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Special Issue on SADC Community Law Guest Editor: Professor Retselisitsoe Phooko

Editorial

Africa's Regional Integration Agenda: An introduction
by Retselisitsoe Phooko 277–280

Articles

The Development of a Uniform Cross-Border Insolvency Law in SADC: Drawing from the OHADA Experience Regional Legal Practice under the GATS: A SADC Perspective
by Andre Boraine and Ngaundje Doris Leno 281–301

The Missing Piece of the Puzzle: The Indispensable Role of Freer Movement of Persons in Implementing the AfCFTA
by Adetutu Oluwaseyi and Victor T Amadi 302–324

Re-calibrating Private Parties' Access to Trade Dispute Resolution under the SADC and AfCFTA Regimes
by David Kanyenda 325–341

Regional Legal Practice under the GATS: a SADC Perspective
by Yolanda N Mambure, Lonias Ndlovu and Tharien van der Walt 342–361

Aligning SADC and Continental Strategies: to what Extent Does Violence against Women in South Africa Constitute an eEent seriously Disturbing Public Order?
by Shunelle de Beer and Kim-Leigh Loedolf 362–378

Critical Analysis of the Capacity of SADC in Addressing Vulnerability to Climate Change: Prospects and Challenges on Climate Risk Management Strategies under Africa Agenda 2063
by Patrick Pikisayi Maweto and Ademola Oluborode Jegede 379–398

Another Missed Opportunity of Using International Law as an Interpretative Aid of Domestic Law in Botswana
by Moses Retselisitsoe Phooko and Nokuzola Pangwa 390–402

Examining the Domestication and Implementation of the African Union Convention on Prevention and Combating Corruption: Comparative Synopsis on the DRC and Botswana
by Anzanilufuno Munyai 403–416

The Role of the Principle of Free, Prior and Informed Consent in Fostering Development through Participatory Democracy
by Naledzani Mukwevho 417–436

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The Missing Piece of the Puzzle: The Indispensable Role of Freer Movement of Persons in Implementing the AfCFTA

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Abstract

In 2018, the heads of state of the African Union (AU) adopted two legal instruments, giving teeth to two flagship initiatives under Agenda 2063. The first was the Agreement establishing the African Continental Free Trade Area (AfCFTA Agreement), and the second was the Protocol to the Treaty establishing the African Economic Community Relating to the Free Movement of Persons, Right of Residence and Right of Establishment (Free Movement Protocol). On the one hand, the earlier instrument has received widespread acceptance continentally. On the other hand, the response to the second instrument shows AU member states' lack of interest. This contrast in interests presents a challenge, considering that a critical aspect towards actualising the goal of the AfCFTA Agreement, as mentioned in Article 3(a), to develop a single market for goods and services, is

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underpinned by facilitating the movement of people. This suggests that intra-African trade must revolve around the idea of the facilitated movement of people, and the success of the AfCFTA must be predicated on compatibility with the framework of the movement of people. Against this background, with no enforceable continental framework on mobility, assessing the patterns and benefits towards the movement of people in Africa is essential. This article examines the free movement regime in Africa, its interconnectedness with the AfCFTA, and its socio-economic impacts and challenges, concluding with insights into the role of institutions in addressing these challenges. By exploring the various initiatives and approaches towards the movement of people and the transformative socio-economic impacts of the freer or facilitated movement, this article underscores the necessity of placing people at the heart of Africa's regional integration efforts, ultimately paving the way for a more prosperous and united continent.

Keywords: African integration; intra-African trade; freer movement of people; economic development

1 INTRODUCTION AND BACKGROUND

As set out in the Abuja Treaty, a step towards the African Economic Community (AEC) involves the gradual removal of obstacles to the free movement of persons among states.¹ The Treaty underscores the obligation of member countries to adopt measures to progressively achieve the movement of persons unilaterally, bilaterally or regionally and to conclude a Protocol on the free movement of persons, right of residence and right of establishment.² Bound by these Treaty obligations, member states of the African Union (AU) sought to carve a path towards actualising this mandate. In 2013, the AU adopted a long-term development blueprint as the “AU Agenda 2063: The Africa We Want.” In emphasising several aspirations, such as an “integrated Africa, politically united, based on the ideals of Pan-Africanism and the vision of Africa’s renaissance”, the AU Agenda 2063 included several flagship programmes, two of which are the focus of this article. The first flagship initiative is the AfCFTA, and the second is the African Passport and free movement of people.³ Implementing these flagships was underscored to boost intra-African trade and remove restrictions on Africans’ ability to travel, reside, and establish within the continent.⁴ In 2018, the AU adopted two binding legal instruments to expound on both initiatives and the obligations under the Abuja Treaty. These instruments were the Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, the Right of Residence and Right of Establishment (the Free Movement Protocol and the African Continental Free Trade Area Agreement (AfCFTA).

The Free Movement Protocol aims to facilitate the movement of people, promote integration, and herald many other benefits, such as improved science, technology, education, research, and tourism.⁵ It sets out a three-phase progressive approach to its implementation, with the three phases focused on the rights of entry and abolition of visa requirements, the right of residence, and the right of establishment.⁶ Further actions outlined in the Protocol include the issuance of valid travel documents by member states to their nationals to facilitate free movement, the

1 Article 4(2)(i) of the 1991 Treaty Establishing the African Economic Community Abuja Treaty (the Abuja Treaty).

2 Article 43 of the Abuja Treaty.

3 AU Agenda 2063: The Africa We Want 12–17 <https://au.int/agenda2063/aspirations> (accessed 19-11-2024).

4 Key Agenda 2063 Flagship Programmes Projects <https://au.int/en/agenda2063/flagship-projects> (accessed 19-11-2024).

5 See Preamble of the 2018 Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, the Right of Residence and Right of Establishment (Free Movement Protocol).

6 Article 5 of the Free Movement Protocol.

adoption of a travel document called the “African Passport”, and the harmonisation of laws, policies and systems of regional economic communities and states relating to free movement of persons.⁷ As of the writing of this article, in November 2024, 32 AU member states have signed the Free Movement Protocol, while only four countries, namely, São Tomé and Príncipe, Mali, Niger and Rwanda, have ratified it.⁸ This is far from the 15 ratifications required for the Protocol to come into force.⁹ This raises the question of why most African governments hesitate to ratify the Free Movement Protocol.

Looking at some recent literature, reasons for the low ratification were noted. For instance, UNECA notes issues around inadequate civil registration systems, insecurity, loss of policy space in regulating migration and anti-migrant sentiments at the domestic level.¹⁰

Hirsch, in examining the political and administrative underpinnings of the Protocol, attributes its faltering implementation to a lack of political will, insufficient regional coordination, and systemic institutional challenges.¹¹ Similarly, Chime and others offer a critical examination of the implementation challenges associated with the AU Free Movement Protocol. They detail bureaucratic inefficiencies, legal ambiguities, and political resistance as primary hurdles.¹² Further, while Milo and others discuss key issues stifling the implementation of the Protocol, they propose a comprehensive framework to support the Protocol through targeted policy reforms and enhanced institutional cooperation.¹³ Their analysis outlines specific policy measures to create a more inclusive mobility agenda.¹⁴ However, their work primarily focuses on the legal and institutional dimensions without fully addressing the economic implications of enhanced mobility. Although these papers provide a detailed analysis of obstacles towards free movement, they do not fully engage with the broader economic imperatives underpinned by the AfCFTA. This article builds on this foundation by arguing that the successful implementation of the AfCFTA is intrinsically linked to resolving these mobility issues, thereby bridging a critical gap between political and structural challenges and economic opportunities. Further to the challenges identified above, arguably, this article notes that the design of the Free Movement Protocol exhibits significant structural shortcomings.

While the Protocol aims to achieve unhindered movement of persons across borders, it does not fully account for member states’ diverse political, economic, and institutional realities. This one-size-fits-all approach underestimates the sensitivities related to national sovereignty, security concerns, and the readiness of administrative systems, which has contributed to the slow pace of its ratification and implementation. Given these challenges, a theoretical perspective on developmental regionalism is ideal and fitting for this article. Developmental regionalism offers a broader framework for cooperation, encompassing diverse objectives and interests ranging

7 See Art(s) 9, 10 and 26 of the Free Movement Protocol.

8 AU-FMP status list <https://au.int/en/treaties/protocol-treaty-establishing-african-economic-community-relating-free-movement-persons> (accessed 19-11-2024).

9 Article 33 of the Free Movement Protocol.

10 UNECA “Free Movement of Persons for trade: Towards an accelerated ratification of the African Union Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment, in support of the Implementation of the African Continental Free Trade Area” *Policy Research Paper* (2023) 48. Hirsch and Amadi “Can Africa Accelerate Initiatives towards the Freer Movement of Africans in Africa?” in Mangeni and Atta-Mensah (eds) *Existential Priorities for the AfCFTA* (2022) 123–124.

11 Hirsch “The African Union’s Free Movement of Persons Protocol: Why has it Faltered and How Can its Objectives Be Achieved?” 2021 *SA J Intl Aff* 503.

12 Chime *et al.* “The AU Free Movement Protocol Challenges in its Implementation” 2024 *JAL* 12–17.

13 Milo *et al.* “Opening up Africa for Africans: A Proposal in Support of the Protocol for the Free Movement of Persons” 2023 *EUI STG Policy Brief* 6–7.

14 *Ibid.*

from economic policy to cooperation on social, environmental, migration, regional security, and physical infrastructure development initiatives.¹⁵ The discourse on developmental regionalism is premised on the idea that regional integration as an evolutionary process necessitates capacity building, infrastructural development, and good governance systems.¹⁶ Further, it also recognises that states do not operate in isolation; domestic political pressures, historical legacies, and economic disparities influence their decisions.¹⁷ This approach considers the distinct needs and capacities of respective member states to facilitate the seamless movement of people. This makes it an ideal framework to propose that an approach embracing gradualism would likely have a better chance of success than one that demands immediate full-scale integration.

Although there is a slow pace towards ratifying and implementing the movement of people continentally, AU member states have made considerable progress in ratifying the AfCFTA Agreement, with the tested implementation of the regulatory and institutional frameworks ongoing under the Guided Trade Initiative (GTI). As of this writing, 54 countries have signed the AfCFTA Agreement (except for Eritrea), and 48 have ratified it.¹⁸ The status of both instruments indicates that interest differs significantly among AU member states, which presents a challenge. This is a challenge if one considers the pertinent goal of the AfCFTA Agreement, as mentioned in Article 3(a) of the Agreement, which is to develop a single market for goods and services aided or facilitated by the “movement of people.” In the authors’ view, this qualification suggests that for sustainable liberalised trade in goods and services within the free trade area, there must be “freer or facilitated movement of people.” In essence, the success of implementing the AfCFTA must be predicated on compatibility and appetite towards enabling the movement of people within the continent. As Africa progresses towards implementing the AfCFTA, the significance of the movement of people, its current development, and the path forward are questioned. This article seeks to elucidate these aspects. Therefore, the key question the article aims to address is to what extent the successful implementation of the AfCFTA is dependent on establishing an effective, continent-wide framework for the freer movement of persons and what policy measures are necessary to reconcile national sovereignty concerns with the economic imperatives of regional integration? To address this, the article adopts a qualitative doctrinal research methodology supplemented by comparative and policy analysis of extant measures enabling movement on the African continent.

First, the approach is to examine the free movement regime in Africa, briefly describing what it entails and highlighting trends towards the free movement in Africa through several regional and national initiatives (Section 2). Second, to demonstrate the significance in the context of the AfCFTA, the article discusses the socio-economic impact and challenges associated with free movement and the role of specific institutions in addressing the challenges associated with free movement (Section 4). Between these two sections lies a brief section that highlights the interconnectedness of the free movement arrangement with the AfCFTA (Section 3), and the final section provides a conclusion of the findings (Section 5).

15 UNCTAD Economic Development in Africa Report 2013: Unlocking Private Sector Dynamism (2013) 97.

16 Ismail “A Developmental Regionalism Approach to the AfCFTA” 2020 *J Rev on Glob Econ* 1–15. Soren “Developmental Regionalism and Regional Value Chains: Pitfalls to South Africa’s Vision for the Tripartite Free Trade Area” 2018 *Africa Spectrum* 115–129.

17 Akinkugbe “Theorising Developmental Regionalism in Narratives of African Regional Trade Agreement” 2020 *AJIEL* 299–300.

18 AfCFTA Legal Text and Policy Documents <https://www.tralac.org/resources/by-region/cfta.html> (accessed 5-11-2024).

2 FREE MOVEMENT OF PEOPLE IN AFRICA

Generally, humans are beneficiaries of fundamental human rights protection within a state. From a regional perspective, the African Charter on Human and Peoples' Rights (ACHPR) enshrines several human rights protections; one such right is the freedom of movement. Article 12 explicitly protects all people, emphasising the right to freedom of movement and residence within one's state and the right to leave.¹⁹ This provision, as with other international human rights provisions relating to freedom of movement,²⁰ does not bestow on a person a right to enter or remain in a country of which they are not a citizen. The right to enter and stay in another country is subject to the laws of a host state.²¹

Further, this right to freedom of movement is underpinned by economic integration imperatives based on an obligation allowing for "the free movement of people" as a member of a supranational or intergovernmental organisation (such as the AU) or any bilateral agreement that a particular state may have concluded. Within the African context, this obligation is prescribed in the Abuja Treaty, which came into force in May 1994.²² This Treaty sets out an objective of an integrated Africa by establishing a common market, ensuring the gradual removal of obstacles to the "free movement of persons, goods, services and capital and the right of residence and establishment."²³ Further, member states are to "adopt necessary measures, including concluding a Protocol, to progressively achieve the free movement of persons and ensure the enjoyment of the right of residence and establishment by their nationals within the Community."²⁴ A crucial conceptual consideration for this article is understanding the meaning of "free movement of people." The 2018 Free Movement Protocol is the only legal framework in Africa that expressly proffers a definition of the "free movement of people." The Protocol defines it as:

The right of nationals of a Member State to enter, move freely and reside in another Member State under the laws of the host Member State and to exit the host Member State under the laws and procedures for exiting that Member State.²⁵

This provision emphasises the fundamental rights of nationals from one member state to freely enter, reside, and move within another partner state. It emphasises free movement as an essential aspect of Africa's integration initiative, ensuring that every African is legally entitled to access any AU member state. Furthermore, the provision highlights the importance of adhering to the host member state's laws and procedures, balancing individual rights with the host country's sovereignty and regulatory frameworks. This respect for local laws ensures that while individuals benefit from their rights, they also contribute to the host country's order and governance. Though not in force, this provision reflects the ongoing commitment to promoting cooperation and mobility within a unified framework among member states.

Notably, Magliveras and Naldi provide a vital contribution by framing the free movement of people as both a human and economic right, underscoring the normative dimensions of mobility.²⁶ While this dual-rights perspective enriches the discourse on the free movement of people in Africa, this article expounds on these normative arguments by highlighting extant

19 Article 12(2) of the 1981 African Charter of Human and Peoples' Rights.

20 See Art 13(2) of the 1948 Universal Declaration of Human Rights. See also, Art 12 of the 1966 International Covenant on Civil and Political Rights.

21 See Juss "Free Movement and the World Order" 2004 *Intl J Refugee L* 294.

22 The Abuja Treaty came into force on 12 May 1994.

23 Article 4(2)(h)(i) of the Abuja Treaty.

24 Article 43(1) – (2) of the Abuja Treaty.

25 Article 1 of the Free Movement Protocol.

26 Magliveras and Naldi "The Free Movement of People in Africa as a Human Right and as an Economic Right" 2022 *AHRLJ* 2–3.

trends towards enabling the movement of people to further economic development.

While the implication of free movement in Africa may represent the unhindered ability of individuals to move across borders without restriction, it is suggestive that this initiative should be considered from the perspective of a “freer” movement based on the patterns and trends towards the movement of people in Africa. Lessons from regional and national initiatives can offer valuable insights into developing this conceptual perspective for a freer movement of people.

If applied literally, ‘free’ in the context of the movement of people has a distinct implication. It suggests open borders, arguably creating a stumbling block in accepting and implementing mobility instruments. This is exemplary in the historical development of the South African Development Community (SADC) free movement of persons legal framework. Within SADC, the regional framework on the movement of persons was rejected and subsequently modified from the 1995 proposed *Protocol on Free Movement of Persons* to the *2005 Protocol on the Facilitation of Movement of Persons*, which is not in force as of the writing of this article.²⁷ This rejection and modification were prompted by South Africa, Namibia, and Botswana on the belief that the 1995 Protocol would jeopardise national sovereignty and lead to an open intra-regional border and an influx of migrants.²⁸

The concerns that these instruments threaten national sovereignty or could lead to an uncontrolled influx of migrants are not substantiated.²⁹ While they promote mobility, it is designed with safeguards that allow states to regulate the flow of people and address security concerns. For instance, while the Facilitation of Movement of Persons Protocol prescribes a phased approach towards entry, residence and establishment,³⁰ it refrains from using the term free in contextualising its entry, residence and establishment provisions, and these rights are subject to the host state’s laws.³¹ National sovereignty is not undermined; it is exercised collectively within a regional framework that balances the right to free movement with the prerogative to maintain public order and manage immigration effectively. The fear of an influx of migrants may also be overstated, as research suggests Southern Africa historically had a long and sustained pattern of circular migration, often motivated by labour or economic opportunity.³² Moreover, restrictions on movement may exacerbate irregular migration. Instead of posing a threat, if effectively implemented, these mobility frameworks could foster economic growth and shared responsibility for migration governance, aligning national interests with regional goals. Arguably, the real challenge lies in the political will to implement them equitably and effectively.

Further, aside from the SADC referred to earlier, regional blocs like the Economic Community of West African States (ECOWAS) and the East African Community (EAC), among others, engage in agreements that enable freer cross-border mobility.³³ These agreements are not merely

27 See Oucho and Crush “Contra Free Movement: South Africa and SADC Migration Protocols” 2001 *Africa Today* 3 143–144 for a discussion on the decline of the SADC Draft Protocol on Free Movement of Persons and the development of the Protocol on the Facilitation of the Movement of Persons.

28 *Ibid.* See also Nshimbi *et al.* “Between Neoliberal Orthodoxy and Securitisation: Prospects and Challenges for Borderless Southern African Community” 178–78 in: Magidimisha *et al.* (eds) *Crisis, Identity and Migration in Post-Colonial Southern Africa* (2018) 178–78.

29 Oucho and Crush 2001 *Africa Today* 3, 138–58. See also, Nshimbi *et al.* 178–179.

30 Article 5 of the 2005 SADC Protocol on the Facilitation of Movement of Persons.

31 See Arts 14–19 of the 2005 SADC Protocol on the Facilitation of Movement of Persons.

32 De Haas and Frankema “The Age of Intra-African Migration: a Synthesis” in De Haas and Frankema (eds) *Migration in Africa: Shifting Patterns of Mobility from the 19th Century to the 21st Century* (2022) 20.

33 Adeola “The African Union Protocol on the Free Movement of Persons in Africa: Development, Provisions and Implementation Challenges.” 2018 *AHRYB* 262–264.

about easing travel restrictions but are also about fostering a sense of collective identity among the participating African countries. In ECOWAS,³⁴ a fundamental framework pertinent to regulating the movement of people is the Protocol relating to the Free Movement of persons, the right of residence and establishment, which was adopted in 1979 and came into force in 1980.³⁵ According to the 1979 Protocol, any ECOWAS citizen can move, establish, be employed, and do business in any ECOWAS member country.³⁶ However, this right is not absolute. Member states can reserve the right to refuse admission into their territories to any citizen who comes within the category of inadmissible immigrants under their laws.³⁷ That notwithstanding, several measures have subsequently been adopted to ensure the ease of cross-border movement, notably providing a 90-day visa-free stay for ECOWAS citizens, the adoption of an ECOWAS Passport in 2000, and the adoption of an ECOWAS National Biometric Identity Card (ENBIC) in 2014, which is currently utilised by six³⁸ out of the fifteen members of the ECOWAS.³⁹ Further, in 2023 ECOWAS reinvigorated the implementation of the ECOVISA, a REC-wide visa-free policy granting non-REC members access to the territory of all ECOWAS member states.⁴⁰

In the East African sub-region, looking at the EAC,⁴¹ under Article 104 of its founding Treaty of 1999, partner states agreed to adopt measures to achieve the free movement of persons, labour and services and to ensure the enjoyment of the right of establishment and residence of their citizens within the community.⁴² To actualise this obligation, in 2009, EAC member states adopted the Common Market Protocol (CMP), which came into force in 2010.⁴³ The free movement of persons is enshrined in Article 7 of the CMP, with the partner states committing themselves to guarantee the free movement of persons who are citizens of the other partner states within their territories and to ensure non-discrimination of the citizens of the other partner states. The provisions require the entry of citizens of other partner states without a visa and free movement within the territory of the partner state.⁴⁴ Further, under Article 8 of this Protocol, EAC partner states must progressively establish a “common standard system of issuing national identification documents to their nationals ...”⁴⁵ Further, citizens of a partner state who wish to travel to another partner state shall use a valid common standard travel document. Partner states may agree to use machine-readable passports and electronic national identity cards as travel documents.⁴⁶ In 2017, the EAC Summit directed the partner states to commence the issuance of new regional passports in the form of the EAC e-Passport.⁴⁷ Kenya, Uganda, and Rwanda

34 Comprises fifteen heads of state and government which are Benin, Burkina Faso, Cabo Verde, Côte d’Ivoire, The Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.

35 The 1979 ECOWAS Protocol Relating to the Movement of Persons, Residence and Establishment (entered into force 8 April 1980).

36 See Arts 2 and 3 of the 1979 ECOWAS Protocol Relating to the Movement of Persons, Residence and Establishment (entered into force 8 April 1980).

37 Article 4 ECOWAS Protocol Relating to the Movement of Persons, Residence and Establishment.

38 Guinea-Bissau, Ghana, Senegal, Benin, The Gambia and Sierra Leone.

39 Hirsch 2021 *SAJIA* 4 505.

40 <https://www.ecowas.int/progressing-towards-ecovisa-implementation-ecowas-experts-and-heads-of-immigration-engage-in-deliberations/> (accessed 20-11-2024).

41 The EAC is an eight-member regional economic community comprising Burundi, Tanzania, Kenya, Somalia, South Sudan, Kenya, Rwanda and Uganda.

42 See Art 104 of the Treaty establishing the East African Community, 1999.

43 Protocol on the Establishment of the East African Community Common Market, adopted in 2009 and came into force in 2010 (EAC Common Market Protocol).

44 *Ibid* Art 7.

45 Article 8 of the 2010 EAC Common Market Protocol.

46 *Ibid* Art 9.

47 EAC to start issuing EA e-passport in January 2018 <https://www.eac.int/press-releases/148-immigration-and-labour/754-eac-to-start-issuing-ea-e-passport-january-2018%20=> (accessed 18-11-2024).

recognise their national identity cards as valid travel documents. These countries commenced issuing EAC e-Passports.⁴⁸ To facilitate transit trade and travel, some EAC members, like Kenya, Burundi, DRC, Rwanda, and Uganda, as contracting parties, based on reciprocity, agreed to abolish visa requirements through plurilateral agreements like the Northern Corridor Transit and Transport Agreement.⁴⁹

Arguably, African states' reluctance to engage with the movement of people at a continental level is not a display of a lack of political will, as several states are unilaterally or bilaterally establishing a more liberal "right of entry" regime for citizens of other African countries. For instance, based on a 2024 African Development Bank (AfDB) Visa Openness Report, Rwanda, Benin, The Gambia, and Seychelles unilaterally offer visa-free access to all African visitors with appropriate travel documents.⁵⁰ Further, in March 2023, Botswana and Namibia had a bilateral agreement affording access to the respective countries using national identity cards.⁵¹ In June 2023, Burkina Faso and Morocco finalised an agreement to abolish visa requirements between the two countries.⁵² Similarly, the governments of South Africa and Ghana reached a visa waiver agreement to allow citizens of both countries to travel visa-free.⁵³ Also, in 2023, Kenya announced it would be open to African visitors, with no visas required, by the end of 2023.⁵⁴ This announcement came after several bilateral agreements, for instance, with South Africa, which affords respective citizens visa-free travel to either country for 90 days a year.⁵⁵ However, despite this announcement, Kenya ranks 46th of 55 countries in the 2024 visa openness index, primarily due to the requirement of the electronic travel authorisation (ETA) for access into Kenya.⁵⁶ However, this measure was subject to revision in January 2025.

Similarly, in November 2023, Rwanda adopted a unilateral measure, suggesting that all Africans could enter Rwanda without visas.⁵⁷ This trend continued in January 2024 as Angola and Tanzania signed a memorandum of understanding (MoU) to waive visas and passports for diplomatic and professional holders, after which Angola adopted a policy to allow visa-free entry for tourism purposes for a 90-day stay to nationals from over 90 countries, with

48 Kenya issued the earliest EAC e-Passport in 2017, followed by Tanzania, Burundi and Uganda in 2018. Rwanda followed in 2019. Newly participating members, the Republic of South Sudan, Somalia and the Democratic Republic of Congo have not yet implemented the EAC e-passport systems.

49 The Northern Corridor Transit and Transport Agreement was adopted in 2007. See Arts 5, 43 and 44.

50 African Development Bank (AfDB) *Visa Openness Report (2024)* 13 https://www.visaopenness.org/fileadmin/uploads/afdb/Documents/2024_AVOI_final_R3_20nov24_2.pdf (accessed 31-03-2025).

51 Erasmus and Hartzenburg "Botswana and Namibia Concluded an Agreement on the Movement of Persons" <https://www.tralac.org/blog/article/15940-botswana-and-namibia-concluded-an-agreement-on-the-movement-of-persons.html> (accessed 18-11-2024).

52 CGTN "Burkina Faso and Morocco Agree to Abolish Visa for Travel between their Two Nations" <https://africa.cgtn.com/burkina-faso-and-morocco-agree-to-abolish-visa-for-travel-between-their-two-nations/> (accessed 10-10-2024).

53 "Ghana, South Africa Sign Visa Waiver Deal" <https://www.africanews.com/2023/10/16/ghana-south-africa-sign-visa-waiver-deal/> (accessed 18-11-2024).

54 "Kenya to become Visa-free to African Visitors" <https://www.bbc.com/news/world-africa-67254349> (accessed 19-11-2024).

55 "Kenyans Can Now Visit SA without a Visa for Three Months" <https://www.news24.com/news24/africa/news/kenyans-can-now-visit-sa-without-a-visa-for-three-months-20230103#:~:text=Kenyans%20can%20now%20visit%20South,visa%2Dfree%20for%20a%20month.> (accessed 19-11-2024).

56 https://www.visaopenness.org/fileadmin/uploads/afdb/Documents/2024_AVOI_final_R3_20nov24.pdf (accessed 25-11-2024).

57 "Rwanda Announces Visa-Free Travel for All Africans as Continent Opens Up To Free Movement Of People" <https://www.africanews.com/2023/11/03/rwanda-announces-visa-free-travel-for-all-africans/#:~:text=Rwanda%20announced%20Thursday%20that%20it,to%20rival%20Europe's%20Schengen%20zone.> (accessed 19-11-2024).

fourteen African countries on the list.⁵⁸ Notably, neither South Africa, Botswana, nor Namibia has signed or ratified the AU Free Movement Protocol, and they negotiate and maintain a common position endorsed by the SADC Ministerial Committee of the Organ on Politics, Defence and Security. This common position reflects certain pre-conditions required for the AU Free Movement Protocol to be implemented, such as establishing peace and security on the continent; collaboration among nations to mitigate economic disparities; implementing a gradual strategy; having efficient civil registration systems and machine-readable passports; having bilateral repatriation and extradition treaties; having an agreement on legal mutual assistance and having dependable border control mechanisms; adopting a framework for the African passport; ensuring interoperability of ICT systems at entry points and integration of movement control systems with INTERPOL.⁵⁹

The pattern surrounding the free movement of people in Africa reveals both progress and significant challenges in achieving the continent's integration ambitions. At the same time, regional instruments in SADC, ECOWAS and EAC signal a commitment to fostering mobility, and inconsistencies in implementation highlight underlying tensions between integration objectives and national sovereignty concerns. Further, unilateral and bilateral measures, such as reciprocal visa-free policies, demonstrate that localised, pragmatic solutions can drive mobility even when continental frameworks face resistance. However, these measures are unevenly adopted and risk creating fragmented rather than cohesive mobility systems across the continent. A key lesson is that enabling freer movement suggests a gradual, progressive and targeted approach, which can involve affording visa-free access for all or prioritising selected individuals or professionals, as in the case of Angola and Tanzania or extending the benefits of mobility within RECs to non-citizens and the broader African populace, as seen in ECOWAS. However, extending freer movement beyond RECs demands robust administrative coordination, including interoperable travel documentation systems and enhanced border management, which must be developed in some regions. Critically, any attempt to extend the freer movement must harmonise policies across RECs and address the underlying political resistance that continues to prioritise national interests over continental aspirations.

In the author's view, a gradual approach offers a pragmatic pathway to implementing the movement of people in Africa. It balances the ambitious vision of continental integration and trade with the practical realities of diverse political, economic, and social contexts. It provides the necessary time to strengthen institutional and administrative capacities, such as harmonised border management and civil registration systems, ensuring operational readiness before large-scale continental implementation.

3 FREE MOVEMENT OF PEOPLE AND THE AfCFTA

The AU's ambitious initiatives of the Free Movement of People and the AfCFTA represent a ground-breaking stride towards a more integrated and prosperous Africa. At the heart of these transformative policies lies a vision to unify a continent often fragmented by borders and regulations, propelling it towards unprecedented socio-economic growth. While the Free Movement Protocol and the AfCFTA Agreement are distinct, the mobility of individuals serves as the focal point of complementarity. With the AfCFTA primarily being a free trade agreement, its scope is focused mainly on the trade liberalisation of goods and services. It is envisioned that this will be accomplished by allowing people to move. In essence, people's unrestricted

58 "Angola Opens Up, Put into Place Visa-Free Entry to Nationals from Over 90 Countries" <https://www.africanews.com/2023/10/06/angola-opens-up-puts-in-place-visa-free-entry-to-nationals-from-over-90-countries/> (accessed 30-10-2023).

59 Hirsch 2021 *SAJIA* 4 508–509.

mobility is crucial to the success of free trade.⁶⁰

Further to the AfCFTA Agreement, the AfCFTA Protocol on Trade in Services looks to create a single liberalised service market for trade in services with a focus on a wide range of sectors, such as the business, communications, tourism, transport, and financial sectors, which is critical within the broader context of African regional integration.⁶¹ The Protocol underscores the integral role of skilled mobility by looking at the broader definition of ‘trade in services’ under Article 1 of the Protocol. Article 1 emphasises, among other modes of service supply, the supply of service “by a service supplier of one State Party, through the presence of natural persons⁶² of a State Party in the territory of any other State Party.”⁶³ If implemented across state parties, such a liberal mandate enhances the availability and quality of vital service providers in different professional sectors across borders. Further, the AfCFTA Protocol on Investment also underscores the need to facilitate the movement of specific or high-skilled persons, in this case, investors. The Protocol defines an “investor” as a natural person who is a national or citizen of a state party.⁶⁴ The Protocol emphasises the need to facilitate granting visas and permits to foreign workers, employees, and consultants.⁶⁵

The AU Free Movement Protocol primarily aims to facilitate the movement of people within Africa. As highlighted earlier, the AU Free Movement Protocol sets out a three-phased approach to its implementation, with the first phase focusing on the right of entry and the abolition of visas. The second phase focuses on the right of residence, and the third phase focuses on the right of establishment.⁶⁶ The AU Free Movement Protocol complements the AfCFTA by facilitating the cross-border movement of skilled labour and entrepreneurs, emphasising the mutual recognition of qualifications.⁶⁷ The interplay in the context of skilled labour stems from the fact that skilled labour mobility, provided by the Free Movement Protocol, can directly support and complement the AfCFTA’s aims.⁶⁸ The unrestricted movement of talented professionals across African borders will help to transmit knowledge, boost cross-border investment, and improve the efficiency of regional labour markets. This confluence allows African countries to leverage the potential of skilled labour mobility to alleviate skills gaps, encourage innovation, and establish specialised industries within the framework of the AfCFTA.⁶⁹ By capitalising on this interconnectedness, governments can create huge chances for Africa to become more integrated, rich, and developed.

60 Article 3(a) of the 2018 Agreement Establishing the African Continental Free Trade Area (the AfCFTA Agreement).

61 Article 3 of the AfCFTA Protocol on Trade in Services.

62 A natural person of another state party means a natural person who resides in the territory of that other state party or any other state party and who, under the law of that state party, is a national or has the right of permanent residence. Article 1(i) of the 2018 AfCFTA Protocol on Trade in Services.

63 Article 1(p) of the 2018 AfCFTA Protocol on Trade in Services.

64 Article 1 of the 2023 AfCFTA Protocol on Investment.

65 *Ibid* Art 7(2).

66 Article 5 of the 2018 Free Movement Protocol.

67 *Ibid* Art 18.

68 Bisong “Labour Mobility as a Key Element of the AfCFTA: What Role for the AU’s Free Movement Protocol?” 2022 *ECDPM Briefing Note* 153 7.

69 Bisong and Mayer “Connecting People and Markets in Africa” 2021 <https://ecdpm.org/work/connecting-people-and-markets-in-africa-in-2021> (accessed 08-12-2023).

4 THE SOCIO-ECONOMIC IMPACT OF FREE MOVEMENT

If we move faster on the free movement of people, goods and services, and the African passport, we will surely see an increase in trade and tourism and economic growth.

Dr Nkosazana Dlamini Zuma⁷⁰

Historically, it is acknowledged that mobility is as old as human history and a part of the DNA of all humans as a migratory species.⁷¹ The practice of free movement in Africa dates to pre-colonial times, with trade and mobility closely intertwined on the continent.⁷² Mobility is an opportunity to seek better opportunities.⁷³ This underscores why people search for sustenance, employment, shelter and education. In colonial Africa, artificial borders were created with little regard for existing cultural or economic ties, leading to poorly defined territories.⁷⁴ Consequently, intra-African mobility became subject to state regulations enforced through immigration controls, creating limited pathways for movement.⁷⁵ These restrictions can undermine the potential gains of economic integration by filtering down, negatively impacting social development.

Economic integration, whether as a means or an end, encompasses the free movement of persons, goods, services, labour, capital and the right of establishment.⁷⁶ Recognising its importance, African leaders identified the free movement of people as a critical factor in the continental integration agenda.⁷⁷ Intra-African migration has been shown to boost trade and impact the structural transformation of destination countries.⁷⁸ According to the African Union, over 80 per cent of African migration occurs within and between African regions.⁷⁹ It becomes evident that without enabling cross-border movement, initiatives such as the AfCFTA and the broader Pan-African Vision of “an integrated, prosperous and peaceful Africa” as articulated in Agenda 2063 will be defeated.⁸⁰

To highlight its core developmental impact, the AU Peace and Security Council (PSC) passed a resolution highlighting that the benefits of the free movement of persons, goods, and services outweighed any security concerns and economic challenges that may arise from the free movement agenda.⁸¹ The preamble to the AU Free Movement Protocol recognises that the free movement of persons across African borders holds the potential to:

70 Former Chairperson of the African Union Commission, to the 25th Ordinary Session of the African Union Assembly of Heads of State and Government, Johannesburg, 14 June 2015.

71 Adeola 2019 *AHRYB* 3.

72 Hirsch “The Movement of People in a Common African Market” in Mangeni and Gor (eds) *Consolidating the AfCFTA: Portrait of a Common Market* (2024) 141. Apiko *et al.* “Connecting African Markets and People: Streamlining Regional Trade and Free Movement Protocols” 2021 *ECDPM Discussion Paper No. 311* 1.

73 UNECA *Assessing Regional Integration in Africa (ARIA V): Towards an African Continental Free Trade Area* (2012) 16.

74 Hirsch and Amadi “Can Africa Accelerate Initiatives towards the Freer Movement of Africans in Africa?” 118.

75 Adeola 2019 *AHRYB* 44.

76 Mangeni *Existential Priorities for the AfCFTA* 42.

77 Article 4(2) (i) of the Free Movement Protocol. Aspiration 2 of the AU Agenda 2063: The Africa We Want.

78 Ndegwa *et al.* “Regional integration and migration governance in Africa” in *IOM Africa Migration Report Connecting the Threads: Linking Policy, Practice and the Welfare of the African Migrant* 2 edn (2024) 49.

79 AU Migration Policy Framework for Africa and Plan of Action (2018–2030).

80 Apiko *et al.* *ECDPM Discussion Paper No. 311* 1.

81 661st Meeting of the Peace and Security Council (17-23 February) 2017PSC/PR/COMM.1 (DCLXI).

Facilitate intra-African trade and investment, improve education and human capital development, spur tourism, create employment opportunities and facilitate mobility of labour, provide enhanced access to healthcare, increase remittances, optimal utilisation of Africa's resources, bring entrepreneurship and innovation, and will ultimately advance continental integration and Pan-Africanism.⁸²

The AU Free Movement Protocol moves the continent closer to consolidating the RECs' achievements in facilitating the movement of people. However, as discussed earlier, it falls short of the fifteen ratifications needed to bring it into force. That notwithstanding, this article underscores the progress in achieving the cross-border movement of people through regional, bilateral, and unilateral measures. This section examines the key benefits of facilitating the free movement of people across Africa in more detail.

4.1 Enhanced Intra-African Trade and Investment

Africa is relatively isolated from the global market and from within itself.⁸³ Africa's share of global trade represents a low three per cent, while intra-regional trade in Africa accounts for only about 15 per cent.⁸⁴ In contrast, intra-regional trade in the European Union (EU) and East Asia accounts for roughly 60 per cent and 43 per cent of total trade volume, respectively.⁸⁵ It has been rightly pointed out that one of the factors hindering intra-African trade is regulatory impediments, such as those relating to the free movement of people.⁸⁶ Implementing the AU Free Movement Protocol requires countries to support the removal of barriers to the movement of people and to create unhindered access to goods and services across African borders.⁸⁷ This will create an expanded market, deepen regional integration, and foster more opportunities for African businesses to participate and compete in regional and global markets. Africa's participation in global trade depends on its economy's ability to integrate and move up the value chain and reduce its dependence on the export of commodities.⁸⁸ Adopting strategies to promote intra-African trade is considered a beneficial way to stimulate economic transformation and human capital development.⁸⁹

This aligns with Article 3 of the AfCFTA agreement, which aims to "create a single market for goods, services, and capital, facilitated by movement of persons." This translates to connecting 1.3 billion people across 55 countries with a combined GDP valued at USD 3.4 trillion, with an estimated impact of lifting 30 million people out of extreme poverty by 2035.⁹⁰ Policymakers, regional bodies and several authors have widely recognised the existence of a strong link between trade and mobility.⁹¹ However, Africans need visas to travel to 47 per cent of the countries on

82 Preamble to the AU Free Movement Protocol.

83 Bello-Schünemann *et al.* "African Futures 2035: Key Trends" 2018 *Journal of Futures Studies* 1 131.

84 Afreximbank *African Trade Report* (2023) 25.

85 ECA "African Countries Trading More Outside the Continent Than Amongst Themselves" <https://www.uneca.org/eca-events/stories/african-countries-trading-more-outside-continent-amongst-themselves-eca-report> (accessed 23-10-2024).

86 AU/IOM *Study on the Benefits and Challenges of Free Movement of Persons in Africa* (2018) 32.

87 *Ibid.*

88 Bello-Schünemann *et al.* 2018 *Journal of Futures Studies* 131.

89 *Ibid.*

90 World Bank *The African Continental Free Trade Area: Economic and Distributional Effects* (2020) 5.

91 Almost all the African Regional Economic Communities have adopted legal and policy instruments embedded in their founding treaties or in separate protocols on free movement of people. AUC *Africa Migration Report Connecting the threads* (2024) 61. AUC *Migration Policy Framework for Africa and Plan of Action (2018 – 2030)* 1 edn (2018). Ndegwa *et al.* "Regional Integration and Migration Governance in Africa" (2024) 49. Bisong *ECDPM Briefing Note* 153 7.

the continent due to restrictive immigration policies.⁹² These restrictions on movement can limit the potential opportunities created under the AfCFTA for different classes of persons, mainly business persons and workers. The restrictions can undermine the broader objective of the AfCFTA, which is to build an integrated continent where people, goods, services, and capital can freely flow, fostering economic integration and development.⁹³

The AfCFTA Agreement is being implemented in three phases to cover eight protocols. Phase I negotiations covered goods, services and dispute settlement following the ratification of the AfCFTA Agreement and accompanying Protocols on trade in goods, trade in services and dispute settlement.⁹⁴ Phase II negotiations led to the adoption of protocols on three issues: intellectual property rights, investment, and competition policy. The finalisation of the Phase III negotiations covers the Protocols on Digital Trade and Women and Youth in Trade. All AfCFTA protocols envisage persons' mobility, whether temporary or category-specific, as part of the framework of promoting labour mobility on the continent.⁹⁵ The successful realisation of the three phases depends on and is enabled by the movement of people across the continent.⁹⁶ For instance, the Protocol on Trade in Goods aims to create a liberalised market for trade in goods by eliminating tariff and non-tariff barriers, thereby boosting trade.⁹⁷ With complementary improvements on the broader business environment, such as adequate transport and telecommunications infrastructure, access to finance and cross-border security, the AfCFTA will enhance the seamless mobility of business people across the continent⁹⁸ and provide a platform for micro, small and medium enterprises (MSMEs) to integrate into regional value chains.⁹⁹

In addition, the AfCFTA Protocol on Trade in Services seeks to create a single liberalised service market for trade in services covering business, communications, tourism, transport and financial services.¹⁰⁰ The Protocol focuses on the mobility of business persons and professionals in service delivery as defined through modes 2 and 4 commitments of the modes of service in the agreement.¹⁰¹ Member states considered advancing the movement of business persons and professionals crucial to provide services across the continent. Its implementation is expected to facilitate the cross-border availability of essential service providers in diverse sectors across Africa. The AfCFTA Protocol on Investment (POI) emphasises the importance of facilitating the movement of investors and capital across borders to promote sustainable development.¹⁰² Similarly, the Protocol on Women and Youth in Trade acknowledges the significant contributions of women and youth in intra-African trade. These groups play multiple roles as subsistence traders, budding entrepreneurs, producers, investors, and consumers traversing African

92 AfDB *Africa Visa Openness Report* (2024) 13. Apiko *et al. ECDPM Discussion Paper No. 311* 4.

93 Article 3 of the AfCFTA Agreement.

94 The AfCFTA Agreement.

95 Bisong *ECDPM Briefing Note 153* 2.

96 AfDB *Africa Visa Openness Report* (2023) 24. UNECA *Assessing Regional Integration in Africa (ARIA V)* 61.

97 Article 2(2) of the 2018 AfCFTA Protocol on Trade in Goods.

98 Ikome and Omolo "Free Movement of Persons, Informal Cross Border Trade and the African Continental Free Trade Area" in *Connecting the Threads: Linking Policy, Practice and The Welfare of the African Migrant* 2 edn (2024) 68.

99 Moyo "The African Continental Free Trade Area and Informal Cross Border Trade: Implications on Socioeconomic Development in Africa" 2023 *JCAS* 413.

100 Article 3 of the AfCFTA Protocol on Trade in Services.

101 *Ibid* Art 1(p).

102 Articles 2 and 7 of the 2023 Protocol on Investment (POI). The POI was adopted during the 36th African Union Heads of State meeting on 18 February 2023 in Addis Ababa, Ethiopia. "The AfCFTA Investment Protocol - A Potential Game Changer for the African Continent?" <https://au-afcfta.org/2023/05/the-afcfta-investment-protocol-a-potential-game-changer-for-the-african-continent/> (accessed 26-11-2024).

borders.¹⁰³ The Protocol requires state parties to gradually eliminate non-tariff barriers that impact women and youth in trade to enhance their participation in cross-border trade.¹⁰⁴

The African economic development agenda and industrialisation are closely connected with job creation and building the capacity of MSMEs and informal cross-border traders.¹⁰⁵ It also hinges on the capacity of young and skilled Africans to seize job opportunities across the continent. Therefore, the unhindered movement of economic actors is essential to cross-border investments and job creation, as outlined by the vision of the AU Heads of Government and the AfCFTA.¹⁰⁶ The AU Free Movement Protocol and the AfCFTA envisaged the mobility of persons in varying degrees.¹⁰⁷ The AfCFTA seeks to promote the movement of business persons across the AU member states under the Protocol on Trade in Services.¹⁰⁸ Notably, the AU Free Movement Protocol did not intend to distinguish between economically active Africans and nationals of AU member states.¹⁰⁹ However, Article 14 of the Protocol seeks to regulate the free movement of workers, stipulating that nationals of AU member states shall have the right to seek and accept employment without discrimination in any other state and that they may be accompanied by spouses and dependents when accepting and taking up employment in the host country.¹¹⁰ However, this right to reside and conduct business is not absolute and is subject to the host country's discretion.¹¹¹ While the AfCFTA promotes targeted mobility for businesspersons and service providers to drive intra-African trade, the AU Free Movement Protocol provides a broader framework for labour mobility across the continent. The intersection of both instruments underscores the importance of promoting the free movement agenda to support Africa's transformative development.

The current intra-regional movement in Africa is characterised by the migration of low-skilled workers, many of whom operate in the informal economy. A significant proportion of cross-border movement occurs through informal channels and outside formalised processes.¹¹² Implementing the AU Free Movement Protocol will enhance the participation of informal economic actors in cross-border trade and highlight their roles as drivers of economic development and regional integration.¹¹³ The “cart” of the AfCFTA goal to increase intra-African trade and accelerate continental integration can only move faster if pulled by the “horse” of the Free Movement Protocol. In practical terms, the free movement of people complements trade by facilitating access to markets, enabling cross-border business exchanges, and enhancing the overall efficiency of regional integration initiatives. Opening and effectively managing borders will create a dynamic continental market, accelerating Africa's economic transformation.¹¹⁴ The Boosting Intra-African Trade (BIAT) Initiative emphasises that well-managed migration can

103 Hasham and Mugangu “Pioneering Inclusivity in Trade: The AfCFTA Protocol on Women and Youth in Trade” <https://www.afconomicslaw.org/category/analysis/pioneering-inclusivity-trade-afcfta-protocol-women-and-youth-trade> (accessed on 22-03-2024).

104 Article 7 of the 2024 AfCFTA Protocol on Women and Youth in Trade.

105 AU/IOM 39.

106 Bisong *ECDPM Briefing Note 153 2*.

107 *Ibid.*

108 Article 3 of the AfCFTA Protocol on Trade in Services.

109 Magliveras and Naldi 2022 *AHRLJ* 22 1.

110 Article 14 of the 2018 Free Movement Protocol.

111 Wood *The Role of Free Movement of Persons Agreements in Addressing Disaster Displacement a Study of Africa* (2019) 8.

112 Bello-Schünemann *et al.* 2018 *Journal of Futures Studies* 131.

113 AU/IOM 34.

114 Amadi and Lenaghan “Advancing Regional Integration through the Free Movement of Persons in the Southern African Development Community (SADC)” 2020 *Spec J* 61.

enhance productive capacities, boost intra-African trade, and achieve further integration.¹¹⁵

4.2 Potential for Job Creation, Poverty Reduction and Economic Growth

Labour crosses the border through the exchange of labour-intensive goods or in the form of migration.¹¹⁶ Typically, the free movement of people creates a pathway for the free movement of labour.¹¹⁷ As a factor of production, labour is essential to boost productivity, particularly in the manufacturing sector.¹¹⁸ Labour mobility across specific sectors of interest to countries can significantly enhance productivity and increase exports in those sectors.¹¹⁹ Migration is recognised as a legitimate channel that enables the adjustment of regional and national labour markets' skills, age and sectoral composition.¹²⁰ Both the host and destination countries benefit when there is cross-border movement of people. When one country's labour surplus meets with another country's demand, both economies benefit.¹²¹ The host country benefits from skills transfer, innovation and job creation, as increased labour requires more managerial capacities.¹²² This increases economic efficiency by reducing labour shortages and enhancing skills transfer to local employees.¹²³

On the other hand, migration provides higher income and knowledge, which can be used for productive investments, basic needs, and access to education and healthcare for immigrant families in the host and origin countries.¹²⁴ As demonstrated in the next section, remittances sent home contribute to poverty reduction, improving living standards, and advancing sustainable development.¹²⁵ In support of this view, development economists emphasise that open borders could double global GDP, providing migrants with increased income and opportunities.¹²⁶

The provisions relating to permanent migration and labour movement in the founding treaties of African RECs aim to address labour imbalances by increasing the supply of workers in professions or sectors with excess demand.¹²⁷ However, African businesses are precluded from moving or integrating professionals because of restrictive immigration policies that hinder the mobility of professional services.¹²⁸ Developing a regional policy framework to facilitate labour movement can help tackle labour market imbalances and enable businesses to acquire talent and drive productivity.¹²⁹ Cross-border labour mobility can create employment opportunities, reduce unemployment by matching labour supply with demand, and contribute to job creation in various sectors across the continent. The concurrent operationalisation of the AfCFTA Agreement and the AU-FMP will accelerate these outcomes, contributing to Africa's economic

115 Bisong *ECDPM Briefing Note 153* 1.

116 UNCTAD *Migration for Structural Transformation* 30.

117 UNECA *Assessing Regional Integration in Africa (ARIA V)* 63.

118 Bisong *ECDPM Briefing Note 153* 2.

119 *Ibid.*

120 UNECA *Assessing Regional Integration in Africa (ARIA V)* 61.

121 *Ibid.*

122 AfDB *Africa Visa Openness Report* (2016) 17.

123 AfDB *Africa Visa Openness Report* (2016) 4. UNCTAD *Migration for Structural Transformation* 29.

124 UNCTAD *Migration for Structural Transformation* 20.

125 UNECA *Assessing Regional Integration in Africa (ARIA V)* 63.

126 AfDB *Africa Visa Openness Report* (2016) 17.

127 *Ibid.*

128 Bisong *ECDPM Briefing Note 153* 3.

129 AU *Putting Free Movement of Persons at the Centre of Continental Integration* (2021) 10.

integration and development.

4 3 Remittances

Remittances contribute to poverty reduction, household welfare, quality education and healthcare, and business investments.¹³⁰ Free movement of persons can spur economic development through remittance and serve as a vital livelihood and employment strategy for emigrants.¹³¹ In Kenya and Nigeria, for instance, available evidence shows that households commit about 15 per cent and 20 per cent, respectively, of intraregional remittances to education.¹³² A significant portion of intra-regional Africa remittances are spent on land purchases, building a house or business, improving the farm, agricultural equipment, and other investments, representing 47 per cent in Kenya, 40 per cent in Nigeria and 19 per cent in Uganda and Burkina Faso, respectively.¹³³

Remittance flows added USD 65 billion to Africa's GDP in 2013, representing 13 per cent of funds from Africa.¹³⁴ UNCTAD reported that remittance flows have grown enormously since 2000, representing about 51 per cent of private capital flows to Africa in 2016.¹³⁵ According to the World Bank, the flow of remittances to sub-Saharan Africa reached USD 53 billion in 2022, representing a 6.1 per cent increase from 2021.¹³⁶ Remittances are likely underestimated as a considerable volume of money and goods is sent via informal means to avoid paying formal charges.¹³⁷ As noted by Amadi and Lenaghan, the preceding underscores the significant impact that remittances can have on household welfare and human capital development.¹³⁸

4 4 Increased Tourism

Global trends reveal that tourism is an essential driver of jobs, creating opportunities for more women and youth, and small and medium-sized enterprises (SMEs).¹³⁹ For AU member states that have opened up their borders, such as Seychelles, Mauritius, Rwanda, Ghana and Senegal, the benefits of free movement of persons have been remarkable.¹⁴⁰ Available data revealed that increased cross-border movement facilitated by relaxed visa requirements promotes tourism and the hospitality sector.¹⁴¹ Tourists from one member state to another can explore diverse cultures, landscapes, and attractions, boosting local economies and creating jobs in the hospitality, transportation, food and entertainment sectors. The African Development Bank (AfDB) confirms that Seychelles experienced an annual tourism growth rate of seven per cent between 2009 and 2014.¹⁴² This coincides with the implementation of the elimination of visa requirements for African nationals. Seychelles has been ranked eighth in the world among countries prioritising travel and tourism, and first in Africa regarding tourist service

130 UNCTAD *Migration for Structural Transformation* 135.

131 Amadi and Lenaghan *Spec J* 62.

132 Mohapatra and Ratha *Remittance Markets in Africa* (2011) 19.

133 *Ibid.*

134 AfDB "Remittances, Up By 5%, Reach US \$65 Billion: AfDB Annual Report" <http://www.afdb.org/en/news-and-events/article/remittances-up-by-5-reach-us-65-billion-afdb-annual-report-13144/> (accessed 15-10-2024)

135 These flows have exceeded official development assistance and are more stable than foreign direct investments. See UNCTAD *Migration for Structural Transformation* 135.

136 Ndegwa *et al.* "Regional Integration and Migration Governance in Africa" 2024 49.

137 UNCTAD 139.

138 Amadi and Lenaghan *Spec J* 62.

139 WEF *The Tourism & Travel Competitiveness Report* (2015)

140 AU/IOM 36.

141 AfDB *Africa Visa Openness Report* (2016) 10–15.

142 *Ibid* 15.

infrastructure. The exponential rise in tourism revenues had propelled Seychelles to high-income status, spurring growth in its service, real estate, and aviation sectors.¹⁴³ Similarly, the report notes a 22 per cent increase in African travel to Rwanda following the relaxation of visa requirements in 2013.¹⁴⁴ Consequently, Rwanda witnessed a 50 per cent rise in cross-border trade with Kenya and Uganda, emphasising the favourable economic implications of the free movement of capital and labour.

4 5 Human Capital Development and Knowledge

Human capital development plays a crucial role in driving Africa's economic transformation.¹⁴⁵ Labour mobility closes the gap between skills surplus and deficit among cooperating states in a regional arrangement.¹⁴⁶ It offers the opportunity to share skilled labour and address the unemployment of surplus skilled labour, thereby helping to reduce sub-regional inequalities. Improved education and mobility of students, researchers, and teachers would enhance the quality and diversity of human capital and the exchange of knowledge and skills. This underscores the significance of enabling the free movement of persons seeking educational opportunities across borders, which is fundamental to the realisation of Africa's integration agenda.

Research has noted the impact of human capital on industrial transformation.¹⁴⁷ Increased cross-border movement of people facilitates the exchange of best practices, technology transfer, innovation, expertise and human capital development across the continent. Thus, the free movement of people would mean an unhindered exchange of human capital, giving people with different skills the ability to utilise their knowledge within various African countries. A point of contention on the liberalisation of labour is the brain-drain phenomenon that origin countries often lose their most educated and skilled to migration. Welfare-enhancing schemes and investment in education can discourage brain drain and improve retention in the country of origin.¹⁴⁸

The non-recognition, non-compatibility, and non-comparability of skills, educational qualifications, and experiences have hampered African labour mobility.¹⁴⁹ Research reveals that regional efforts towards cooperation in the African higher educational sector have not been encouraging.¹⁵⁰

4 6 Social and Cultural Exchange

Implementing the AU Free Movement Protocol can facilitate cross-border collaborations in arts and culture and the sharing of traditions and languages, enriching the social fabric of the continent. Free movement of persons can foster greater cultural exchange, solidarity and social

143 World Bank Press Release "WB Update Says 10 Countries Move Up in Income Bracket" <https://www.worldbank.org/en/news/press-release/2015/07/01/new-world-bank-update-shows-bangladesh-kenya-myanmar-and-tajikistan-as-middle-income-while-south-sudan-falls-back-to-low-income> (accessed 19-10-2024).

144 AfDB *Africa Visa Openness Report* (2023) 73.

145 AU/IOM 55. 20th Session of the Standing Committee on Programmes and Finance (2017) 3 S/20/10.

146 AU/IOM 3.

147 AU/IOM 55.

148 UNCTAD 30. Amadi and Lenaghan *Spec J62*.

149 UNECA *Assessing African Regional Integration Index* (2012) 17.

150 The legal framework for cooperation in higher education in Africa is governed by the Arusha Convention, adopted in 1981 and ratified by 19 out of 54 AU member states. This formed the basis of the African Higher Education Harmonization Strategy (HEHS), adopted by the Conference of Ministers of Education of the African Union in 2007.

cohesion among Africans.¹⁵¹ It encourages people-to-people interactions, leading to better understanding, tolerance, and appreciation of different cultures. This can contribute to social cohesion, peace-building efforts, and promoting a Pan-African identity.

5 ADDRESSING CHALLENGES AND CONCERNS

From the formation of the OAU in May 1963 to the launch of the AfCFTA in 2021, African countries have continued to make efforts to facilitate the free movement of persons on the continent, albeit at a languid pace.¹⁵² Countries are constrained from implementing the provisions of the AU-FMP for economic, political, and socio-cultural reasons.¹⁵³ Chief among the factors responsible for the reluctance of member states to ratify the protocol stems from concerns regarding national security, potential public health threats, lack of infrastructure and capacity and existing socioeconomic disparities among member states.¹⁵⁴ Alluding to this, Vhumbunu and Rudigi note that AU member states' inadequate political will and commitment are the most significant challenges to ratifying the AU Free Movement Protocol.¹⁵⁵ Also, many African leaders are often moved by decisions to promote their national identity rather than regional interest. They have yet to detach from ethnicity and nationalism, holding on to their national identity and being reluctant to fully pay allegiance to a supranational entity. The realisation of the African regional integration agenda would remain limited as long as members of the AU hold on to their sovereignty. The African cultural landscape is heterogeneous, reflected in the distinct official languages spoken by the citizens. The free movement of persons in Africa has also been said to be hindered by the different official languages at border crossings.¹⁵⁶

The socio-economic disparity among member states is often advanced as another significant argument against the free movement agenda.¹⁵⁷ For instance, the economic imbalance between SADC member states was one of the major arguments against ratifying comprehensive mobility in the SADC, and it contributed to the rejection of the first Draft Protocol on Free Movement. More developed states in the region fear that the varying levels of economic development among the member states can lead to an influx of citizens from less-developed countries to their territories, destabilising their already stressed economies. The trend of economic decline in many African countries, along with dwindling job opportunities and a rapidly growing youth population, intensifies the competition for employment and influences migration patterns.¹⁵⁸ It is believed that the unhindered cross-border movement of people and exceptionally skilled labour will increase the pressure of economic downturns.

Security concerns arising from long borderlands, limited resources, political instability and border disputes undermine national efforts to secure national boundaries and control immigration, leading to several unauthorised entries.¹⁵⁹ About 100 active border disputes abound across Africa, including the dispute over Lake Malawi between Tanzania and Malawi; the Badme territory dispute between Eritrea and Ethiopia; and the territorial disputes on the Island of

151 AU/IOM African Union Continental Free Movement of Persons Protocol: Implications for Migration Governance in Africa (2017) 20th Standing Committee on Programmes and Finance.

152 Vhumbunu and Rudigi "Facilitating Regional Integration through Free Movement of People in Africa" 2020 58 *JAUS* 2.

153 UNECA *Assessing Regional Integration in Africa (ARIA V)* 65.

154 AU 107.

155 Vhumbunu and Rudigi 2020 *JAUS* 58.

156 Bolarinwa "The ECOWAS Free Movement Protocol: Obstacle or Driver of Regional Integration?" 2015 *Insight Africa* 165 2.

157 Nita *et al. Migration, Free Movement and Regional Integration* (2017) XXV.

158 Vhumbunu and Rudigi 2020 *JAUS* 59.

159 UNECA *Assessing Regional Integration in Africa (ARIA V)* 72.

Mbanié between Gabon and Equatorial Guinea; and the frontier dispute between Burkina Faso and Niger.¹⁶⁰ Political unrest in West African countries and separatist tendencies to create more independent states are rife.¹⁶¹ Disputes and civil unrest breed distrust and distract people from regional integration projects. There are reports of torture and killings by border officials and security personnel.¹⁶²

5 1 Strategies to Overcome Challenges and Promote Successful Implementation

As referred to earlier, the core principle of the developmental regionalism approach to integration suggests that countries can collaborate in a regional framework to effectively address issues of common interests and craft policies that reflect their socio-economic situations.¹⁶³ Coming from this background, a nuanced and context-specific strategy is required to successfully implement the free movement of people in Africa. This approach should promote political understanding and secure public acceptance and support through advocacy.¹⁶⁴ Policymakers should consider each member state's distinct needs and capacities to facilitate the seamless implementation of the Free Movement Protocol. The following analysis highlights some factors that could be addressed to mitigate the drawbacks of implementing the Free Movement Protocol across the region.

a Public Education and Advocacy

An apparent misinformation or lack of understanding exists among AU member states about what the free movement of people entails.¹⁶⁵ This misconception significantly impacts some steps in the treaty-making process, including ratification and domestication.¹⁶⁶ The limited public engagement during the treaty-making process and awareness of the objectives and benefits of free movement have generated resistant attitudes among most AU member countries, shaped by misperceptions and misconceptions.¹⁶⁷ Most communities are reluctant to co-exist with or intolerant of foreign nationals, leading to xenophobic tendencies and violence.¹⁶⁸ This has dramatically hampered the implementation of the free movement of people on the continent. If the objectives of the AfCFTA and the AU Free Movement Protocol must be actualised, member states must adopt a single vision to drive the continental vision.¹⁶⁹ Citizens and governments should be adequately educated on common African citizenship and Pan-Africanism, as envisaged in the OAU Treaty and Agenda 2063.¹⁷⁰ As the AEC building blocks, the RECs are vital in creating awareness of the AU Free Movement Protocol implementation, collaborating

160 Oduntan "Africa's Border Disputes Are Set to Rise – But There Are Ways to Stop them" <https://theconversation.com/africas-border-disputes-are-set-to-rise-but-there-are-ways-to-stop-them-44264> (accessed on 20-10-2024).

161 Studies confirm that approximately 58 potential secessionist territories exist in 29 out of the total 54 independent nations of Africa. *Ibid.*

162 44 Ghanaians, 9 Nigerians and 2 Ivoirians were reportedly killed by security agencies in 2005 at the Gambian border.

163 This is known as developmental regionalism approach to regional integration.

164 AU/IOM 57.

165 The concept of free movement envisaged by Agenda 2063 is that of a continent of "seamless borders" where people, goods, and services can move more freely without restrictions and not the removal of borders that will lead to the uncontrolled irregular movement of persons across border. African Union at 63, 108.

166 Adeola 2019 *AHRYB* 274.

167 Vhumbunu and Rudigi 2020 *JAUS* 59.

168 Adeola 2019 *AHRYB* 273.

169 *Ibid.* 274.

170 *Ibid.*

with member states, regional civil society organisations (CSOs) and the AU Commission.¹⁷¹

b Visa Openness

The concept of borders, originally imposed through imperialism, has been perpetuated by African leaders even after gaining independence.¹⁷² However, the liberation from colonial rule should extend beyond political independence, with African nations striving for unity and a shared identity that transcends artificial boundaries. Respecting national sovereignty remains crucial, but it should not impede collective interests or the realisation of an economically integrated Africa under the AfCFTA. Africans do not need a visa for 28 per cent of intra-Africa travel, while Africans still need a visa before travelling for 47 per cent of intra-Africa travel.¹⁷³ Billionaire businessman Aliko Dangote emphasised the importance of supporting visas-on-arrival or visa waivers for African citizens to boost intra-African trade and investment.¹⁷⁴ He stated that those with restrictions aimed to exclude due to security concerns are already moving freely across borders without visas. Tourists, organisers of international conferences, and international businesses seeking opportunities will instead select countries with open visa policies for their meetings and vacations to provide easier access to their members and participants than countries with closed visa policies.

The 2024 Africa Visa Openness Report (AVOI) made some instructive recommendations for progressing the Africa visa openness agenda.¹⁷⁵ First, all AU members should extend visa-free travel policies to all member states, gradually moving from a visa before travel to a visa-on-arrival to visa-free entry, and progressively advancing to other phases of residence and establishment. In addition, member states should support the implementation of REC-wide visas that allow non-REC members to apply for a single visa that covers travel within another REC. Finally, member states can consider adopting a regional passport or accepting a national identity card to ease travel within a region, providing an African passport for business travellers and an African Union passport for all African citizens.

c Regional Infrastructural Development

The absence of infrastructure within RECs and between countries hampers deep connectivity, economic progression and the welfare of the citizens.¹⁷⁶ For one, the high cost of intra-regional trade has been linked to infrastructural deficits between regions. This is because inadequate shared cross-border infrastructure, such as a lack of transport, communication, water and power infrastructure, contributes to non-tariff barriers (NTBs) that hinder the movement of goods, people and capital across African borders.¹⁷⁷ These factors may impose additional unforeseen transactional costs on traders, leading to uncertainty and low intra-African trade.¹⁷⁸ The AfDB reports that Sub-Saharan Africa is the only region globally where road mass has deteriorated over the past two decades without concrete efforts at rehabilitation.¹⁷⁹ Conversely, studies have shown that the free movement of people can improve cross-border infrastructure, leading to an

171 Bisong *ECDPM Briefing Note 153* 6.

172 Gashaw “Colonial Borders in Africa: Improper Design and its Impact on African Borderland Communities” <https://africaupclose.wilsoncenter.org/colonial-borders-in-africa-improper-design-and-its-impact-on-african-borderland-communities/> (accessed 12-12-2023).

173 AfDB *Africa Visa Openness Report* (2024) 13.

174 Speaking at the 2023 Afreximbank Annual Meetings on 23 June 2023 in Accra Ghana.

175 AfDB *Visa Openness Report* (2024) 43.

176 African Union *Minimum Integration Programme* (2009) 24.

177 Bisong *ECDPM Briefing Note 1536*.

178 Bello-Schünemann *et al.* 2018 *Journal of Futures Studies* 52. *Ibid.*

179 AfDB *African Visa Openness* (2018) 10.

unhindered flow of goods, capital and services.¹⁸⁰ Special Economic Zones (SEZs) are examples of border projects that can leverage border towns' strategic economic locations to create greater "economic efficiency and infrastructural development spin-offs."¹⁸¹ They have the potential to stimulate intra-regional transport linkages and attract the presence of trade-related industries.

The AfDB estimated that the continent's infrastructure needs represent between USD 130 and USD 170 billion annually to close the financing gap of USD 68 to USD 108 billion.¹⁸² Most literature and commentators agree that concerted efforts should be made to invest in road networks, rail services, air transport and digital infrastructure to connect the continent sufficiently.¹⁸³ It is worth highlighting the initiative of the ECOWAS to create a borderless zone by leveraging regional infrastructure development as a catalyst for economic integration, focusing on the free movement of persons as the core ingredient since 2000.¹⁸⁴ The pilot projects consist of a two-rail link built along the Lagos–Cotonou–Lomé–Accra and Lagos–Niamey–Ouagadougou corridor. More recently, the AU established the Single African Air Transport Market (SAATM) as crucial logistical infrastructure to promote the successful implementation of the AfCFTA and complement the AU Free Movement Protocol.¹⁸⁵ Facilitating intra-African mobility is a vital pillar for the success of the SAATM, which 34 AU members have signed to date.¹⁸⁶ By enhancing air connectivity across the continent, more African passengers will experience a reduction in travel and waiting times by over 20 per cent.¹⁸⁷ This increase in connectivity is expected to drive growth and create jobs in the tourism sector.¹⁸⁸ The AU leaders' commitment to facilitating air connectivity reflects their understanding of the role of mobility in driving economic growth.

d Sustainable Border Management Approach

Sustainable border management practices require improved civil registration, integrated approaches, cooperation between national security agencies, and collaboration to tackle cross-border organised crimes. For instance, some African countries are hindered in implementing the free movement agenda as they do not possess the infrastructure to harmonise and implement internationally standard travel documents, which are the critical tools in implementing the free movement agenda. Moreover, specific administrative procedures at borders constitute NTBs, slowing down trade processes and the movement of people and limiting competitiveness. In addition, some government officials at the border possess limited knowledge of the regional immigration policies, which leads to the demand for several entry documents even when a visa-free policy has been adopted.

Member states are encouraged to collaborate to eliminate border practices hindering the free movement of goods and people through coordinated and harmonised border management practices. For instance, building one-stop border posts has reduced border post clearing times

180 AU/IOM 45.

181 SEZs developed by China and its neighbour Mongolia in the town of Erenhot located between China and Mongolia attracted significant proliferation of economic activities and clusters between 2002 to 2013. AU/IOM 45.

182 AFDB *Africa's Infrastructure: Great Potential but Little Impact on Inclusive Growth* (2018) 64.

183 Bisong *ECDPM Briefing Note 153* 6. Adeola 2019 *AHRYB* 44.

184 AU/IOM 45.

185 Established on 28th January 2018 at the 30th Ordinary Session of the AU Assembly held in Addis Ababa, Ethiopia by the Declaration (Doc. Assembly/AU/Decl.1 (XXIV)). SAATM Handbook.

186 "The Single African Air Transport Market (SAATM)" <https://www.iata.org/en/about/worldwide/ame/saatm/#:~:text=To%20date%2C%2034%20countries%20have,%2C%20Mozambique%2C%20Namibia%2C%20Niger%2C> (accessed 23-11-2024).

187 *The SAATM Handbook: Flying Agenda 2063* (2019).

188 AfDB *African Visa Openness* (2019) 6.

from three to five days to the same day.¹⁸⁹ In an OSBP, border-crossing formalities are undertaken in one place through coordinated action by the regulatory agencies of adjoining jurisdictions to facilitate seamless collaboration and coordination among multiple border agencies, enabling them to maximise operational efficiency. By bringing together all the regulatory institutions responsible for border-crossing control procedures in the same space, an OSBP eliminates the need for people and goods to undergo double stops during border-crossing formalities, thereby reducing border-crossing time and associated costs.¹⁹⁰ States can also implement policies to strengthen border management security systems and inspections in place of restrictive trade measures such as border closures. African countries should use such progressive measures to address the social menace associated with the free movement agenda, such as human trafficking, drug trafficking, terrorism, cross-border crimes, national security, public health concerns, and market distortions.

Government institutions involved in border management, including customs and immigration departments, should, therefore, undergo frequent training on implementing the AU Free Movement Protocol to ensure efficient service delivery towards the realisation of the free movement of people in Africa. Furthermore, border disputes between AU member states must be resolved to facilitate the free movement of people within Africa. This is necessary for cooperative border management.

e Regional Security

Another fundamental issue militating against the free movement of people and goods on the continent is the challenge of regional security. Most member states reluctance to adopt the AU Free Movement Protocol stems from the fear of insecurity arising from international terrorism and organised crimes, such as human trafficking, arms dealing, drug trafficking and smuggling.¹⁹¹ While it is beyond doubt that the security threat is real, there is limited empirical evidence to support the position that relaxing visa restrictions will bring more significant danger to national security than already done by nationals.¹⁹² Visas were initially considered a necessary security measure to address the challenge of suspected illegal travellers who could threaten national security.¹⁹³ However, evidence from countries¹⁹⁴ practising open visa regimes has proven otherwise. For instance, Rwanda reported that its open visa regime did not bring more significant security challenges, as only 0.045 per cent of travellers visiting the country in 2014 could potentially be suspects of trans-border crimes.¹⁹⁵

It is submitted that regional security concerns can be effectively addressed by collaborations with member states to tackle both the root causes and impact of insecurity. A 2018 PSC Communique supports this position by encouraging member states to engage their security services to undertake joint border tactical and operational measures with neighbouring countries

189 An OSBP is a single border crossing point jointly managed by adjoining partner states. UNECA 72.

190 EAC *Trade and Investment Report* (2020) 3. One-Stop Border Post Source Book (2016).

191 Adeola 2019 *AHRYB* 274. AU/IOM 64.

192 AfDB *African Integration Report* (2021) 108.

193 AU/IOM 65.

194 Examples are Rwanda, Seychelles and Mauritius. AU/IOM 65.

195 Rwanda extended visa-free access to the citizens of all African Union member states in 2023.

to tackle illegal migration and transnational crimes.¹⁹⁶

6 CONCLUSION

The interplay between the AfCFTA and the freer movement of people is crucial for realising a truly integrated and prosperous Africa. This article has elucidated the vital role that free movement plays in facilitating trade, fostering economic growth, and enhancing regional cooperation. The benefits of unrestricted movement extend beyond mere economic advantages; they encompass cultural exchange, improved educational opportunities, and strengthened social ties among African nations. Despite its evident importance, the apparent lack of enthusiasm among AU member states to ratify the AU Free Movement Protocol poses a significant threat to the effectiveness of the AfCFTA. Addressing this issue requires a concerted effort that includes raising awareness about the mutual benefits of free movement, implementing supportive policies, and harmonising existing legal frameworks. Only by eliminating obstacles to movement can the full potential of the AfCFTA be unlocked, promoting a single market and a united African community. Ultimately, placing individuals at the centre of Africa's regional integration goals is not just a strategic choice but a moral imperative. As the continent strives towards self-reliance, the Free Movement Protocol's successful integration with the AfCFTA's objectives will be foundational to achieving the aspirations outlined in the AU Agenda 2063. By embracing the idea of free movement, Africa can pave the way for sustainable development, enabling its people to embark on a journey towards a more integrated, prosperous, and resilient future.

In conclusion, while the Free Movement Protocol has yet to see significant engagement, the strides achieved through regional, bilateral, and unilateral initiatives underscore a commitment to enhancing regional mobility and cooperation. These developments highlight the need for a freer, step-by-step, progressive strategy to boost African mobility. Embracing this approach will lead to greater connectivity and opportunity for all.

196 Communique of the AU Peace and Security Council on the African Migrant's Crisis the 771st meeting: Imperative for Expediting Free Movement Policy in Africa (2018).