



Migrating for Work Research Consortium (MiWORC)



Project funded by the European Union EU-South Africa Dialogue Facility EuropeAid/132200/L/ACT/ZA. Coordinated by the African Centre for Migration & Society, University of the Witwatersrand

A region without borders?

Policy frameworks for regional labour migration towards South Africa

Consultation on MiWORC Report N°1



by Dr. Chris Changwe Nshimbi, Centre for Governance Innovation (GovInn), University of Pretoria



Introduction and background



- Report focus: labour migration policy frameworks in a regional context
- Overview of global and regional standards
- Focus – policy evolution in Southern Africa
 - policy frameworks regulating labour migration towards South Africa from: Botswana, Lesotho, Malawi, Mozambique, Namibia, Swaziland, and Zimbabwe.
- Summary of Work Package 1 research activities under the project, Migrating for Work Research Consortium (MiWORC) - Regional international migration and its impact on the South African labour market: data, policies and livelihoods.

Introduction and background



- More people are migrating across national borders today
- 214 million international migrants in 2010.
- 155 million in 1990.
- From the total global increase of 59 million international migrants between 1990 and 2010, migrants living in the Global South increased by 13 million.
- Within Africa: out of the total 214 million international migrants in 2010, 29.2 million were Africans, and their major destination was Africa itself
- More international migrants in Southern Africa: economic liberalisation, structural adjustment programmes, quest for better economic life, clandestine migration—local herdsmen, ethnic groups.

Objectives of the study



- Overview of existing policy frameworks on labour migration in selected regions of the world
- Policy frameworks and legislations in Africa
- Policy frameworks and legislations in the Southern African Development Community

Objectives of the study



- Brief comparative overview of existing labour migration policy frameworks in key regions of the world: Europe, Southeast Asia, South America and Africa.
- Investigate existing policies and bilateral/regional frameworks pertaining to labour migration in Southern Africa, and particularly labour migration originating from Namibia, Botswana, Lesotho, Swaziland, Zimbabwe, Mozambique, and Malawi towards South Africa.
- Analyse South Africa's 'migration' policy responses to inflows of migrants from the above countries.

Research questions



- 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 'regionalization' 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 consistency between of international policies (e.g. ILO, IOM, EU) and existing legislation and policy agendas dealing with labour migration in the SADC region?

Methodology



- Primary data: thorough review of relevant global and regional legislations; interviews and focus groups; correspondence with key policy makers.
- Respondents selected 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.
- Countries were selected based on geographical proximity and relevance to the South African labour market. the countries have also been traditional suppliers of migrant labour to South Africa.
- All countries, except Malawi, share borders with South Africa.

Global governance of migration: an overview



- International migration has significant impact on the political economy of sending and receiving countries.
 - Can facilitate supply of qualified and skilled human resources
 - Can lower labour standards, strain social safety nets, lead to brain drain.
- How can migration be more successfully governed?
- No agency exists specifically designed to address international migration. Governance at global level is rather spread out
- 3 broad levels levels of global international migration governance:
 - Formal multilateralism;
 - International principles, rules and norms
 - Informal networks, e.g. GFMD
- * Declarations and Treaties

Ratifications of Migrant Labour-relevant UN/ILO Conventions and African Charter: SADC States



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



- Future prospects for establishing global and regional multilateral agreement on free movement are unfavourable:
- divergence of interests between sending and receiving countries;
- migration is a security issue;
- unknown social, economic and political effects of an international framework.
- The region could be a more viable level of governance for establishing multilateral agreements on migration,
- most cross-border movements occur within regions.
- viewed more favourably by states; shared interests, smaller number of states involved, similarities in levels of economic development
- better option for migration governance than bilateral agreements—lower transaction costs and shift preference.



- Most significant strides total freedom of movement of persons and labour; high levels of implementation of movement of persons protocols, legislations and policies
- Schengen Agreement & Schengen Convention 1990 No internal border controls; TCNs – work in country they hold permit
- Single European Act (SEA): “market without frontiers” free movement of goods, persons, services and capital
- Maastricht Treaty European citizenship: live, work, establishment
- Issues: TCN?; Older EU members & workers from new members



- Treaty of Asunción does not address free movement of persons
- Montevideo Protocol on Trade in Services of Mercosur: regional movement of persons in services
- Social and Labour Declaration: principles and rights for labour
- Residence Agreement
- work & residence;
- increased documented immigrants;
- indigenised in national migration policies



Regional Governance of Migration: ASEAN



- Long history of deliberations on labour migration
- Framework Agreement on the ASEAN Investment Area (1998) – commitment to promoting free flow of skilled labour and professionals
- Emphasis: professionals and business people “managed or facilitated entry”
- Piloting a free regional labour market for professionals and specialists starting 2015
- Students & staff mobility – ASEAN University Network



Regional Migration Governance in Africa



- Abuja Treaty envisages an African Economic Community built on 8 key African RECs
- Two key policy frameworks define the AU's approach to migration in Africa:
- Migration Policy Framework for Africa
- African Common Position on Migration and Development
- Have African RECs progressed towards achieving free movement of persons and Africa's integration?



- Protocol on Free Movement of Persons, Residence and Establishment (1979)
- 3-phased, 15-year implementation schedule
- 1992: ECOWAS revised the 1975 Treaty
- Most comprehensive, advanced & well-implemented freedom of movement regime in Africa



Regional Migration Governance in Africa: ECOWAS



- 2008 ECOWAS Common Approach on Migration expedites implementation of protocol
- 2009 Regional Labour and Employment Policy and Plan of Action
- Challenges in implementing phases 2 and 3: conflict, economic decline

Regional labour mobility regimes: implications for regional integration and migration management in Africa



- Level of economic development of a region and the degree of similarity of economic development of neighbouring countries shape the ease with which cross border labour mobility can be handled.
- Some policies within a region clearly aim at complete free movement for citizens and others aim at managed migration of specific categories of workers.
- Many regional labour market regimes focus on skilled migration and link this to the recognition of qualification.

Regional labour mobility regimes: implications for regional integration and migration management in Africa



- The EU is exceptional in how 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 its more restrictive managed migration regime
- Mercosur States have indigenised their region's 'reactive' labour migration legislation into national policies.
- ECOWAS emerges as a best practice for SADC: categorical legislation, evident commitment to free movement of labour



- Long history of international migration with organised labour migration system by 1860s
- 1995 Draft Protocol on Free Movement of Persons – shot down
- 2005 Draft Protocol on Facilitation of Movement – more acceptable, adopted and signed but not in force



Regional Migration Governance in Africa: SADC



- National laws regulate labour migration
- No regional labour migration framework
- Other Protocols
- Bilateral agreements govern labour migration



Regional Migration Governance in Africa: Labour migration dialogues and international actors



- Limited recognition of the ILO Migration for Employment Convention, Revised and Migration for Employment Recommendation, Revised (1949)
- MIDSA: Informal platform for regional consultation and dialogue
- Compliments SADC formal efforts and gives non-binding recommendations
- Significant influence: e.g. Draft SADC Labour Action Plan 2013 – 2015

The institutional governance of migration in Southern Africa: conclusion



- SADC States do not incorporate most existing multilateral international instruments in national migration regimes
- SADC States maintain a managed approach to regional labour migration, which allows migration of sectoral and certain categories of skilled and unskilled labour
- South Africa appears to have the upper hand in determining the sectors and skill sets it officially allows into its territory



The institutional governance of migration in Southern Africa: conclusion



- Bilateral agreements especially between SA and neighbours have established a ‘parallel’ labour migration system
- Slim prospects for regional policy on migration
- However, significant informal cross-border movement for work & informal trade



DISCUSSION



Draft list of policy recommendations



- Labour migration is an historic component of regionalism in Southern Africa
- Region has porous borders, with informal movement and random ‘repatriations’
- A regional economic and social integration outlook requires harmonisation of domestic policies and legislation that are aligned to regional goals.
- Need for a regional framework on migration
- SADC states need to formalise a regional mechanism to govern labour migration and establish regional standards for protection of migrant workers

Draft list of policy recommendations



- SACU states could formalise a SACU region labour migration system upon which they could harmonise migration and labour policies. Labour MOUs between South Africa and each of other SACU states do not differ significantly in content.
- A multi tiered regional cooperation framework might be a path to reconciling the conflicting interests and aspirations. The COMESA-SADC-EAC Trilateral Free Trade area could provide only for the free movement of business persons (as currently stated) and, in the short term SACU might provide for the full free movement of workers within it
- A staged process of free movement within the broader region (SADC?) could then be experimented, following the EU's multi-tiered variable geometry, with country op-outs

Draft list of policy recommendations



- Adopting and ratifying ILO C097, C143 and the ICPRWM would enhance SADC States' efforts towards establishing a harmonised rights-based labour migration regime
- South Africa should 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. Further bi-lateral deals should be discouraged.
- Otherwise SADC may have to revisit its integration goals and objectives and develop appropriate measures to achieve these goals. Consensual commitment is essential to achieving regional goals

Draft list of policy recommendations



- Policy making within South Africa on these issues needs to involve the DSD, Min Labour, Home Affairs, Min Health, Education, Home Affairs, Police (as well as Treasury).
- SADC should consider that a clear 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.
- SADC states should harmonise and establish uniform (length of stay) entry provisions across the region for informal cross-border traders and other kinds of regional travellers.

Draft list of policy recommendations



- SADC States should 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 Mercosur experience with the Residence Agreement provides learning experiences here.
- An operational and official multi-lateral migration governance mechanism would serve the SADC region better than ad hoc measures in times of crisis. The region should decide on a timeframe for Members that have not yet ratified the Protocol on Facilitation of Movement to expedite enforcement or whether to revise the protocol.
- This multi-lateral framework suggested above should aspire to embody in time the terms of the free movement protocol.

Contacts WP1



WP1 (Policy) Coordinator:

Dr. Lorenzo Fioramonti, Centre for the Study of Governance Innovation (GovInn), University of Pretoria. lorenzo.fioramonti@up.ac.za

Presentation by Dr. Chris Changwe Nshimbi, Centre for the Study of Governance Innovation (GovInn), University of Pretoria. csnzed@gmail.com