol style="list-style-type: none"> i.) Agriculture and livestock; ii.) water affairs; iii.) mining and tourism; iv.) environmental co-operation; v.) monetary and financial arrangements; vi.) transportation, roads and other infrastructure development; vii.) health, culture, education and development and utilisation of human resources; viii.) joint development and utilisation of natural resources and energy; ix.) migration; x.) communication in the fields of telecommunication, broadcasting and posts; xi.) any other areas that the commission may identify as beneficial. 	Every 2 years (extraordinary sessions on request)

Country	Name of Commission or Bi-National Agreement	Year established	Objectives and Functions or Purpose	Fields of common interest	Frequency of Commission meetings
Lesotho	Joint Bilateral Commission of Cooperation	April 2001	<ol style="list-style-type: none"> 1) Guide the strategic partnership between the Parties; 2) promote mutually beneficial economic integration between the two countries with the aim of closing the existing economic disparities; 3) promote cooperation in the field of science and technology with the aim of bridging the technological divide which exists between the two countries; 4) cultivate and promote good-governance, beneficial social, cultural, humanitarian and political co-operation and facilitate contact between the public and private sectors of the Parties; 5) maintain peace and security between the two countries and general stability in the Southern African region through collective action based on respect for democratic institutions, human rights and the rule of law; 6) co-operate and harmonize the position of the Parties in addressing multilateral issues of common interest; 7) facilitate movement of people, goods and services between their two countries taking into consideration the unique geographic position of Lesotho. 	Not specified	3 to 4 times a year



Malawi	Joint Commission for Cooperation	May 2007	<ol style="list-style-type: none"> 1) (a) Planning and implementation of bilateral programmes of co-operation, (b) studies and surveys in the fields of common interest; 2) the Commission may engage the specialised institutions to gather information, conduct studies and make surveys in accordance with the provisions of this Agreement; 3) Joint Committees, comprising technical experts in specific fields may be established for the purpose of elaborating co-operation in specific fields. The modalities of the Joint Committees shall be concluded under separate agreements between the Parties; 4) the Commission may review these agreements and recommend amendments to the Parties in light of new needs arising out of practical experience. 	<ol style="list-style-type: none"> i.) agriculture and livestock; ii.) trade, industry, mining and tourism; iii.) monetary and financial arrangements, development of transportation and communication facilities, roads and other infrastructure of the two countries; iv.) joint development and utilisation of natural and energy resources; v.) health, education and development and utilisation of human resources; vi.) institutional development; and vii.) nature conservation and other environmental matters of common concern. 	Every 2 years (extraordinary sessions upon request)
Mozambique	Joint Permanent Commission for Cooperation Bi-National Commission	June 1994 December 2011	(Of 2011 Bi-National Commission) 1) Seek ways of promoting and enhancing co-operation in the various sectors of government, and coordinate initiatives in this regard as well as to facilitate contact between the public and private sectors of the Parties.	Not stipulated	Terminated Annually
Namibia	Heads of State Economic Bilateral Meeting Bi-National Commission	June 1997 November 2012	<ol style="list-style-type: none"> 1) Seek ways and means of promoting and enhancing co-operation in the various sectors of government; 2) co-ordinate initiatives with regard to the co-operation contemplated in paragraph (a); and 3) facilitate contact between the public and private sectors of the Parties. 	Not stipulated	Terminated Annually (Extraordinary session upon request)

Country	Name of Commission or Bi-National Agreement	Year established	Objectives and Functions or Purpose	Fields of common interest	Frequency of Commission meetings
Swaziland	Joint Bilateral Commission for Cooperation	December 2004	<ol style="list-style-type: none"> 1) Guide the strategic partnership between the Parties; 2) promote economic and social development, multilateral cooperation, democracy, human rights and good governance in the two countries; 3) promote cooperation in the fields of health, science and technology, language technology, archiving, arts, education, film and heritage; 4) strengthen cooperation in the provision of mutual legal assistance in criminal and civil matters; 5) promote democratic, credible and effective leadership, development of a strong civil society and respect for universal human rights and the rule of law within the two countries; 6) facilitate movement of people, goods and services between the two countries by ensuring user-friendly border posts; 7) facilitate a mechanism for a dialogue or discussion of issues which may not be specifically covered by this agreement, but which may be of concern to one or both parties; 8) maintain security and stability between the two countries and general stability in the Southern African region through respect for the principles enunciated in the African Union, the Harare Declaration of 1991 and the SADC Treaty. 	<p>Cited under Clusters as:</p> <p>i.) Social Cluster: Home Affairs; Labour; Health and Social Development; Education; Arts and Culture; Science and Technology; Local Government and Water Affairs;</p> <p>ii.) Economic Cluster: Trade and Industry; Agriculture; Land Affairs; Transport; Communication; Environmental Affairs and Tourism; Labour; Home Affairs; Finance; Revenue Services; Minerals and Energy; Science and Technology; Public Enterprises; Water Affairs; Forestry;</p> <p>iii.) Stability and Security Clusters: Defence; Justice and Constitutional Affairs, Police and Correctional Services; Land Affairs; Home Affairs; Intelligence; Foreign Affairs and Revenue Services;</p> <p>iv.) Governance Cluster: Provincial and Local Government.</p>	Annually



Zimbabwe	Joint Commission for Economic, Social, Scientific, Technical and Cultural Co-operation	March 1995	<p>1) (a) planning and implementation of Bilateral Programmes of Cooperation, (b) studies and surveys in fields of common interest;</p> <p>2) the Commission may engage the specialised institutions to gather information, conduct studies and make surveys in accordance with the provisions of this Agreement;</p> <p>3) the Commission may propose to the two Governments agreements for the development of cooperation in the fields of political, social, economic, cultural, technical and scientific advancement.</p>	<p>i.) Agriculture and livestock;</p> <p>ii.) trade, industry, mining and tourism;</p> <p>iii.) monetary and financial arrangements;</p> <p>iv.) development of transportation and communications facilities, roads and other infrastructures of the two countries;</p> <p>v.) joint development and utilisation of natural and energy resources;</p> <p>vi.) health, education and development and utilization of human resources;</p> <p>vii.) institutional development; and</p> <p>viii.) nature conservation and other environmental matters of common concern.</p>	Every 2 years (extraordinary sessions upon request)
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Source: Department of International Relations and Cooperation, RSA. Table compiled by the author.

As per the 1973 agreement with South Africa on the ‘establishment of an Office for a Lesotho government Labour Representative in the Republic of South Africa, Lesotho Citizens in the Republic of South Africa and the Movement of such Persons across the International border’, Lesotho’s Labour Representative and staff in South Africa consult with South African authorities regarding the welfare of citizens of Lesotho living and working in South Africa and their conditions of employment, ensuring that these comply with South African laws. In a similar agreement with South Africa (YEAR?), Swaziland undertook “to assist the Government of the Republic of South Africa with the repatriation of sick, injured or destitute Swaziland citizens whose presence in the Republic of South Africa is or has become unlawful” (Klaaren & Rutinwa, 2004, p. 62). South Africa and Lesotho have also signed an agreement (2012) for cooperation in tourism. As an area of cooperation, the five-year, automatically renewable agreement focuses on the cross-border movement of tourists, with both countries working towards enhancing the movement of tourists between them.

South Africa also has a joint bilateral arrangement – the Joint Bilateral Commission for Cooperation (JBCC) – with the Kingdom of Lesotho first signed in April 2001. The JBCC has formed the basis for strengthening relations between the two countries and the various agreements they have concluded since 2001. For example, the RSA – Lesotho Facilitation of Cross-border Movement of Citizens of South Africa and Lesotho, signed 19 June 2007, was concluded with an eye to furthering the objective of JBCC and helping Lesotho become a developed country. The agreement allows visa-free entry for visits to citizens of both countries who hold valid national passports. Citizens who enter the other country to take up employment are required to apply for work permits. South Africa and Malawi revived the South Africa - Malawi Joint Commission for Cooperation (JCC) at the Second Session held 7 September 2012 (Mkandawire, 2012). The JCC was first signed in 2007. Among issues covered in the latest session were trade and investment.

An MOU on Cooperation in the Field of Labour between South Africa and Lesotho also exists. The MOU cites five areas of cooperation in the field of labour between the bilateral partners including, dispute resolution mechanisms and institutions; social dialogue mechanisms and institutions; compensation in respect of occupational diseases and injuries to citizens of both countries working in either of the two countries; social security; and review of the Labour Agreement between the two Governments concluded in 1973. Bilateral cooperation between the partners in these areas includes inter alia exchange visits at the Ministerial and senior government official levels as well as by specialized study groups; exchange of materials and information on inspection services and of experts of both countries in the social dialogue, adjudication and dispute resolution institutions; and consultation aimed at developing common positions in the SADC, AU Labour and Social Affairs Commission and ILO.

Migration Dialogue of Southern Africa (MIDSA)

MIDSA is an important stakeholder and features prominently in discussions on migration and movement of persons in Southern Africa. MIDSA is one of three regional consultative processes (RCP) on migration in Africa (UNCTAD, 2009). It complements SADC’s formal efforts to facilitate movement of persons in the region by promoting dialogue and cooperation on migration and related policy matters among SADC governments. Born out of a convergence of various organisations’ interests in international migration in the Southern Africa region (Oucho, 2007), the MIDSA Secretariat is housed at the IOM in Pretoria and specifically focuses on migration and development, migration and border management, labour migration, irregular movement, human trafficking and smuggling, migrants’ rights, health, etc. MIDSA also facilitates



technical cooperation and seeks to enhance the sharing of information among SADC governments on the above listed issue areas. Though its recommendations are non-binding, MIDSA brings together SADC and other key regional actors and helps SADC governments identify goals on migration issues. The management of migration in the SADC region at both bilateral and multilateral levels has indeed developed thanks to inter alia MIDSA's role and the active involvement of Member States (Oucho, 2007).

Like the several other RCPs that have emerged around the world in the recent past (UNCTAD, 2009), MIDSA complements formal regional integration efforts in the SADC region in the area of labour mobility. MIDSA's express aims include assisting SADC governments respond to the AU Strategic Framework on Migration and the AU Common Position on Migration and Development; stimulating discussion and debate on the implications of ratifying the SADC Draft Protocol on the Facilitation of Movement; and assisting SADC governments to participate in global debates on migration and development such as the Global Commission on International Migration, the UNHDIMD and GFMD (MIDSA, 2012). Apart from facilitating labour mobility MIDSA, therefore, also concerns itself with facilitating cooperative dialogue among key stakeholders including national governments, local, regional and international groups and organisations, etc. and representatives of these respective organisations on migration management matters to cultivate common understanding that leads to the adoption of, albeit, non-binding recommendations or actions among such actors. According to IOM's Regional Director for Southern and East Africa, Bernardo Mariano, MIDSA provides a platform where migration-related issues are discussed in an informal setting and thus increases awareness of challenges and best practices in migration management in various migration-related fields (IOM, 2012c).

The Annual Conference for Permanent Secretaries and senior government officials from SADC nations was held in Mauritius from 27 to 29 August 2012 under the theme: "Enhancing Intra-regional Labour Migration towards Social and Economic Development in the SADC Region" (IOM Regional Office Pretoria, 2012, p. 7). Based on proposals and recommendations made in the course of the conference, the technical meeting formulated a preliminary regional roadmap on labour migration for the SADC region highlighting 7 key thematic areas to guide the development of a 'labour migration roadmap to 2014' for Southern Africa. Each key thematic area came with sets of recommendations accompanied by key actions to be spearheaded by the SADC Secretariat and Chair in conjunction with a lead SADC Member State. The key thematic areas included: Policy and Legal Framework; Migration and Health; Remittances; Data Collection and Information; Rights (Protection) of Migrant Workers; Portability of Benefits; and MIDSA Governance. The August 2012 technical meeting was followed by a tripartite technical working group meeting in Pretoria from 18 to 19 October 2012 themed: "Stakeholders Consultative and Consensus-Building Meeting on SADC Employment and Labour Sector: Draft Policy Instruments and Guidelines." This group met to "flesh out" the roadmap for the Ministerial MIDSA Conference and the SADC Meeting of Ministers and Social Partners set for 2013 (IOM Regional Office Pretoria, 2012). The August 2012 MIDSA and subsequent meetings are indicative of progress and the contribution these MIDSA's, though informal, are making in promoting an "action oriented" regional migration agenda and movement towards a concrete SADC region migration regime. It is worth noting, therefore, that some of the themes developed during the August 2012 MIDSA and "fleshed out" for the 2013 Ministerial MIDSA Conference and SADC Meeting of Ministers and Social Partners were themselves recommendations of a previous Ministerial MIDSA, the 2010 Ministerial MIDSA held in Namibia (see Box 1).

Moreover, the SADC Joint Technical Sub-Committees Meeting on SADC Employment and Labour Sector Programmes that met in Pretoria on 6 and 7 December 2012 developed a draft SADC Labour Migration Action Plan for 2013 to 2015, based on recommendations from the MIDSA conference of Permanent Secretaries and senior officials of August 2012.

The 2014 roadmap, an outcome of the August 2012 MIDSA technical meeting and subsequent adoption into the roadmap to 2014, as well as SADC Technical Working Group Sub-Committees on Labour's formulation of the Draft SADC Labour Migration Action Plan 2013 to 2015, and other labour and migration-related instruments for SADC Ministerial consideration, shows that Recommendation 1 (see Box 1) of the 2010 Ministerial MIDSA has been adopted. Apart from this and Recommendation 7, which is being followed, more room remains for adoption of the 2010 Ministerial recommendations.



Box 1:

MIDSA Ministerial Conference Recommendations on “Managing Migration through Regional Cooperation”, Windhoek Namibia, November 2010.

Adopted Recommendations

The following recommendations, which were based on the presentations, discussions and group work, were revised and adopted at the ministerial level on Day Three of the workshop.

1. The Chair in Office of MIDSA and IOM to pursue the integration of current and future recommendations of the MIDSA Ministerial meeting into SADC structures so that these recommendations lead to concrete actions.
2. Enhance migration management coordination, including through the establishment of migration focal points in relevant ministries; agreement on common regional standard operating practices including minimum standards for migrants’ access to basic social services; capacity building; ongoing exchange of experiences and best practices; harmonised border management systems; and an integrated regional information management system.
3. Encourage countries to expedite ratification of the SADC Protocol on the Facilitation of Movement of Persons in accordance with SADC decision.
4. Address challenges of irregular migration by increasing public awareness in order to discourage irregular migration as well as promoting legal labour mobility channels and opportunities.
5. Promote the participation of the diaspora in development and mitigate the effects of brain drain by, for example, increasing opportunities for skilled migrants to remain within the region, undertaking a regional assessment of remittance flows and developing a Regional Diaspora Engagement Framework.
6. Improve the collection, analysis, dissemination and harmonisation of migration data, ensuring its application to policy - making and incorporation into national development plans, requiring capacity building of national statistical offices, national migration institutions and the SADC statistical department.
7. The agreed frequency of MIDSA meetings as follows:
 - A. Yearly: MIDSA workshop for Permanent Secretaries and senior government officials
 - B. Every other year: MIDSA ministerial workshop.

Source: IOM, 2010.

ILO and other UN conventions and treaties bear on SADC States. All 15 SADC Member States have each ratified the African Charter, the SADC Charter and the UN Convention Relating to the Status of Refugees (Table 1). Most SADC countries do not, however, incorporate much of existing multilateral international instruments in their migration regimes, as detailed earlier. Only Botswana, the Seychelles and Lesotho have ratified the ICPRMW as of May 2013, while Mozambique has signed, as earlier indicated. Five SADC States - Madagascar, Malawi, Mauritius, Tanzania and Zambia - have signed ILO's Migration for Employment Convention, Revised, 1949 (No. 97). Only five SADC States - Angola, Congo DR, Lesotho, Madagascar and South Africa - have signed the International Convention on Civil and Political Rights.

A question arises about the extent to which SADC States that have ratified international conventions, such as ILO's Migration for Employment Convention, go in implementing and incorporating such conventions in respective and relevant domestic policies. This brings us back to the questions asked in the introduction. The next chapter discusses and highlights some issues arising from the foregoing discussion as they relate to the research questions and objectives set out in the introduction to this paper.



Discussing the key aspects of labour migration governance in Southern Africa

This section provides a synthetic discussion of some issues arising from the previous sections of this report. It discusses and highlights these issues as they relate to the research questions and objectives set out in the introduction.

Conditions exist and are suitable for setting up a regional migration regime in southern Africa through the Treaty Establishing SADC and the SADC Protocol on the Facilitation of Movement of Persons in the SADC. The Treaty Establishing SADC explicitly states that Member States aim to (progressively) eliminate obstacles to the free movement of capital, labour, goods and services. Through its Charter of Fundamental Rights, SADC also seeks to promote labour policies, practices and measures that facilitate labour mobility, remove distortions in labour markets and enhance industrial harmony and increase productivity in Southern Africa. The SADC Protocol on Facilitation of Movement takes cognizance of the AU's goal of an African Economic Community by 2028 and is crafted to support AU efforts towards that goal. The Facilitation Protocol implements SADC's goal of eliminating obstacles to free movement of factors, including labour.

This study's review of cross-border international migration and regimes in other regions of the world suggests these objectives are achievable especially if there are:

- a) Treaties and protocols crafted to establish regional migration governance systems;
- b) Commitment to realising the (labour migration) objectives in the treaties; and
- c) Willingness to bring Member States' and regional labour migration policies and legislations in conformity with regional and international realities and standards.

These conditions are discussed briefly below.

Treaties and protocols to establish regional migration governance systems

The regions surveyed in this study are all founded on treaties or agreements of one kind or another. The treaties or agreements ideally inform the type of labour migration governance frameworks that exist in each of these regions. These, as in the case of SADC, are defined by Protocol(s) on the Facilitation (or Freedom) of Movement of Persons, etc. Where regional treaties do not specifically address labour migration, regional organisations commission special committees to establish measures towards addressing regional labour migration. The Andean Community, for instance, took this path, which also shows the region's commitment to establishing freedom of movement of workers. The Cartagena Agreement establishing the Andean Community has no specific provisions for labour migration. Thus the Andean Community through an ad hoc committee passed decisions that have since promoted the recognition of identity documents, "unhampered movement" and residence of wagedworkers in the Community, and creation of an Andean passport.

Against official regional labour migration governance frameworks such as those in the other regions studied here, analysis of bilateral and joint cooperation in Southern Africa and especially between South Africa and

other SADC States reveals the existence of a form of labour migration governance system in the region. Though very formal, this form of labour migration governance is not multilateral and thus passes for a 'parallel' system of labour migration governance. South Africa engages in joint bilateral economic cooperation with each of the seven SADC States studied in this research and has signed bilateral labour MOUs in the framework of Joint Permanent Commissions of Cooperation with each of them. In fact South Africa engages in bilateral cooperation and has various agreements with each of all SADC States. Some of these agreements have consequences for labour migration. The contents of most of these agreements are largely similar, regardless of the State Party with which South Africa contracts.

South Africa and Angola, for example, have an MOU on Cooperation in the Field of Human Settlements, which aims to encourage cooperation in inter alia exchange of experts, experience and professional capacity building in human settlements. In the MOU on Cooperation in Economic, Scientific, Technical and Cultural Fields, South Africa and Angola facilitate cooperation by encouraging "exchange of scientists, researchers, technicians and other experts." The exchange of experts or scientists, for example, involves cross-border movement of the said officials and persons. The labour MOUs between South Africa and the seven countries studied here suggest that at policy level SADC States maintain a managed approach to regional labour migration, which allows migration of sectoral and certain categories of skilled and unskilled labour. However South Africa, the receiving country, appears to have the upper hand in determining the sectors and skill sets it officially allows into its territory. The picture is different at the grassroots given the number of informal and especially undocumented migrants that cross into South Africa to search for work.

These labour agreements have one of two opposite effects: on the one hand they could be a desirable alternative to a regional labour migration policy for Member States and thus dim prospects of the States adopting and ratifying the SADC Protocol on the Facilitation of Movement. On the other hand where the contents of such labour agreements are similar, irrespective of the SADC State South Africa concludes them with, the agreements could be a stepping stone to the establishment of a regional labour migration regime. The labour MOUs between South Africa and each of Botswana, Lesotho, Swaziland and Namibia do not differ significantly in content one from another. These States could, under the SACU umbrella for instance, formalise a SACU region labour migration system upon which they could harmonise migration and labour policies.

The long history of labour MOUs between South Africa and each of these countries and the way the MOUs have facilitated recruitment of labour, especially in South African mines and agriculture, suggest (a) the existence of a parallel managed migration system at bilateral level, i.e. between governments across the region involving skilled and unskilled workers, experts, professionals and government employees and diplomats; (b) that bilateral agreements are the major instruments that facilitate cross-border labour migration for at least skilled, unskilled, expert and professional labour; (c) that consolidating the separate bilateral agreements into an official regional agreement might minimally alter their contents and prevailing practices governed by the existing bilateral agreements between South Africa and each of the seven (and even all) sending SADC States, and (d) cross-border labour migration of men for work in mines and farms represent a long-standing and the most institutionalised form of labour migration in Southern Africa. It is worth noting however that some labour MOUs (such as the establishment of a Labour Office MOUs) and particularly those between South Africa and each of the SACU States seem rather unilateral and biased towards South Africa. The receiving State evidently sets the terms of labour migration. In the 1960s and 1970s the Zambian copper belt attracted large numbers, for the time, of similar cross-border work seekers



from neighbouring countries (IOM, 2000). The current buzz in mineral prospecting and development in coal, diamonds, oil, uranium, etc. in Mozambique, Zimbabwe and Angola, for example, suggests that South Africa will soon start to compete for this labour as migrant workers look to her budding neighbours for work. It is essential for SADC States to urgently formalise a regional mechanism for the governance of labour migration and set regional standards for protection of migrant workers, although SADC Ministers have already underlined that NEPAD add decent employment and social integration in its Action Plans to ensure social development in African (UNU-CRIS, 2008). Regions and bilateral agreements between States are indeed making some progress in integrating migration into their social policy frameworks (Deacon et al, 2007). SADC States should also adopt and ratify ILO's Convention C097 and C143 and the ICPRWM to help them establish a harmonised rights-based labour migration regime. The decision and responsibility to adopt these instruments, however, rests squarely with respective governments in the region.

In view of the non-enforcement of the existing protocol on movement of persons in the SADC region resulting from non-ratification, SADC and Member States' commitment to regional integration should be questioned. Perhaps SADC should revisit its integration goals and objectives and develop appropriate measures to achieve these goals. The question must therefore be asked again whether SADC aims for a Customs Union or Common Market. The answer to that question addresses the unavoidable need policy makers in the region have to come to terms with: to establish a free regional labour migration governance system. The EU experience informs this situation very well, as explained below.

This study has shown that labour migration is significant to processes of regional integration and that harmonising policies and standards to provide for good governance in labour migration is essential to effective regional agreements. Moreover, this study has also shown that the implied goal of Common or Single Markets is freedom of movement, which connotes one of four factors including goods, services, capital and persons. In the EU, the research has shown, free movement of these factors constitutes a fundamental principle and forms the basis of the Single Market as enshrined in the EC Treaty. Freedom of movement of people, as one of the four factors, originally connoted free movement of workers and not free movement of all people. In the European project, however, the notion of free movement gradually evolved from free movement of workers to free movement of people in general. Of importance to the SADC region is the realisation that focus on the objective application of practical measures towards the goal of a Common Market helped the EU realise freedom of movement of persons and the other factors – capital, goods and services. This is not to say, however, that the EU project did not face challenges and obstacles as it evolved towards the Common Market. Economic, security and other such concerns always arise when sovereign States open up their borders. Rather than allow such fears to hinder the integration agenda, States ought to seek ways to jointly address these concerns. Structures have evolved around the coal and steel mines forming the foundation of European integration, including the project's law enforcement agency, European Police Office (Europol) established under the Maastricht Treaty. Such structures suggest that regional public goods such as security can be jointly addressed, further enhancing the process of integration.

Commitment to realising the (labour migration) objectives of the treaties

This study has established that despite the existence of the SADC Protocol on Facilitation of Movement, the protocol is not yet enforced because the required two-thirds majority Member States have not yet ratified

the protocol. Moreover, though not yet enforced the current SADC Facilitation Protocol is a watered-down instrument for regional free movement. SADC shied away from a regional free movement regime (when it dropped the very first Draft Protocol on Free Movement of Persons in the SADC) to the current un-enforced Facilitation of *Movement of Persons* protocol. No formal regional labour migration governance system currently exists within SADC but there is a South African unilateral approach that translates into bilateral agreements. This is not formally a SADC framework but, in effect, a parallel framework for the region.

The absence of a formal SADC framework to govern labour migration negatively impacts the AU's envisaged African Economic Community to be built through RECs by 2028. In addition to defining its approach to migration, the AU's two key migration policy frameworks suggest the organisation recognises that migration is crucial to development and that there are political and socioeconomic challenges associated with migration in Africa. In adopting the MPFA, for example, African Heads of State and Government demonstrate that in principle they agree with the document's principles and guidelines. Though the MPFA is not legally binding, the current absence of a regional migration policy in SADC evidently shows Member States are yet ready to implement the basic MFPA guidelines.

Some African (and other) RECs, however, have made considerable progress towards achieving intra-regional free movement of persons and labour. Their experiences provide helpful lessons and examples to SADC for the governance of its regional labour migration. ECOWAS provides a good example. Why is the ECOWAS Protocol on Free Movement said to be the most comprehensive and best implemented? ECOWAS enforced an ambitious protocol on free movement, residence and establishment in 1980 to be fully implemented, in three phases, by 1995. That all Member States ratified phases 1 and 2 of the Protocol is significant and shows consensual commitment in ECOWAS to free movement of persons and labour. Moreover, the region went ahead to revise the Treaty establishing ECOWAS and renewed commitments to abolishing all obstacles to free movement of factors, including labour.

Apart from the Protocol on Free Movement, ECOWAS's policy paper on migration, the ECOWAS Common Approach on Migration indicates further the commitment and political will to achieve regional free movement and shows that ECOWAS appreciates the migration-development nexus. Their policy paper expedites implementation of the free movement protocol. This contrasts with SADC shying away from and dropping the free movement of persons protocol. ECOWAS has fully implemented Phase 1 of its Free Movement protocol and allowed visa-entry to Community citizens.

The EU has enforced freedom of movement as prescribed in its Treaty and defined into legislations and policies that give EU citizens (and some third country nationals) freedom of movement and establishment in other EU Member States. The EU has achieved milestones in implementing free movement of persons through successive treaties, directives, decisions, regulations and European Court of Justice rulings, etc. The region has followed-through by implementing each of such measures. This accounts for the success of the EU project. Again, unlike SADC shying away from a free movement of persons migration protocol, each successive EU treaty, decision or piece of legislation has effectively enhanced progression towards free movement as opposed to curbing citizens' movements in the region. Successive and subsequent treaties reinforce the free movement of persons and other factors.

ASEAN's Vision 2020 aims to accomplish free movement of goods, services, investment and capital through an ASEAN Community. ASEAN has committed itself to facilitating the movement of skilled labour, business people and talent as a measure for establishing the economic community. Furthermore, ASEAN Heads of



State resolved to hasten the process of establishing the Community by signing and adopting the Cebu Declaration on the Acceleration of the Establishment of an ASEAN Community by 2015.

Entry requirements, passports, visas, other documents

The non-ratification and enforcement of SADC Facilitation Protocol, a much less ambitious objective than its free movement predecessor, raises questions about the region and its Member States' political will and commitment to migration governance. In addition to showing commitment and political will, these nations would also need to harmonise existing requirements for entry into their territories with common visas and travel documents. In other regions, this has been largely the case, although to varying degrees. For instance, while Mercosur and the Adecan Community do not have express provisions for free movement of persons and labour in their respective treaties, through UNASUR the two organisations provide for a common passport for Member States' citizens.

Southeast Asia, too, has prepared a migration regime modelled on the idea of managed migration. ASEAN will allow free movement for skilled labour. Traders, professionals and specialists in accounting, architecture, nursing, medicine, dentistry, natural resources, etc. will participate in the pilot free regional labour market planned for 2015. Migrant workers will be issued with visas and employment passes.

War and economic decline in West Africa undoubtedly slowed down implementation of the ECOWAS Free Movement protocol. Nonetheless ECOWAS has evidently made concrete progress towards achieving regional free movement. Cross-border movement is now cheaper and easier. Citizens can now choose from one of three documents when travelling in ECOWAS: the ECOWAS Travel Certificate, the ECOWAS common passport and National Identity Cards.

Despite several failed attempts, EAC founding States' present attempts to revive East African integration have yielded concrete results. An East African flag, a common East African passport and freely exchangeable currencies now exist in the EAC. EAC States also have a general consensus to ensure EAC citizens enjoy the rights of establishment and residence.

All SADC Member States allow entry of one sort or another to other Member State citizens. Lengths of stay upon entry vary, however, from 30 or less to 90 days depending on the cross-border movers' country of origin within SADC. Many informal cross-border traders make use of such entry provisions and travel between their countries and South Africa to purchase goods for resale in their home countries. SADC States should harmonise and establish uniform (length of stay) entry provisions across the region for such and other kinds of regional travellers. This is especially apparent in view of various official but apparently unrecognised forms of labour migration that exists in the SADC. Despite the absence of an official regional (position or) framework on labour migration and the non enforcement of the SADC Facilitation of Movement Protocol, other SADC protocols do allow free movement of persons and labour in the SADC region. From a legislative and policy point of view SADC does indeed have non-unified albeit unrecognised regional framework of labour migration. This is embedded in Protocols other than the Facilitation of Movement Protocol. SADC officials enjoy visa-free entry privileges into all SADC Member States through the SADC Laissez-Passer bestowed by the SADC Protocol on Immunities and Privileges.

The SADC Protocol on Education and Training facilitates freer movement of students and staff in the region for study, teaching, research and other educational and training pursuits. This research has revealed that

South Africa favours students from the SADC region in its admissions policy to tertiary educational institutions. SADC citizens comprise the largest number of foreign students in South Africa. The Department of Science and Technology too funds postgraduate study for SADC citizens from Member States associated with the SKA project.

SADC states also permit persons, organisations or associations of other Member States to establish cargo, clearing and forwarding offices in their territories as per the SADC Protocol on Trade. Citizens of a Member State are thus able to set up and or maintain business presence in other Member States. Moreover, SADC countries recognise driving licences issued according to the agreed SADC codes and format by other Member States. Licences issued in a SADC State are valid and recognised for driving vehicles in other Member States in the region. Certain categories of persons in the SADC, therefore, including diplomats, students, researchers, teachers, business persons, etc. enjoy free movement in the SADC region. This resembles the 2015 pilot migration system planned for ASEAN. The ASEAN framework is constructed to issue migrant workers with visas and employment passes.

Willingness to bring Member States' and regional labour migration policy and legislations in conformity with regional and international realities and standards

Regional labour migration, sovereignty, national security and development

European integration has progressed to a level where Member States have surrendered aspects of their sovereignty to supranational institutions. EU law is superimposed and replaces in some cases national laws of individual Member States and brings accompanying obligations and rights for Member States and citizens. Member States find it easier to domesticate EU laws, policies, etc. because of this. On the contrary, domestic laws determine respective States' migration laws in the SADC region as this study has revealed. Security concerns and national interest are prominent in the formulation of immigration laws in SADC States. Laws are consequently designed to "keep criminals out" or "expel" undesirable elements from countries. Where prospects to employ non-nationals or grant them permanent residence exist, the non-nationals are only considered if they secure the employment before arriving in the country of employment while permanent residence may only be granted if the non-nationals are unlikely to pursue endeavours in which sufficient numbers of nationals are already engaged or against the host country's "primary regard" to the national interest.

This research has shown that in the case of the EU, despite transition periods that may restrict migrant workers from new member states entering freely into the labour markets of older Member States, migrants from sending countries perceived as less developed are sometimes still considered to pose a threat to or disturb the labour markets of receiving countries. However Ireland's experience with the newer EU members – Romania and Bulgaria – challenges this argument. In Africa, that Kenya (the most advanced economy in EAC) and Rwanda have abolished work permit requirements challenges the argument too. Neither Kenya nor Rwanda is inundated with migrants seeking work from the EAC's less developed economies. A free labour migration governance regime may not necessarily hurt the more developed economies in a region.



Establishment and migrant workers' rights

The rights of migrants within the EU are entrenched in the notion of free movement of persons, which is bolstered by EU treaties and subsequent legislations, decisions, court rulings, etc. Through the Maastricht Treaty, for example, EU citizens obtained personal and fundamental rights to live and move freely in other EU Member States. Free movement of persons within the EU has thus evolved from free movement of workers in 1968 (through Regulation No. 1612/68) to visa-free entry and establishment, with accompanying fundamental rights entrenched via EU citizenship as enforced by Maastricht Treaty 1991.

In Latin America, Mercosur passed the Agreement on Free Movement and Residence for State Party Nationals (or the Residence Agreement) giving regional citizens rights of residence and work in other Member States. Argentina, for example, responded to the challenge of irregular migration in Mercosur by integrating the agreement into its national migration policy and then regularised and integrated the many undocumented regional migrants in the country. Argentina subsequently registered record increases in documented immigrants.

South Africa's amnesties to Zimbabweans and SADC citizens, and to an extent regularisation of Mozambican refugees, achieved similar results. The difference, however, is that South Africa's amnesties were one-off measures affected in and by one State and not a regional policy or agreement. The Mercosur Residence Agreement gives visa-free entry and an automatic visa and freedom of residence, establishment and work to Mercosur citizens in Member States. SADC can learn from Mercosur's experience with the Residence Agreement. South Africa's reactive policies and amnesties to the large scale cross-border movements from Zimbabwe, the SADC region and Mozambican refugees demonstrate the unavoidable need for SADC to view the reality of cross-border migration in the region as one that cannot forever be ignored. The region must decide on a suitable migration governance mechanism to adopt and implement rather than resorting to ad hoc measures in times of crisis. The SADC Protocol on the Facilitation of Movement is a good starting point. The region must decide whether countries that have not yet ratified the protocol should do so to expedite enforcement or whether the protocol should be revised. SADC could also investigate, with a view to implementing, the option of framing a regional agreement that would regularise undocumented migrants to grant them residence and work rights in the host Member State.

The influence of international actors and organisations in regional labour migration governance in the SADC

As we have seen, the IOM supports policy and programme development on labour migration in the SADC region. It brings stakeholders from migrant sending and receiving countries together. IOM houses MIDSA in Southern Africa, which promotes dialogue among SADC States on migration matters. MIDSA's facilitation and contribution in drawing up the SADC labour migration roadmap 2014 at the 2012 MIDSA in Mauritius and the eventual drafting in December 2012 of the SADC Draft Labour Migration Action Plan by a SADC Tripartite Technical Committee of the Employment and Labour Sector cannot be overlooked. Because MIDSA outcomes and recommendations are not binding, however, the Labour Action Plan does not yet represent commitment on the part of SADC and Member States. Rather it is a framework for discussing the labour migration issues outlined in the action plan. MIDSA and SADC Member States are developing and managing migration at bilateral and multilateral levels in the region. To the question whether international organisations and standards influence policy formulation on cross-border labour migration in the SADC region, therefore, the work of MIDSA and ILO is recognisable, even if not all SADC States have ratified the international organisations' key documents on migration and labour. SADC States are, therefore, far from

domesticating legally binding international instruments such as the International Convention for the Protection of the Rights of Migrant Workers and their Families and ILO Conventions C097 and C143. Most (on average ten) SADC States have neither adopted nor ratified any of these instruments. If SADC States that have not yet signed or ratified these international conventions did so, this would make way for harmonisation of domestic policies with international standards and encourage a more uniform regional labour migration governance framework.



Conclusions and recommendations

Southern Africa is a porous region with substantial informal cross-border movements that carry political and economic costs. Brain drain, downward pressures on wages and frictions between migrants and locals in host countries, for instance, are just examples of a wide range of issues associated with informal and unmanaged migration processes across the region. Although most of these problems have existed for a longer period of time, 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 the undocumented migrants that are deported from South Africa return, once again, via informal routes.

Experience from other regions of the world, including in Africa, shows that the regionalization of migration governance lowers the transaction costs associated with cross-border migration. As regional frameworks involve all member states of a regional group, this multilateral policy process is more likely to shift preferences and bargaining positions. Moreover, through a regional focus, the various states involved get to share responsibilities and costs, thus limiting the burden on each party and reducing the risk of free-riding. Our research has confirmed that bilateralism is the current approach governing migration in the SADC region. Unfortunately, this form of bilateralism tends to be exclusive, that is, it does not take into consideration the interests of other countries, but isolates the contracting parties from the regional context, often forcing them to compete with one another. In this sense, such exclusive bilateralism crystallises the negotiating parties into two fixed categories: sending and receiving countries, thereby resulting in a zero-sum game: the payoffs of sending countries are seen as losses for the receiving countries. Yet, this need not be the case. Regionalism has the potential to upset such zero-sum relationship, given that no country in the region is a sole receiver or sender of migrant labour. Each nation receives migrant workers from somewhere, while sending other workers somewhere else. While South Africa may still be the destination of most migrant labour from the SADC region, it also sends workers to these countries (e.g. Namibia and Botswana) South African business people also move to and operate in most neighbouring countries. A regional policy framework would highlight this integrated element of labour migration and therefore open up possibilities for a more cohesive and mutually beneficial system of management.

This research shows that the current system of governance based on exclusive bilateralism, which largely ignores the porousness cross-border migration, is fundamentally unsustainable and expensive. Moreover, the reliance on ad-hoc measures undermines the rights of migrant workers and destabilises the labour market in both sending and receiving countries. What is needed is a clear framework for managed regional migration that empowers workers and reinforces labour markets. For instance, the enactment of protocols and formal policies on migration, which are for instance common in the ECOWAS region and in other African regional economic communities, can be seen as an important step forward in the process of moving away from informal and ad hoc arrangements. Of course, these policies are often poorly implemented, yet they allow migrants in the respective regions to challenge their misapplication and poor implementation or

seek redress through established and relevant channels. The existence of such regional policies strengthens the rights of those who migrate for work, while making the phenomenon of migration more predictable for sending and receiving countries.

Based on the various issues raised by our research and its overall findings, this report presents the following four policy recommendations.

Key recommendations:

1. The Southern African Customs Union (SACU) should be seen as a policy laboratory, where new innovations could be introduced before considering a potential/incremental expansion to the SADC region. In this regard, SACU members should establish a two-tier policy whereby they work towards free movement of labour while maintaining a managed migration policy outside of SACU, within SADC, or within the COMESA-EAC-SADC tripartite region. South Africa should further be encouraged to establish a SADC-based multi-lateral framework for the management of labour migration and social protection issues in line with the SADC Draft Action Plan. An operational and official multi-lateral migration governance mechanism would serve the region better than the current ad-hoc measures.
2. If bilateralism is the only workable practice, SADC States should place emphasis on forms of bilateralism that take regional elements into account as opposed to exclusive bilateralism. In other words, bilateralism should be encouraged only if it is incremental and used as a stepping-stone towards establishing a regional framework for migration (e.g. it should be compatible with and supportive of policies and protocols being discussed at the SADC level). Where bilateral agreements already exist, therefore, the agreements should be redesigned in order to support regional policies rather than undermine them.
3. Discussions to create a wider free trade area (FTA) between COMESA-EAC-SADC do not make any reference to a future managed migration or free movement policy, except for capital and business people. The emerging trilateral agreement to establish the tripartite FTA implies that the policy of managed labour migration will prevail in this larger region, as the alternative free movement policy is not even on the agenda of the tripartite body. We believe that a multi-tiered regional cooperation framework would help reconcile the conflicting interests and aspirations. In this regard, the Trilateral FTA should integrate the various aspects of regional migration indicated in Recommendations 1 and 2. While limiting free movement only to business persons for the time being, it should support free movement of all workers within SACU and also encourage the gradual expansion of free movement policies to other 'willing' SADC members, following a process of variable geometry and possible opt-out similar to that undertaken by the European Union through the Schengen agreement.



SADC states should remain open-minded as to what may be the best institutional mode and level to deal with the issues addressed in this research. It may very well be that SADC, as an organization, is not the best structure through which to address labour migration governance. If this is the case, then the region will need a different type of institutional arrangement to address regional labour migration and govern its implementation. As we have discussed in the report, also the Schengen Agreement was born independently of the EU, with a parallel institutional setup, and only integrated into conventional European institutions in the late 1990s. Pursuing the establishment of the suggested regional labour regime among SACU states, if well implemented, could free up resources (such as funds for manning border posts), which could then be channeled to reinforcing SADC or developing alternative institutional structures.



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Annex

Access to data, correspondence with policy makers, focus groups and interviews

Systematic correspondence was entertained with all SADC National Contact Points in each of the target countries and other organisations listed below. The National Contact Points provided access to documents and helped the research team liaise with the relevant departments in each country.

SADC National Contact Points for the Seven Countries in the Study

Country	Contact
Botswana	Dr. Taufila Nyamadzabo Secretary for Economic Affairs Ministry of Finance and Development Planning SADC National Contact Point Private Bag 008 Gaborone, Botswana Fax: +267 356086/304525 Tel: +267 3950372/3959851 Email: tnyamadzabo@gov.bw amadikwe@gov.bw
Kingdom of Lesotho	Mr. Mositho Khethisa Principal Secretary Ministry of Finance and Development Planning SADC National Contact Point Kings Way Road Cnr. High Court Road P.O Box 395 Maseru 100, Lesotho Fax: +266 22 310964 Tel: +266 22 323703 Email: mkhethisa@finance.gov.ls ps@finance.gov.ls
Republic of Malawi	Mr. Anthony Livuza (liaised with Ms Msaka and Mr. C. Kambauwa) Secretary for Foreign Affairs Ministry of Foreign Affairs SADC National Contact Point Capital Hill, Local Govt. Offices P.O. Box 30315 Lilongwe, Malawi Fax: +265 1 788482/788516 Tel: +265 1 789088/789323 Email: foreign@malawi.net

Republic of Mozambique	<p>Mr. Domingos Fernandes (Not reachable)</p> <p>Directorate of SADC Affairs</p> <p>Ministry of Foreign Affairs and Cooperation SADC National Contact Point</p> <p>Avenida 10 de Novembro nr. 620 Maputo, Mozambique</p> <p>Fax: +258 21 327029</p> <p>Tel: +258 21 497944/494409</p> <p>Email: fernandes@consadc.co.mz</p> <p>dasadc@minec.gov.mz</p>
Republic of Namibia	<p>Dr. Malan Lindeque Permanent Secretary Ministry of Trade and Industry (Not reachable)</p> <p>SADC National Contact Point</p> <p>Uhland and Goether Street, Block B 4th Floor Branden Simbuaye Square</p> <p>Private Bag 13340</p> <p>Windhoek, Namibia</p> <p>Fax: +264 61 220148/220227</p> <p>Tel: +264 61 283711/229933</p> <p>Email: mlindeque@mti.gov.na</p> <p>kamalanga@mti.gov.na</p>
Kingdom of Swaziland	<p>Mr. Clifford S Mamba (liaised with Ms. Magongo)</p> <p>Principal Secretary</p> <p>Ministry of Foreign Affairs and International Cooperation SADC National Contact Point</p> <p>P.O. Box 518</p> <p>Mbabane, Swaziland</p> <p>Fax: +268 404 2669</p> <p>Tel: +268 4042661/4 – 4040922</p> <p>Email: itd@realnet.co.sz</p>
Republic of Zimbabwe	<p>Mr. G. C. Magwenzi (liaised with Ms. Nyagura and Mr. Chindindi)</p> <p>Divisional Head, Multilateral Affairs Ministry of Foreign Affairs</p> <p>SADC National Contact Point</p> <p>P.O. Box 4240</p> <p>Causeway Harare, Zimbabwe</p> <p>Fax: +263 4 705470</p> <p>Tel: +263 4 705677</p> <p>Email: godfreycecil@yahoo.co.uk</p>

In each country under study, the following departments were targeted:

1. Ministry or Department of Home Affairs
2. Ministry or Departments of Labour
3. Ministry or Department of Foreign Affairs



Although useful to get access to primary data, the intermediary role of the SADC National Contact Points did not succeed at facilitating a direct contact with policy makers in the various countries.

In South Africa, the research team made similar efforts to interview officials in the Department of Labour (DoL), Department of International Relations and Cooperation (DIRCO) and the Department of Home Affairs (DHA). With the only exception of DIRCO, the other departments declined the request for an interview. For instance, a response from the Research Management Academy at DHA read:

“I’m responding to your request addressed to our DG requesting his time for an interview pertaining to the legislation and policies governing labour migration from the region to South Africa. Please note that our DG will not be able to avail himself for this proposed interview as the department of Home Affairs is in a process of reviewing its Migration Policy and any policy consultation/interviews are being handled by our Policy and Strategy unit. This review is a matter of priority to our new Minister and DG-until this process is done” (email correspondence from Bela Silulwane, Research Learning Management Academy, DHA, 13 November 2012).

Correspondence and exchange of information (mainly written both via post and e-mail) was entertained with the following government units and officials:

Department of Labour

1. Manager
International Labour Migration
Department of Labour
Laboria House
215 Schoeman Street
PRETORIA
2. Director, Labour Market and Information Statistics
Department of Labour
3. Director, International Relations
Department of Labour
4. Deputy Director-General
Public Employment Services
Acting Chief Operations Officer

Department of International Relations and Cooperation

5. Chief Director
Chief Directorate: Southern Africa
Branch: Africa Bilateral
Department of International Relations and Cooperation
O R Tambo Building
460 Soutpansberg Road

Rietondale
Pretoria, 0084

6. Director
Directorate: Botswana, Lesotho, Swaziland, Namibia and Angola
Branch: Africa Bilateral
Department of International Relations and Cooperation
O R Tambo Building
460 Soutpansberg Road
Rietondale
Pretoria, 0084
7. Director
Directorate: Malawi, Zambia, Zimbabwe, Mozambique and Tanzania
Branch: Africa Bilateral
Department of International Relations and Cooperation
O R Tambo Building
460 Soutpansberg Road
Rietondale
Pretoria, 0084
8. Deputy Director
Directorate: Malawi, Mozambique, Tanzania
Branch: Africa Bilateral
Department of International Relations and Cooperation
O R Tambo Building
460 Soutpansberg Road
Rietondale
Pretoria, 0084
9. Directorate: SADC
Department of International Relations and Cooperation
O R Tambo Building
460 Soutpansberg Road
Rietondale
Pretoria, 0084

Department of Home Affairs

10. Acting Deputy-Director General
Directorate: Immigration Services
Department of Home Affairs
Private Bag X741
Pretoria, 0001
11. Director
Directorate: International Relations



Department of Home Affairs
Private Bag X741
Pretoria, 0001

12. Chief Director
Port Control
Department of Home Affairs
Private Bag X741
Pretoria, 0001

13. Director
Integrated Governance
Department of Home Affairs
Private Bag X741
Pretoria, 0001

14. Assistant Director
Refugee Affairs
Department of Home Affairs
Private Bag X741
Pretoria, 0001

15. Chief Director: Permits
Department of Home Affairs
Private Bag X741
Pretoria, 0001

It must be noted that the South African Treaty Section in DIRCO was very cooperative and gave the research team access to its archive of treaties signed between South Africa and its bilateral partners in the region. These were a vital source of secondary data.

Outside government, correspondence and exchange of information was entertained with:

1. National Economic Development and Labour Council (NEDLAC)
2. The Employment Bureau of Africa (TEBA)
3. The United Nations High Commission for Refugees, South Africa
4. The Ex-Miners Association of the Mountain Kingdom of Lesotho
5. The Association for Mozambican Miners (AMIMO)
6. The Swaziland Migrant and Mineworkers Association (SWAMMIWA)

Face-to-face interviews were held with the Ex-Miners Association of the Mountain Kingdom of Lesotho, AMIMO and SWAMMIWA. A face-to-face interview was also held with the Directorate, Africa Bilateral in DIRCO.

Due to logistical and time constraints, the research team also organized a focus group discussion with the leadership of the mining associations from Lesotho, Mozambique and Swaziland at the Protea Hotel Hatfield, South Africa, in January 2013.



Abstracts

ENGLISH – MiWORC Report N°1. A region without borders? Policy frameworks for regional labour migration towards South Africa

This paper surveys global and regional legislative and policy frameworks regarding labour migration. It specifically: provides a brief overview of existing labour migration policy frameworks in key regions of the world; analytically surveys existing policies and bilateral or regional frameworks pertaining to labour migration in Southern Africa; determines South Africa's policy responses to inflows of migrants from neighbouring countries. The study thoroughly reviewed relevant global and regional legislations, policy reports and scientific publications on migration and interviewed and corresponded with key policy makers chosen on the basis of their policy portfolio. The paper shows that global conventions and human rights instruments provide a common framework to regulate labour migrants' rights and duties and could be better used in the Southern African context. Enforcing these norms, however, is contingent upon the ratification of governments. Most SADC countries have not yet ratified many of these agreements. The absence of a migration policy in the SADC region shows that Members have not yet implemented the basic guidelines of the continental policy. Three systems coexist in Southern Africa that may complicate migration governance: a South Africa-managed bilateral migration policy; *de facto* but contested informal regional migration; and aspirations to establish a formal SADC policy for managed migration. In reality a mixed system of informal but contested movement of irregular migrants into South Africa coexists with managed skilled and low-skilled migration practice between South Africa and neighbouring countries. Bilateral agreements especially between SA and its neighbours have established a 'parallel' labour migration system. Prospects for a regional migration policy that might facilitate development are slim if this inconsistency is not resolved. Discussions to create a wider COMESA-EAC-SADC FTA make no reference to a future managed migration or free movement policy, except of capital and business people. The emerging agreement for the tripartite FTA implies that managed labour migration will prevail in this larger FTA, as the alternative free movement policy is not even on the agenda of the tripartite body. Potentially, SACU Members could establish a two-tier policy whereby they work towards free movement while maintaining a managed migration policy outside SACU, within SADC, or within the tripartite region. South Africa could further be encouraged to establish a SADC-based multi-lateral framework for the management of labour migration and social protection issues coherent with the SADC Draft Action Plan. An official multi-lateral migration governance mechanism would serve the region better than the current ad-hoc measures. Existing bilateral agreements should be redesigned to support rather than undermine regional policies. Ignoring the reality of regional migration is economically and politically costly because it entails more regular, periodical migrant regularisation and repatriation programmes for Member States. Addressing the issue through a regionally managed programme is likely to lower transaction costs, shift national preferences, reinforce social protection and promote a rights-based governance system for migrants.

العربية – تقرير (اتحاد الهجرة للبحث عن عمل) (MiWORC) رقم 1: منطقة بلا حدود؟ إطار السياسة العامة لهجرة اليد العاملة الإقليمية نحو جنوب أفريقيا

تستطلع هذه الورقة الأطر التشريعية والسياسات العالمية والإقليمية بشأن هجرة اليد العاملة. على وجه التحديد: تقدم لمحة موجزة عن أطر سياسات هجرة اليد العاملة الموجودة في المناطق الرئيسية من العالم؛ تستطلع تحليلًا للسياسات والأطر الثنائية أو الإقليمية المتعلقة بهجرة اليد

العاملة في جنوب أفريقيا؛ تحدد استجابة سياسة جنوب أفريقيا لتدفقات المهاجرين من البلدان المجاورة. دراسة وافية شاملة استعرضت التشريعات العالمية والإقليمية ذات الصلة وتقارير السياسات والمنشورات العلمية في مجال الهجرة وأجرت مقابلات ومراسلات مع واضعي السياسات الرئيسية المختارة على أساس محفظة سياستهم.

وتبين الورقة أن الاتفاقيات العالمية و قوانين حقوق الإنسان توفر إطار مشترك لتنظيم حقوق وواجبات العمال المهاجرين ويمكن أن تستخدم بشكل أفضل في السياق الجنوب الأفريقي. ومع ذلك يتوقف تطبيق هذه المعايير على تصديق من الحكومات. ومعظم دول مجموعة التنمية للجنوب الأفريقي (سادك) لم تصادق حتى الآن على العديد من هذه الاتفاقات. و عدم وجود سياسة للهجرة في منطقة مجموعة التنمية للجنوب الأفريقي (سادك) يدل على أن الدول الأعضاء لم تنفذ حتى الآن المبادئ التوجيهية الأساسية للسياسة القارية.

ثلاثة أنظمة تتواجد في منطقة جنوب أفريقيا من شأنها تعقيد إدارة الهجرة: سياسة الهجرة الثنائية التي تديرها جنوب أفريقيا ؛ هجرة إقليمية غير رسمية واقعة لكن معترض عليها ، والتطلعات إلى وضع سياسة هجرة رسمية في منطقة مجموعة التنمية للجنوب الأفريقي (سادك). في الواقع يوجد نظام مختلط بين حركة هجرة إقليمية غير رسمية معترض عليها للمهاجرين غير الشرعيين إلى جنوب أفريقيا وهجرة المهرة وذوي المهارات المتدنية التي تدار بين جنوب أفريقيا والبلدان المجاورة. اتفاقات ثنائية خاصة بين جنوب أفريقيا والدول المجاورة لها قد أنشأت نظاما موازيا لهجرة اليد العاملة. أفاق سياسة الهجرة الإقليمية في تسهيل التطوير ضئيلة إذا لم يتم حل هذا التضارب.

إن المناقشات لإنشاء منطقة أوسع للتجارة الحرة تشمل مجموعة شرق وجنوب أفريقيا(كومسا)، و مجموعة شرق أفريقيا (إيبك) و مجموعة التنمية للجنوب الأفريقي (سادك) لم تنطرق إلى الإشارة إلى سياسة إدارة الهجرة في المستقبل أو حرية التنقل ، باستثناء رأس المال ورجال الأعمال. الاتفاق الناشئ لمنطقة التجارة الحرة الثلاثية يعني أن هجرة اليد العاملة المدارة ستسود في مجال منطقة التجارة الحرة الأوسع ، بما أن سياسة حرية التنقل كبدل ليست حتى على جدول أعمال الهيئة الثلاثية. يحتمل أن يضع أعضاء الاتحاد الجمركي للجنوب الأفريقي سياسة من شقين حيث أنها تعمل من أجل حرية التنقل مع الحفاظ على سياسة الهجرة المدارة خارج الاتحاد الجمركي، داخل مجموعة التنمية للجنوب الأفريقي (سادك)، أو داخل المنطقة الثلاثية. يمكن مواصلة تشجيع جنوب أفريقيا لوضع إطار متعدد الأطراف يستند إلى مجموعة التنمية للجنوب الأفريقي (سادك) لإدارة هجرة اليد العاملة وقضايا الحماية الاجتماعية متسقة مع مشروع خطة العمل لسادك. ومن شأن آلية إدارة الهجرة الرسمية متعددة الأطراف خدمة المنطقة أفضل من التدابير المخصصة الحالية. يجب إعادة تصميم الاتفاقات الثنائية القائمة لدعم، بدلا من تقويض، السياسات الإقليمية. تجاهل واقع الهجرة الإقليمية مكلف اقتصاديا وسياسيا لأنه ينطوي على برامج دورية أكثر انتظاما لإعادة توطين و تنظيم المهاجرين بالنسبة للدول الأعضاء. معالجة هذه القضية من خلال برنامج إدارة على الصعيد الإقليمي يتوقع لها التقليل من تكاليف المعاملات، إحداث تحول في الأولويات الوطنية، تعزيز الحماية الاجتماعية والترويج لنظام إدارة قائم على حقوق المهاجرين.

ESPAÑOL – Informe MiWORC N°1. ¿Una región sin límites? Directrices normativas para la migración laboral regional a Sudáfrica

Este trabajo analiza los marcos legislativos y normativos globales y regionales sobre migración laboral. Específicamente, ofrece una breve visión general sobre los marcos normativos existentes de migración laboral en regiones clave del mundo; investiga analíticamente las normativas existentes y marcos bilaterales o regionales sobre la migración laboral en África meridional; determina las respuestas normativas de Sudáfrica a la entrada de inmigrantes provenientes de países vecinos. El minucioso estudio revisa las legislaciones mundiales y regionales pertinentes, informes normativos y publicaciones científicas sobre migración y entrevista e intercambia correspondencia con los responsables de formular las normas, seleccionados sobre la base de su cartera normativa. Este trabajo muestra que las convenciones mundiales e instrumentos de derechos humanos proporcionan un marco común para regular los derechos y deberes de trabajadores inmigrantes y podrían ser mejor utilizados en el contexto del África meridional. Hacer cumplir estas normas, sin embargo, está condicionado a la ratificación de los gobiernos. La mayoría de los países de la SADC no han ratificado todavía muchos de estos acuerdos. La ausencia de una política migratoria en la región de la SADC muestra que los Miembros todavía no han aplicado las directrices básicas de la normativa continental.



En el sur de África coexisten tres sistemas que pueden complicar la gobernanza de la migración: una política de migración bilateral gestionada por Sudáfrica; una migración regional informal de facto aunque debatida; y aspiraciones de establecer una normativa de SADC formal para la migración administrada. En la realidad coexisten un sistema mixto de movimiento informal aunque debatido de inmigrantes irregulares en Sudáfrica con una práctica gestionada de migración cualificada y poco cualificada entre Sudáfrica y sus países vecinos. Acuerdos bilaterales, especialmente entre Sudáfrica y sus vecinos han establecido un sistema de migración laboral 'paralelo'. Las perspectivas de una normativa de migración regional que podrían facilitar el desarrollo son escasas si no se resuelve esta inconsistencia. Las discusiones para crear un COMESA-EAC-SADC FTA más amplio no hacen referencia a una futura migración administrada o política de libre circulación, excepto de capital y gente de negocios. El acuerdo emergente para el FTA tripartito insinúa que la migración laboral gestionada prevalecerá en este FTA más amplio, ya que la normativa alternativa de libre circulación no está siquiera en la agenda del órgano tripartito. Potencialmente, los Miembros de SACU podrían establecer una normativa de dos niveles donde trabajarían hacia la libre circulación al mismo tiempo que mantienen una política de migración administrada fuera de SACU, dentro de la SADC, o dentro de la región tripartita. Sudáfrica podría ser impulsada a establecer un marco multilateral basado en SADC para la gestión de la migración laboral y temas de protección social coherentes con el Plan de Acción del Proyecto SADC. Un mecanismo oficial multilateral de gestión de la migración ayudaría a la región mejor que las actuales medidas ad-hoc. Los acuerdos bilaterales existentes deberían de ser rediseñados para apoyar en lugar de debilitar las políticas regionales.

Ignorar la realidad de la migración regional es costoso económica y políticamente ya que conlleva a programas más regulares y periódicos de repatriación y regularización de migración para los Estados Miembros. Abordar el problema a través de un programa gestionado regionalmente es probable que reduzca los costos de transacción, cambie las preferencias nacionales, refuerce la protección social y promueva un sistema de gobierno basado en los derechos de los inmigrantes.

FRANÇAIS – Rapport MiWORC N°1. Une région sans frontière? Cadres des politiques publiques de migration régionale de travail en direction de l'Afrique du Sud.

Ce rapport évalue les cadres législatifs et de politique publique mondiaux et régionaux régulant les migrations de travail. En particulier, le rapport fournit un bref aperçu des cadres existant dans certaines régions spécifiques, analyse les politiques et les accords régionaux et bilatéraux existant en Afrique australe, et examine la réponse sud-africaine à l'afflux de main-d'œuvre migrante des pays voisins. L'étude est fondée sur une revue systématique des législations internationales et régionales, des rapports de politique publique, et des publications scientifiques sur la migration, ainsi que sur des interviews et correspondances avec différents informateurs clés responsables de secteurs spécifiques des migrations de travail. Le rapport montre comment les conventions internationales et les instruments de protection des droits de l'homme fournissent un cadre commun de régulation des droits des migrants économiques qui pourraient être mieux utilisé en Afrique australe. L'entrée en vigueur de ces normes demeure toutefois contingente à la ratification des textes par les gouvernements. La plupart des pays de la SADC doivent encore ratifier plusieurs de ces instruments. L'absence de politique migratoire dans la région de la SADC indique que les états membres n'ont pas encore mis en œuvre les directives de base de l'Union Africaine. Trois systèmes coexistent en Afrique australe qui peuvent potentiellement compliquer la gouvernance des

migrations : une politique d'immigration gérée bilatéralement par l'Afrique du Sud ; des migrations régionales informelles contestées mais importantes de facto ; et des aspirations à établir une politique migratoire formelle au niveau de la SADC. Dans la réalité, on observe la coexistence entre un système mixte de mouvement informel mais contesté en direction de l'Afrique du Sud, coexiste avec des migrations formelles de travailleurs qualifiés et moins qualifiés entre l'Afrique du Sud et ses voisins. Des accords bilatéraux entre l'Afrique du Sud et ses voisins ont établi un système de migration de travail parallèle. Les perspectives d'émergence d'une politique régionale qui encourage le développement sont minces si cette incohérence n'est pas surmontée. Des discussions pour mettre en place une zone de libre-échange plus vaste entre le COMESA, l'EAC et la SADC ne font pas mention d'une politique future de libre circulation et de migration sélective, sauf en ce qui concerne les chefs d'entreprise et les hommes d'affaires. Cet accord émergent indique une préférence claire pour les migrations de travail dans la mesure où aucune référence n'est faite à la liberté de circulation, une dimension qui de toute façon ne fait pas partie des objectifs de la tripartite.

Il paraîtrait possible d'envisager que les états membres de la SACU mettent en place une politique spécifique instaurant la liberté de circulation à l'intérieur des états de la SACU, tout en maintenant une politique d'immigration sélective à l'extérieur, au sein de la SADC ou de la tripartite. On pourrait envisager que l'Afrique du Sud soit encouragée à établir un cadre multilatéral au sein de la SADC sur les migrations de travail et la question de la protection sociale qui s'alignerait sur le Plan d'Action provisoire de la SADC. Un mécanisme officiel multilatéral de gouvernance des migrations servirait mieux la région que les mesures ad hoc qui dominent aujourd'hui. Les accords bilatéraux devraient être reformulés de telle façon qu'ils ne contredisent pas les politiques régionales. Ignorer la réalité des migrations régionales est coûteux économiquement et politiquement en raison des différents programmes de régularisation et de rapatriement que les états membres doivent organiser. On peut penser qu'un programme régional des gestion des migrations permettrait de diminuer les coûts de transaction, de faire évoluer les préférences nationales, de renforcer la protection sociale, et de promouvoir une gouvernance migratoire fondée sur le droit.

PORTUGUES – Relatório MiWORC N°1. Uma região sem fronteiras? Estruturas diretivas para a migração laboral regional para África do Sul

Este trabalho analisa as estruturas legislativas e regulamentares globais e regionais sobre migração laboral. Especificamente, fornece uma breve visão geral das estruturas regulamentares de migração laboral existentes nas principais regiões do mundo; investiga analiticamente as políticas existentes e estruturas bilaterais ou regionais sobre migração laboral na África Austral; determina as respostas da África do Sul para a política de entrada de imigrantes de países vizinhos. O estudo detalhado analisou a legislação regional e global, os relatórios normativos e publicações científicas sobre a migração, e entrevista e troca correspondência com os responsáveis de formular normas, os quais são selecionados com base na sua carteira normativa. Este trabalho mostra que os instrumentos de direitos humanos e convenções globais fornecem uma estrutura comum para regular os direitos e deveres dos trabalhadores imigrantes e poderiam ser melhor utilizados no contexto da África Austral. Aplicar estas normas, no entanto, está sujeito a ratificação dos governos. A maioria dos países da SADC não ratificaram ainda muitos desses acordos. A



ausência de uma política de migração na região da SADC mostra que os Membros ainda não implementaram as diretrizes básicas da política continental.

Na África Austral coexistem três sistemas que podem complicar a governança das migrações: uma política de migração bilateral controlada pela África do Sul; uma migração regional informal de facto ainda que debatida; e aspirações de estabelecer umas diretrizes formais da SADC para uma migração controlada. Na realidade coexiste um sistema misto de movimento informal de imigrantes irregulares para África do Sul, com uma de migração controlada qualificada e pouco qualificada entre África do Sul e os seus países vizinhos. Acordos bilaterais, especialmente entre a África do Sul e os seus vizinhos estabeleceram um sistema 'paralelo' de migração laboral. As perspectivas de uma política de migração regional para facilitar o desenvolvimento são escassas se esta inconsistência não é resolvida. Discussões para criar uma mais ampla COMESA-EAC-SADC FTA não se referem a uma futura migração controlada ou política de livre circulação, exceto para capital e pessoas de negócios. O acordo emergente para o FTA tripartido sugere que a migração laboral controlada vai prevalecer nesta mais ampla FTA, já que a política alternativa de livre circulação não é mesmo na agenda do corpo tripartido. Potencialmente, Membros da SACU poderiam estabelecer um regulamento de dois níveis, onde eles iriam trabalhar para uma livre circulação ao mesmo tempo que mantem uma política de migração controlada fora da SACU, dentro da SADC, ou dentro da região tripartida. África do Sul poderia ser conduzida para estabelecer uma estrutura multilateral baseada na SADC para a gestão da imigração laboral e questões relativas à protecção social coerente com o Plano de Acção do Projecto da SADC. Um mecanismo multilateral formal de gerenciamento de migração ajudaria a região melhor do que as actuais medidas ad hoc. Acordos bilaterais existentes devem ser redefinidos para apoiar, ao invés de minar as políticas regionais. Ignorar a realidade da migração regional é caro, economicamente e politicamente desde que leva a programas mais regulares e periódicos de repatriamento e regularização de migração para os Estados-Membros. Tratar o problema através de um programa gerido regionalmente é susceptível de reduzir os custos de transação, alterar preferências nacionais, reforçar a protecção social e promover um sistema de governo baseado nos direitos dos imigrantes.

SESOTHO – MiWORC Tlaleho ya N°1. Naha e se nang meedi? Meralo ya leano bakeng sa basebetsi ba naha ba fallelang Afrika Borwa

Sengolwa sena se lekola meralo ya leano le ya melao e amang phallo ya basebetsi naheng le lefatsheng ka bophara. Haholoholo: e nehelana ka tjebokakaretso e kgutshwane ya meralo e teng ya leano la phallo ya basebetsi dinaheng tse ka sehloohong tsa lefatshe; e lekola ka tsela e hlophollang leano le teng le meralo ya naha kapa e ntlhapedi mabapi le phallo ya basebetsi kahara Afrika e ka Borwa; e tiisa dikarabelo tsa leano ho basebetsi ba fallelang ka hare ho tswa dinaheng tse mabapi. Ka tsela e keneletseng, phuputso ena e ile ya sheba botjha melao ya naha le ya lefatshe e loketseng, ditlaleho tsa leano le diphatlatso tsa sayense tsa phallo le ho buisana le ho ngollana le babopi ba leano ba ka sehloohong ba kgethilweng ho latela mesebetsi ya bona ya leano. Sengolwa se bontsha hore diboka tsa lefatshe lohle le disebediswa tsa ditokelo tsa botho di nehelana ka moralo o kopanyang ho laola ditokelo le boikarabelo ba basebetsi ba fallang mme di ka sebediswa ka tsela e ntlafetseng sebakeng sa mona Afrika e ka Borwa. Le ha ho le jwalo, ho kenngwa tshehetsong ha melawana ena, ho itshetlehile ho kamohelo ya mebuso. Bongata ba dinaha tsa SADC ha di so amohele boholo ba ditumellano tsena. Tlhokeho ya leano la phallo naheng ya ka SADC ho bontsha hore Ditho ha di so kenye tshehetsong ditataiso tsa motheo tsa leano la kontinente. Ho na le

mekgwa e meraro e phedisanang mmoho mona Afrika e ka Borwa e ka thatafatsang taolo ya phallo: leano la phallo la ntlhapedi le tsamaiswang ke Afrika Borwa; phallo ya setereke e sa hlophiswang e tshebetse le hoja ho na le ngangisano ka yona; le ditabatabelo tsa ho theha leano le hlophisitsweng la SADC bakeng sa phallo e tlasa taolo. Bonneteng, mokgwa o tswakuweng wa phallo e sa hlophiswang empa ho ngangisanwa ka ona, e le phallo ya bafalli ba sa tlwaelehang ba fallelang Afrika Borwa, o phedisana le tshebetso ya phallo ya basebetsi ba nang le bokgoni le ba bokgoni bo tlase pakeng tsa Afrika Borwa le dinaha tse mabapi. Ditumellano tsa ntlhapedi haholoholo pakeng tsa SA (ke hore Afrika Borwa) le baahelani ba yona di thehile mokgwa wa phallo ya basebetsi o 'mabapi'. Kgonahalo ya leano la phallo kahara naha le ka kgonahatsang ntshetsopele ha e tshepise haeba diphetoho tsena di sa rarollwe. Dipuisano tsa ho theha COMESA-EAC-SADC FTA e atolohileng ha di bue kapa ho bontsha letho ka phallo e tlasa taolo ya kamoso kapa ka leano la phallo ya bolokolohi, mme ke feela ka ditjhelete le batho ba kgwebo. Tumellano e hlahellang bakeng sa FTA e ntlhatharo e bolela hore phallo ya basebetsi e tlasa taolo e tla dula e le teng ho FTA ena e kgolwanyane, ka ha leano le leng la phallo ya bolokolohi le se lenaneng la mosebetsi wa mokgatlo o ntlhatharo. Ho ka etsahala hore ditho tsa SACU di thehe leano la mehato e mmedi leo ka lona ba sebeletsang phallo ya bolokolohi ba ntse ba bolokile leano la phallo e tlasa taolo ka ntle ho SACU, kahara SADC, kapa kahara naha ya ntlhatharo. Ho feta moo, Afrika Borwa e ka kgothaletsa ho theha moralo wa mahlakore a mangata o theilweng ho SADC bakeng sa tsamaiso ya phallo ya basebetsi le dintlha tsa tshireletso ya batho e tsamaisanang le Moralo wa Mosebetsi wa Nakwana wa SADC (ke hore SADC Draft Action Plan). Sesebediswa sa mmuso sa taolo ya phallo ya mahlakore a mangata se tla sebeletsa naha ka tsela e ntlafetseng ho feta mekgwa ya jwale ya nakwana feela. Ditumellano tsa jwale tsa ntlhapedi di lokela ho hlophiswa hape hore di tshehetse bakeng sa hore di fokodise leano la naha. Ho qhelela thoko nnete ya phallo ya naha ho kotsi moruong le sepolotiking hobane ho sebedisa menaneo a kgutlisetso le tokiso ya bafalli e etsahalang nako le nako bakeng sa Dinaha tseo e leng Ditho. Ho tobana le taba ka lenaneo le tlasa tsamaiso ya naha ho ka fokotsa ditjeo tsa phapanyetsano, ha fetola boikgethelo ba dinaha, ha matlafatsa tshireletso ya setjhaba le ho kgothaletsa mokgwa wa taolo ya bafalli o itshetlehleng ho ditokelo.

KISWAHILI - Ripoti Namba 1 ya MiWORC. Kanda bila mipaka? Mfumo wa Sera za uhamiaji ajira wa kikanda kuelekea Afrika Kusini

Nakala hii inakusanya kimataifa na kikanda utafiti wa mfumo wa kisheria na kisera kuhusu uhamiaji ajira. Na hutoa hasa kwa kifupi maelezo ya mifumo iliyopo ya sera za uhamiaji ajira katika kanda muhimu ya dunia; huchunguza kwa kukagua sera zilizopo na mifumo ya kikanda au baina ya nchi inayo husiana na uhamiaji ajira Kusini mwa Afrika; huamua sera ya majibu ya Afrika Kusini kwa kuingia kwa wahamiaji kutoka nchi jirani. Utafiti ulichunguza kwa uketo sheria husika ya kimataifa na kikanda, ripoti za sera na machapisho ya kisayansi kuhusiana na uhamiaji na waliohojiwa na ilihusiana pia na watunga sera muhimu waliyochaguliwa kulingana na msingi wao wa mtazamo wa sera. Nakala hii huonyesha kwamba mikataba ya kimataifa na vyombo vya haki ya kibinadamu hutoa mfumo wa pamoja ili kudhibiti haki na wajibu wa wanao hamia kutafuta kazi na inaweza kuwa bora kutumika katika mazingira ya Kusini mwa Afrika. Kutekeleza kanuni hizi, hata hivyo, kutatokana na kuridhishwa kwa serekali. Baadhi ya nchi nyingi ya SADC hazijawahi kuridhishwa na sehemu kubwa ya mikataba hii. Kukosekana kwa sera ya uhamiaji katika kanda ya SADC inaonyesha kwamba wanachama hawajafikia bado utekelezaji wa mwongozo wa msingi wa sera ya bara. Kuna mifumo mitatu katika Kusini mwa Afrika ambayo inaweza kuleta dosari Katika utawala wa uhamiaji: Afrika kusini ilimudu sera ya uhamiaji ya nchi baina ya nyingine; uhamiaji halisi rasmi wa kikanda ambao unaopingwa; na



matarajio ya kuanzisha sera rasmi za SADC ili kumudu uhamiaji. Katika hali halisi ya mchanganyiko ya mifumo rasmi lakini waligombea harakati ya wahamiaji wasio wa kawaida katika Afrika Kusini kuwepo na ushirikiano wa kudumu wenye ujuzi na wenye ujuzi mdogo wa uhamiaji zoezi kati ya Afrika Kusini na nchi jirani. Mikataba baina ya nchi hasa kati ya Afrika Kusini na majirani zake imehimarisha sambamba mfumo wa uhamiaji ajira. Matarajio ya sera ya kikanda ya uhamiaji ambayo inaweza kuwezesha maendeleo ni ndogo sana ikiwa huu upayukaji haujatatuliwa. Majadiliano ya kubuni mtandao mkubwa wa COMESA-EAC-SADC FTA haifanyi kumbukumbu ya kumudu uhamiaji siku za usoni au sera za harakati huru isipokuwa wa mtaji na wafanya biashara. Kujitokeza kwa makubaliano baina ya vikundi vitatu vya FTA ina maana kwamba kumudu uhamiaji ajira itafaulu katika huu muungano mkubwa, kama vile harakati ya sera huru haipo hata katika agenda ya shirikisho ya muungano huo. Wanachama wa SACU wanaweza kuanzisha mifumo miwili ya sera ya pamoja ambapo wanatumika kuelekea harakati huru huku wakizingatia kumudu sera za uhamiaji nje ya SACU, ndani ya SADC, au ndani ya miungano mitatu ya kanda. Afrika Kusini ingeweza zaidi kutiwa moyo kuanzisha mifumo mbalimbali yenye msingi imara ya SADC kwa ajili ya usimamizi wa uhamiaji ajira na maswala ya ulinzi wa kijamii ikishirikiana na rasimu ya mpango wa utekelezaji ya SADC. Utaratibu rasmi wa utawala wa kimataifa wa uhamiaji ungeweza kutumikia kanda bora zaidi kuliko hatua ya kipengele cha sasa. Mikataba iliyopo baina ya nchi lazima iundwe upya ili kusaidia badala ya kudhoofisha sera za kikanda. Kupuuza ukweli wa uhamiaji wa kikanda ni wenye gharama kubwa ya kiuchumi na kisiasa kwa sababu inajumlisha taratibu zinazo kubalika mara kwa mara ili kudhibiti wahamiaji wa msimu na kuwarejesha makwao kwa nchi ya uwanachama. Kushughulikia swala hii kwa njia ya kumudu mipango ya kikanda ambayo inaweza kupunguza gharama kubwa, kubadilisha mapendekezo ya kitaifa, kuimarisha hifadhi ya jamii na kukuza mfumo haki ya msingi ya utawala wa mfumo wa wahamiaji.

ISIXHOSA – INgxelo yesi-1 yakwa-MiWORC. Ngummandla ongenayo imida? Ubume bomgaqo-nkqubo woMzantsi Afrika ngabantu abasebenza kude namakhaya abo

Eli phepha liyaphanda ngobume bomgaqo-nkqubo kuwiso-mthetho lwehlabathi jikelele nolweengingqi ngokumalunga nabantu abasebenza kude namakhaya abo. Ngokukodwa: liyabonelela ngesishwankathelo sobume obusele busetyenziswa ngabasebenzi abakude namakhaya abo kwezona ngingqi ziphambili zehlabathi; luphando lokuhlalutya imigaqo-nkqubo esele isetyenziswa kunye nobume bamacala amabini okanye obeengingqi obujongene nabasebenzi abakude namakhaya abo kwi-Afrika esemaZantsi; leli phepha elimisa iimpendulo ngomgaqo-nkqubo woMzantsi-Afrika kwicala lokuthontelana kwabasebenzi abakude namakhaya abo besuka emazweni angabamelwane eli lethu ilizwe. Uphando luluhlolisise ngokumandla uwisomthetho lwehlabathi nolweengingqi olunxulumene naloo nto, iingxelo zomgaqo-nkqubo, ezenzululwazi ezishicilelweyo malunga nemfuduko, kubekho udliwanondlebe kwaza kwanxityelelwana ngembalelwano nabona baphambili abaqulunqi bomgaqo-nkqubo abakhethwe ngokweepotifoliyo zabo zomgaqo-nkqubo.

Iphepha libonisa ukuba imvumelwano yamazwe ehlabathi nezixhobo zamalungelo oluntu zibonelela ngobume obuqhelekileyo nobufanayo bokulawula amalungelo noxanduva lwabasebenzi abakude namakhaya abo nanokusetyenziswa ngendlela ephucukileyo kwimeko ye-Afrika esemaZantsi. Kuyinto enokwenzeka, noxa kunjalo, ukunyanzeliswa kwezi zithethe ngenxa yoqinisekiso lwaba rhulumente. Inkoliso yamazwe eSADC ayikaqinisekisi ngezivumelwano ezininzi. Ukungabikho komgaqo-nkqubo wabasebenzi abakude namakhaya abo kwingingqi ye-SADC kubonisa ukuba amaLungu awakazifezekisi

izikhokelo ezisisiseko zomgaqo-nkqubo wamazwekazi. Iinkqubo ezintathu zisetyenziswa ngaxesha-nye kwi-Afrika esemaZantsi, nkqubo ezo zinokubangela ubunzima obukhulu kulawulo lwabasebenzi abakude namakhaya abo: Umgaqo-nkqubo wabasebenzi abakude namakhaya abo olawulwa nguMzantsi-Afrika kumacala amabini; ngokwenyani nangona iyimfuduko yokusukuzana kwingingqi nengekho sikweni; kunye nolangazelelo lokuseka umgaqo-nkqubo osesikweni weSADC kusenzelwa imfuduko enokulawuleka. Ngokwenene inkqubo exutyiweyo yentshukumo yokusukuzana engekho sikweni yabafuduki abaphuma bengena eMzantsi-Afrika ikhona kwaye ikunye neenkqubo zofuduko olulawulwayo nolo lungalawulwa ngokupheleleyo phakathi koMzantsi-Afrika namazwe angabamelwane beli lizwe. Izivumelwano zamacala amabini, ingakumbi eziphakathi koMzantsi-Afrika kunye namazwe angabamelwane, zezi zivumelwano eziseke inkqubo 'enxuseneyo' yabasebenzi abakude namakhaya abo.

Azanelanga iimbono ezinokulubhexesha uphuhliso zomgaqo-nkqubo wabasebenzi bengingqi abakude namakhaya abo ukuba ukuguquguquka akusunjululwa. Iingxoxo zokudala enobubanzi i-COMESA-EAC-SADC FTA azenzi salathiso sekamva lemfuduko elawulekayo okanye umgaqo-nkqubo wokuhamba-hamba ngokukhululekileyo, ngaphandle kwenkunzi nabantu boshishino. Izivumelwano esivelayo se-FTA eneenxaxheba ezintathu sithetha ukuba imfuduko elawulwayo yabasebenzi abakude namakhaya abo yiyo eza koyisa kwi-FTA ngokubanzi, njengoko enye indlela yomgaqo-nkqubo wokuhambahamba ngokukhululekileyo ingekho kwi-ajenda yegqiza elineenxaxheba ezintathu. Ngokwamandla aleleyo, amaLungu eSACU ebenakho ukuseka umgaqo-nkqubo wezibophelelo ezibini apho basebenzela ukuhambahamba ngokukhululekileyo ngeli xesha kuzinziswa umgaqo-nkqubo olawulekayo wemfuduko ngaphandle kweSACU, kodwa kwakuyo iSADC, okanye kwalapha kwingingqi eneenxaxheba ezintathu.

Kananjalo uMzantsi-Afrika ubunokukhuthazwa ekusekeni ubume obusekelwe kwiSADC bamacala ayintlaninge kusenzelwa ulawulo lwemfuduko yabasebenzi nemibandela yokhuselo kwintlalo olunokunamathelana neseSADC isiCwangciso sokuSetyenziswa koYilo. Ubuchule obusesikweni bolawulo lwemfuduko kumacala ayintlaninge bungasebenza kakuhle kwingingqi kunezi nkqubo zisetyenziswayo zijongene nemibandela ethile. Izivumelwano ezikhoyo zamacala amabini kufuneka ziyilwe ngokutsha ukuze zixhase endaweni yokujongela phantsi imigaqo-nkqubo yengingqi. Ukungahoywa kwemfuduko eqhubekayo kwingingqi kudla inkuntyula yemali kwezopolitiko nakwezoqoqosho ngoba oko kubandakanya iinkqubo ezenzeka qho nezamaxesha athile kwezemfuduko kumaZwe angamaLungu. Ukuhlangabezana nalo mbandela ngenkqubo elawulekayo kwingingqi ingakuko okuzithobayo iindleko zonaniselwano, zokuhlengahlengisa okukhethwayo zizizwe, zokuzinzisa ukhuseleko kwintlalo efanele abafudukayo nokukhuthaza inkqubo yolawulo olusekelwe kumalungelo.

ISIZULU - Umbiko i- MiWORC Report N°1. Isifunda Esingenamingcele? Izinhlaka Zezinqubomgomo Zabasebenzi Abasuka Emazweni Abo Beya ENingizimu Afrika

Kuleli phepha kubhekwa izinhlaka zezifunda nezamazwe omhlaba zezinqubomgomo nemithetho ephathelene nokusuka kwabasebenzi emazweni abo beya kwamanye amazwe. Libuyekeza ikakhulukazi, kafushane, izinhlaka zezinqubomgomo ezikhona zokusuka kwabasebenzi emazweni abo beya ezifundeni ezisemqoka zamanye amazwe; lihlaziya izinqubomgomo ezikhona kanye nezinhlaka zezifunda ezisebenza phakathi kwezifunda ezimbili ngokuphathelene nokusuka kwabasebenzi emazweni abo beya kwamanye e-Afrika eseNingizimu; liveza indlela iNingizimu Afrika eyamukela ngayo abasebenzi abavela emazweni angomakhelwane ngokusebenzisa izinqubomgomo. Kulolu cwaningo kubuyekezwe ngokucophelela



imithetho efanele yamazwe omhlaba neyezifunda, kwabuyekwezwa nemibiko yezinqubomgomo nemibhalo eshicilelwe yocwaningo ngokuya kwabasebenzi kwamanye amazwe, kwaxoxa futhi nabahlanganisi bezinqubomgomo abasemqoka, abaqokwe ngokweqhaza labo kwezenqubomgomo. Leli phepha libonisa ukuthi izivumelwano zamazwe nemibhalo yamalungelo abantu kuhlinzeka uhlaka olwejwayelekile lokulawula imisebenzi namalungelo abasebenzi abasuka kwamanye amazwe, uhlaka olungasetshenziswa nase-Afrika eseNingizimu Afrika. Kodwa ukuqiniswa kwale mithetho kwencike ekwamukelweni kwayo ngohulumeni. Iningi lamazwe esifunda i-SADC awakazamukeli lezi zivumelwano. Ukungabibikho kwenqubomgomo yabasebenzi abasuka emazweni abo beya kwamanye esifundeni i-SADC kubonisa ukuthi amalungu alesi sifunda awakayisebenzisi imigomongqangi yenqubomgomo yezwekazi. Kunezinhlalo ezintathu e-Afrika eseNingizimu, ezingenza kube lukhuni ukulawulwa komsebenzi oya kwelinye izwe: inqubomgomo yamazwe amabili yokuya kwelinye izwe elawulwa yiNingizimu Afrika; nakuba kungavunyelwana kahle ngakho, kukhona ukusuka ezweni uye kwelinye okungalandeli mithetho; nenhloso yokusungula inqubomgomo yesifunda i-SADC ngokwemithetho yokuya kwamanye amazwe okulawulekayo. Okwenzekayo ngempela wukuthi kunohlelo oluxubayo olungalandeli migomo, nakuba kuphikiswana ngakho, lokuhamba kwabantu ngokungahlelekile bangene eNingizimu Afrika oluhambisana nokulawulwa kwabantu abanamakhono nabangenawo abasuka emazweni abo, phakathi kweNingizimu Afrika namazwe angomakhelwane. Ngokwezivumelwano phakathi kwamazwe amabili, ikakhulukazi phakathi kweNingizimu Afrika namazwe angomakhelwane, sekusungulwe uhlelo lokusuka ezweni lakho uya kwelinye 'olunhlehlobili'. Amathemba enqubomgomo yokuya kwelinye izwe esifundeni anokusiza entuthukweni kubukeka engenakufezeka uma lokhu kungahlangani kwezinhlelo kuqhubeka. Izingxoxo zokuhlanganisa i-COMESA-EAC-SADC FTA ngokubanzi azisho lutho ngenqubomgomo yesikhathi esizayo elawulekayo noma ngenqubomgomo yokuhamba ngokukhululeka, ngaphandle kweyemali yokuqhuba umsebenzi neyosomabhezini. Isivumelwano esifufusayo somfelandawonye wezinhlangothi ezintathu we-FTA sisho ukuthi ukuya kwelinye izwe kwabasebenzi kuzovama kule FTA, kwazise ukuthi enye inqubomgomo yokuhamba ngokukhululeka ayikho ngisho nasezinhlalweni zale nhlangano yomfelandawonye. Okungenzeka wukuthi amalungu e-SACU asungule inqubomgomo emikhakhamibili azoyisebenzisela ukufeza ukuhamba ngokukhululeka, okuzohambisana nenqubo yokuya kwelinye izwe okulawulekayo ngaphandle kwe-SACU, noma ngaphakathi kwalesi sifunda esinhlangothintathu. INingizimu Afrika ingabuye igqugquzelwe ukuba isungule uhlaka olwesekelwe yi-SADC lwezinhangothi eziningi lokulawula ukuya kwabasebenzi kwelinye izwe nolwezindaba eziphathelele nokuvikelwa kwemiphakathi oluhambisana nohlelo olubizwa nge-SADC Draft Action Plan. Uhlelo olusemthethweni lwezinhangothi eziningi lokulawula ukuya kwelinye izwe kwabasebenzi lungasisiza kangcono lesi sifunda, kunalezi zindlela zesikhashana ezikhona manje. Izivumelwano ezikhona manje zamazwe amabili kumele ziklanywe kabusha ukuze zeseke izinqubomgomo zesifunda, kunokusetshenziselwa ukuchitha lezi zinqubomgomo. Ukuziba ubukhona bokusuka ezweni lakho uye kwelinye kubiza kakhulu ngokomnotho nangokwezombusazwe, ngoba kusho ukwengeza njalo ngezikhathi imithetho elawula abasuka emazweni abo beya kwamanye kanye nezinhlelo zokubaphindisela emazweni abo. Ukubhekana nalolu daba ngohlelo olulawulayo lwesifunda kungasho ukuncishiswa kwezindleko, kusho noguquko kokukhethwa ngamazwe, kuqinise ukuvikelwa kwemiphakathi, kuqhubezele futhi nohlelo lokulawula olususelwa emalungelweni abasebenzi abaya kwamanye amazwe.



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