

# African Continental Initiatives for Mobility:

How the African Union Protocol on the Free Movement of Persons and the African Continental Free Trade Agreement facilitate the mobility of people in Africa



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# List of Abbreviations

<b>ACHPR</b>	African Court on Human and Peoples' Rights
<b>ACoJ</b>	African Court of Justice
<b>ACJHR</b>	African Court of Justice and Human Rights
<b>AEC</b>	African Economic Community
<b>AfCFTA</b>	African Continental Free Trade Area
<b>AfCHPR</b>	African Charter on Human and Peoples' Rights
<b>AfDB</b>	African Development Bank
<b>AU</b>	African Union
<b>AUC</b>	African Union Commission
<b>AQF</b>	African Qualification Framework
<b>EAC</b>	East African Community
<b>ECOWAS</b>	Economic Community of West African States
<b>eVisas</b>	electronic visas
<b>FAL</b>	Final Act of Lagos
<b>GCM</b>	Global Compact for Migration
<b>HHS</b>	Department of Humanitarian and Social Development
<b>IOM</b>	International Organisation for Migration
<b>ICBTs</b>	Informal cross-border traders
<b>JLMP</b>	Joint Labour Migration Programme
<b>LPA</b>	Lagos Plan of Action
<b>MIDWA</b>	Migration Dialogue for West Africa
<b>MIGRA</b>	Migration Governance Reform in Africa
<b>MIDSA</b>	Migration Dialogue for Southern Africa
<b>MPFA</b>	Migration Policy Framework for Africa
<b>OAU</b>	Organisation of African Unity
<b>PAFOM</b>	Pan-African Forum on Migration
<b>PAP</b>	Pan African Parliament
<b>PRC</b>	Permanent Representatives Committee
<b>RCPs</b>	Regional Consultative Processes
<b>RECs</b>	Regional Economic Communities
<b>SADC</b>	Southern African Development Community
<b>SDG</b>	Sustainable Development Goals
<b>STC</b>	Specialised Technical Committees
<b>UK</b>	United Kingdom
<b>UNDESA</b>	United Nations Department of Economic and Social Affairs
<b>UDHR</b>	Universal Declaration of Human Rights

# Executive Summary

The free movement of people, a cornerstone of African integration, is crucial to the continent's developmental aspirations. This was underscored in 2018 when African leaders adopted 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). The preamble of the Free Movement Protocol articulates the numerous tangible and intangible benefits of facilitating the movement of Africans within the continent. It states that 'the free movement of persons, capital goods and services will promote integration, and Pan-Africanism, enhance science, technology, education, research and foster tourism, facilitate inter-African trade and investment, increase remittances within Africa, promote mobility of labour, create employment, improve the standards of living of the people of Africa and facilitate the mobilisation and utilisation of the human and material resources of Africa to achieve self-reliance and development'. Despite this, the Protocol has not garnered significant support, with only four ratifications and 32 signatories. The Protocol requires 15 country ratifications for it to be enforced.

In light of the above, the New South Institute's Migration Governance Reform in Africa (MIGRA) programme launched a study to map out viable pathways for improving the ease of movement and settlement and the quality of migration management by Africans across African borders. This study discusses the migration governance framework in the African Union (AU) as part of eight planned case studies. It aims to describe and analyse how and where progress has been made and highlight what strategies have supported reform and what factors inhibit progress within the AU context.

The AU has pursued the free movement of Africans in Africa since its formation, when it adopted the commitment of the Organisation of African Unity (OAU) to free movement as embodied in the Abuja Treaty of 1991. A framework for migration policy was adopted in 2006, and in 2018, a protocol on the free movement of persons was agreed at the leaders' summit. However, the continental programme has stuttered, with states focusing on national, bilateral and regional migration reform processes rather than the continental process for free movement. Also in 2018, the African Continental Free Trade Agreement (AfCFTA) was adopted at the leaders' summit. The AfCFTA focuses on trade but has many dimensions, including a provision for the freer movement of some categories of travellers in Africa. The AfCFTA has a great deal of formal support and a strong secretariat that is driving it forward. The paper concludes that Africa's migration governance approach must be driven simultaneously on several fronts, including at the AU level.

## 1. Introduction

Migration has long been a defining feature of human existence, shaping societies, economies and cultures across the globe. In Africa, migration dynamics are particularly complex and influenced by many factors, including historical legacies, economic opportunities and socio-political contexts. The common narrative or perception of migration in Africa, as highlighted by Flahaux and De Haas, is one of ‘mass displacement and migration caused by poverty and violent conflict and influenced by media images of massive refugee flows and boat migration’.<sup>1</sup> Concern about misleading perceptions was reiterated in the first edition of the African Union (AU) and International Organization for Migration (IOM) African Migration Report.<sup>2</sup> That report described the ‘reality of how Africans move, noting migration does not happen in response to the colonial border but to local and regional histories and imperatives, and the need to recognise these historical movements’.<sup>3</sup> In this report we take as our starting point that most Africans move for practical reasons and often over relatively short distances within their country or region.<sup>4</sup> The critical concern of this report is to assess the extent to which the collective African objective of the seamless movement of Africans within Africa has been achieved and to what extent continental interventions have contributed to migration policy reform within Africa.

Africa is the second-most populous continent, estimated to be around 1.5 billion in 2024. Its population is growing at roughly 2.3–2.5% per year, so it could double within the next three decades, reaching approximately 2.5 billion by 2050.<sup>5</sup> One of the continent’s most distinctive demographic features is its youth; the median age is about 19 years, and most Africans are under 25.<sup>6</sup> While Africa’s youthful demographic profile presents a significant asset for future growth, unemployment remains a challenge.<sup>7</sup> A 2020 Mo Ibrahim Joint Research Paper notes that,

*In 2019, the unemployment rate among 15 to 24-year-olds in Africa was 13.4%, more than twice as high as for those older than*

*25 (6.1%). In some countries, such as South Africa, Libya, Mozambique, and Namibia, youth unemployment rates are above 40.0%. Even higher education does not offer better job prospects, and unemployment rates tend to be higher among young people with advanced levels of education than those with basic education.<sup>8</sup>*

As the continent increasingly seeks to integrate and harness its human capital for sustainable development, the governance of migration has emerged as a critical area of focus. Within this framework, the AU has made significant strides in recent years, notably through the adoption of several migration-related regulatory frameworks like the revised Migration Policy Framework for Africa (MPFA), the Action Plan (2018–2030), and the Protocol to the Treaty Establishing the African Economic Community Relating to the Free Movement of Persons, Right of Residence and Right of Establishment (commonly referred to as the Free Movement of Persons Protocol or FMP) in 2018.<sup>9</sup> The Agreement establishing the African Continental Free Trade Area, 2018 (AfCFTA Agreement) offers a rules-based system influential to the movement of service providers, and this aspect will be discussed substantively in subsequent sections. Notably, these policies are rooted in the Treaty Establishing the African Economic Community (Abuja Treaty), which prescribes establishing the African Economic Community (AEC).<sup>10</sup>

This paper aims to analyse the migration governance framework in Africa, emphasising the intersection of human mobility underpinned by the AU Free Movement of Persons Protocol with trade as enabled by the AfCFTA Agreement. As noted by Hoffmeyer-Zlotnik, ‘deepening trade relations and increasing human mobility are two of the most visible consequences of heightened globalisation, and international mobility of persons is both a consequence of and a prerequisite for the global trade of goods and services’.<sup>11</sup> The AfCFTA, launched in the same year, represented a significant step towards eliminating barriers to trade and promoting economic integration across the continent. The effective implementation of these frameworks depends on the freer

movement of people, which can be crucial for promoting trade and improving the overall competitiveness of African economies. In 2017, the Peace and Security Council of the AU acknowledged that the benefits of allowing Africans to freely move across African borders outweighed the real and imagined economic and security challenges that such a reform might pose.<sup>12</sup>

Despite the potential benefits of these agreements, the AU Free Movement of Persons Protocol has struggled to gain traction, with a limited number of ratifications compared to the widespread endorsement of the AfCFTA. As of this writing, the AfCFTA Agreement has been signed by 54 countries (except Eritrea) and ratified by 49 countries,<sup>13</sup> while the AU Free Movement of Persons Protocol has been signed by 32 countries and ratified by only four countries.<sup>14</sup> It requires ratification by 15 countries to enter into force.<sup>15</sup> This disparity raises essential questions about the underlying challenges constraining the realisation of the free movement of people in practice. By examining these intertwined frameworks, this paper highlights the potential pathways for enhancing mobility across African borders, considering how successful migration governance can contribute to individual African countries and broader continental development goals. By evaluating applicable policies, implementation, efficacy and discursive gaps, this paper provides a nuanced understanding of the intersection between migration and trade in Africa and the interdependent pathways to achieving the free movement of people within Africa.

Recent global developments, including the protectionist policies towards migration and trade adopted in powerful developed countries, make the issue of achieving greater African integration in trade and migration (and the movement of capital) even more urgent. While global opportunities may shrink, even temporarily, greater integration of African markets for goods, services, capital and labour would enhance Africa's economic and

social development opportunities.

This paper will first sketch the historical context for migration in Africa and the history of the AU and examine the significant trends and patterns influencing contemporary population movement across the continent. Following this discussion, the paper will analyse Africa's migration governance framework, particularly emphasising the roles of the AU Free Movement of Persons Protocol and the AfCFTA Agreement. A critical assessment will explore the relationship between these legal frameworks and their implementation, highlighting the political and economic factors that affect migration governance. Further, the paper will reflect on the successes and shortcomings observed in advancing these frameworks, concluding with the challenges and opportunities ahead. Ultimately, this paper aims to provide insights into how Africa can effectively leverage migration as a critical driver for development. It emphasises the importance of collective action and commitment among member states to realise the continent's integration aspirations.

## 2. Research Methodology

As with the earlier papers in the MIGRA programme, this study uses a mixed-methods approach to gather extensive data on the research topic. The research design primarily involves desktop research, using existing literature, reports and datasets from reputable sources, including our earlier reports.<sup>16</sup>

Furthermore, a qualitative component is integrated into the research through semi-structured interviews with selected individuals. These interviews provide valuable first-hand perspectives and insights from key stakeholders with direct experience relevant to the research questions. By combining desktop research with targeted interviews, this research design aims to comprehensively understand the topic, drawing on both existing knowledge and first-hand accounts to inform the analysis and conclusions. Towards the end of the paper, we deploy political economy

and a gap analysis as analytical filters for the accumulated material.

The following section of the paper gives a brief history of the AU and examines the trends and patterns of migration on the continent.

### 3. Brief History of Migration in Africa and the African Union (AU)

African migration is multifaceted and deeply intertwined with the continent's socioeconomic, political and cultural dynamics. Adepoju notes that long-standing migration history and patterns have characterised Africa. As he succinctly notes, 'people of Africa are perpetually on the move, perhaps more so than other regions in the world'.<sup>17</sup> Understanding this history is vital for comprehending contemporary migration trends and governance frameworks, which will be discussed in subsequent sections.

From the pre-colonial and colonial context, as highlighted by Hirsch, the trans-Saharan trade routes that connected North and West Africa, for instance, brought about mobility across geographic boundaries.<sup>18</sup> These early migrations were often seasonal, shaped by trade reliant on agricultural commodities.<sup>19</sup> The colonial period and the systematic use of forced labour and recruitment have shaped contemporary African migration patterns, with the imposition of artificial boundaries that fragmented ethnic groups.<sup>20</sup> With colonialism, as noted by Adeola and others, 'movements in the colonial state were patterned along economic opportunities'.<sup>21</sup> For example, the exploitation of mineral resources in Southern Africa led to the development of migrant labour systems in South Africa,<sup>22</sup> where movements of people, both internally and regionally, were racialised and restricted for political reasons.<sup>23</sup> In West Africa, after the abolition of the slave trade, labourers from interior regions were persuaded to work on plantations in the coastal part of the region.<sup>24</sup>

Since the wave of independence in the 1960s, population movements have been largely

shaped by regional economic, political, social and environmental factors. Civil wars, ethnic conflicts and political instability in countries like Nigeria, Sudan and Somalia have caused massive displacement of populations, leading to the growth of refugee communities both within Africa and abroad.<sup>25</sup> Environmental and economic migration has also become a defining feature of contemporary African migration, with movement occurring within and outside the continent in search of better opportunities, particularly in regional hubs such as Nigeria.<sup>26</sup>

The critical evaluation of Africa's migration history reveals a complex interplay of factors influencing migration patterns over time. Flahaux and De Haas move beyond the focus on 'push factors like poverty, demographic pressure, conflict and environmental degradation; migration can be viewed as a function of people's aspirations and capabilities'.<sup>27</sup> While migration has the potential to contribute positively to development,<sup>28</sup> challenges persist, particularly in governance. Adeola observed,

*Shortly after independence, mobility in Africa became a function of independent states' regulation, curated through immigration controls with limited pathways for access. However, one of the consequences of these limited pathways has been that migration has become a much-contested issue and increasingly has become a growing concern for policymakers within and outside the continent.<sup>29</sup>*

As Africa seeks to enhance its economic integration and development trajectory and leverage its human capital, a holistic, inclusive approach to migration governance that creates accessible pathways towards mobility is essential. Recognising the value of trends and patterns of increased intra-continental movement, creating supportive legal frameworks and effectively managing cross-border flows are pivotal for fostering a more seamless migration experience for Africans. The AU aims to create this governance architecture on a continental scale. Before

examining the governance frameworks, a brief history of the AU will be outlined in the subsequent paragraphs.

As an organisation, the AU is a testament to Africa's quest for unity and collective progress. Its roots can be traced back to the initial formation of the Organisation of African Unity (OAU) in Addis Ababa, Ethiopia, on 25 May 1963.<sup>30</sup> The OAU aimed to promote unity and solidarity among African states, coordinate development efforts and eradicate all forms of colonialism from the continent.<sup>31</sup> However, while the OAU played a crucial role in supporting liberation movements and achieving its objective of liberating the continent, it faced criticism for its leadership, limited capacity to intervene in member states' internal affairs and perpetuating political tyranny, often labelled as the dictators' club.<sup>32</sup> The Lagos Plan of Action (LPA) for Economic Development in Africa, initiated in 1980, along with the Final Act of Lagos (FAL) from 1981, represents significant strides made under the OAU towards shaping a robust economic future for Africa.<sup>33</sup> These visionary frameworks emphasise the importance of collective self-reliance and lay the groundwork for establishing the AEC.<sup>34</sup> These commitments were consolidated in the 1991 Abuja Treaty, which provided clear steps for achieving the AEC.<sup>35</sup>

Notwithstanding these developmental blueprints, the Sirte Declaration, adopted on 9 September 1999, called for a revised institution, acknowledging the need for a more robust organisation that recognises and accommodates the independent African states' reality.<sup>36</sup> Subsequent summits in Lomé (2000) and Lusaka (2001) facilitated the adoption of the AU's Constitutive Act and laid out plans for its operationalisation.<sup>37</sup> The AU was officially launched in Durban, South Africa, on 9 July 2002. It succeeded the OAU and inherited its mandate under the Abuja Treaty to promote peace, security and development across the continent.<sup>38</sup> Notably, in the fifth integration phase, the Abuja Treaty aimed to create an African common market

within four years, from 2019 to 2023.<sup>39</sup> A highlight of this African common market is promoting 'free movement for people' and recognising their rights to reside and establish themselves across the continent.<sup>40</sup>

The following section briefly discusses the continent's migration trends, patterns and governance frameworks.

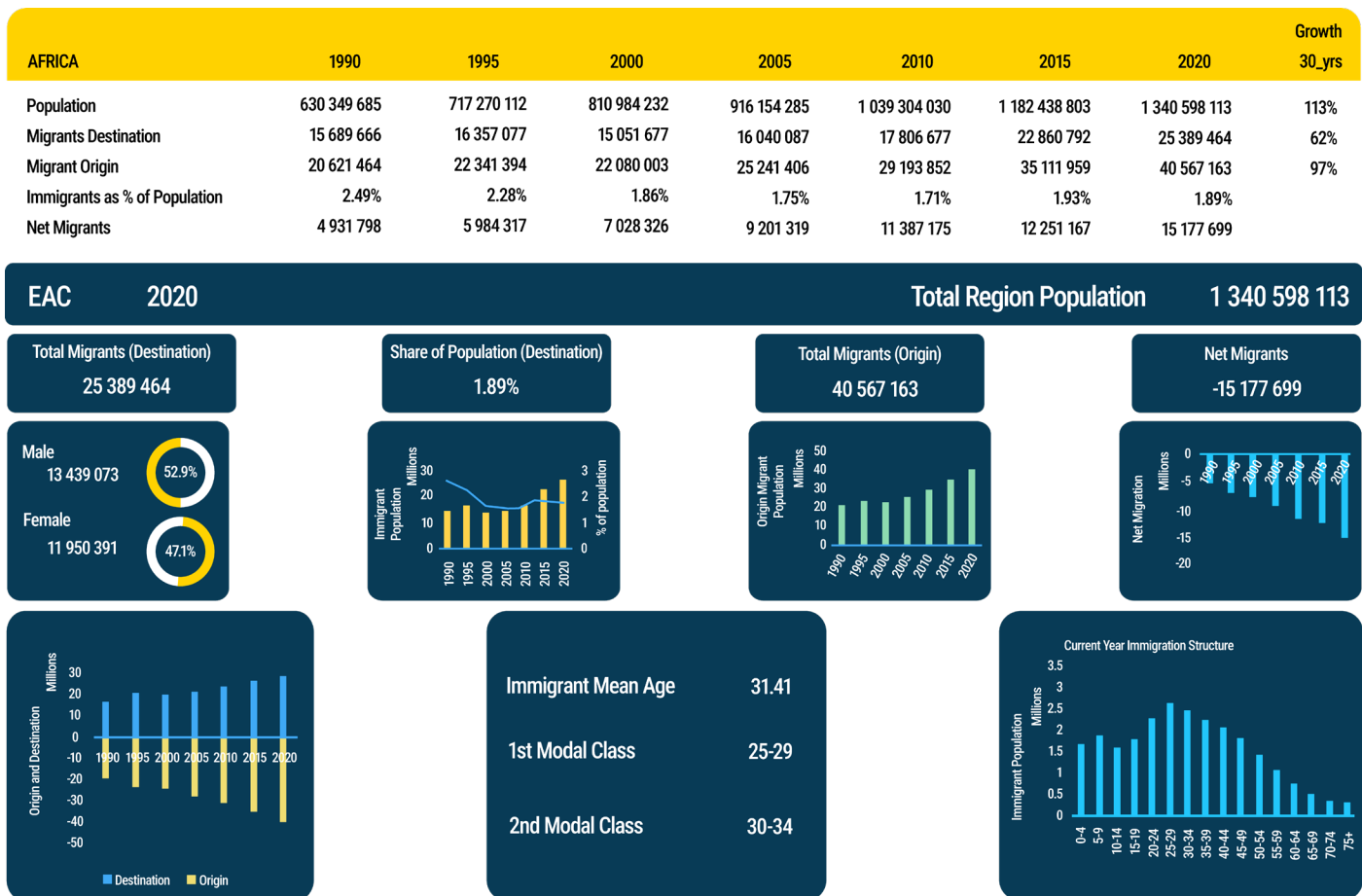
#### 4. Migration Trends and Patterns in Africa

The data widely used in this section is from the United Nations Department of Economic and Social Affairs (UNDESA) data for 2020. Findings are also based on data like the IOM/AU second edition 'Africa Migration Report' 2024.<sup>41</sup> As Figure 1 below suggests, Africa's population has grown markedly over the past 30 years, increasing to approximately 1.34 billion in 2020. The estimated stocks of African immigrants and emigrants, including those from other African countries, rose

respectively by 62% (25.4 million) and 97% (40.6 million) between 1991 and 2020. However, migrant density as a proportion of the total population was relatively low in 2020, at only 1.89%, as seen in Figure 1 below.

Figure 1 presents an overview of migration trends, focusing on African migration globally and within Africa. It indicates that 9% of the total global migrant population (280.6 million) had migrated to or within Africa. The number of emigrants from Africa outnumbered immigrants to Africa by 15.1 million.<sup>42</sup>

Figure 1 Summary of crucial Africa's statistics and trends

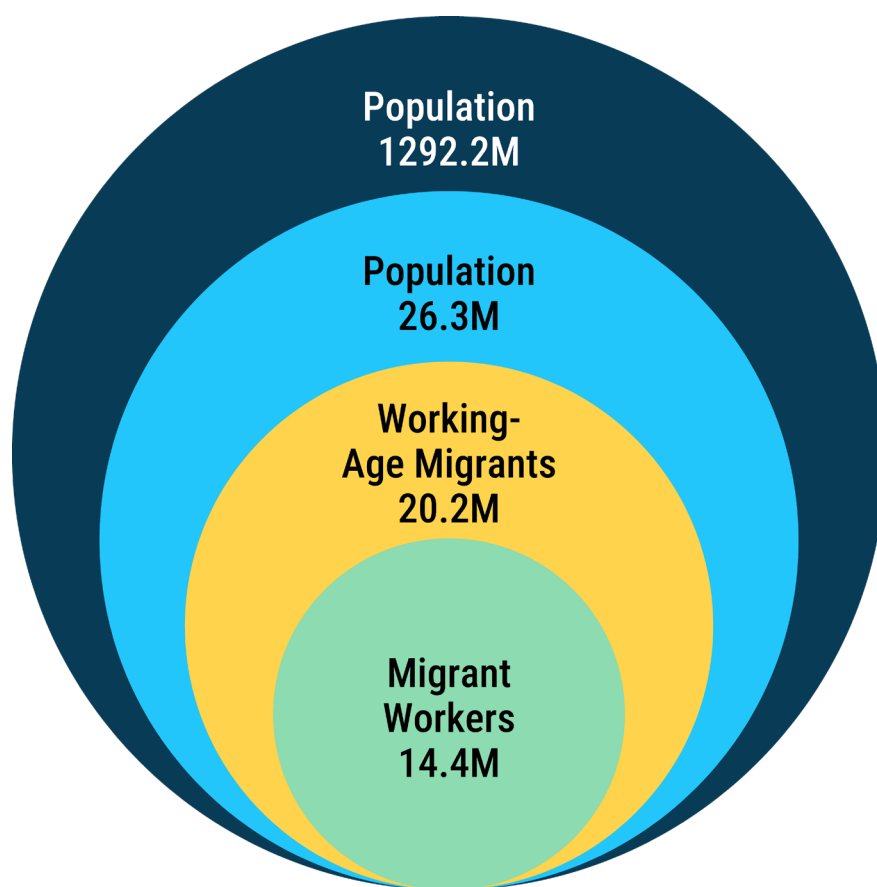


Source: Mutava, 2023

The age profile of migrants is young, with a mean age of 31.4 years and the largest age groups being in the 25–29 and 30–34 age groups. The gender composition of Africa’s immigrant population is close to parity, with males slightly outnumbering females at 52.9% of the continent’s migrant stock in 2020. This youthful demographic aligns with the continent’s population structure but signals an economic opportunity if managed strategically.<sup>43</sup> The youthful demography

represents a potential labour force that could drive economic growth. Policies should aim to harness this potential by facilitating labour mobility within the region, recognising skills across borders and fostering industries capable of absorbing this labour domestically and regionally. Figure 2 shows the high proportion of African migrants of working age in 2019, including those who are recorded as working.

Figure 2: Total migrants, working-age migrants and migrant workers in Africa (2019)  
Volume does not indicate proportion

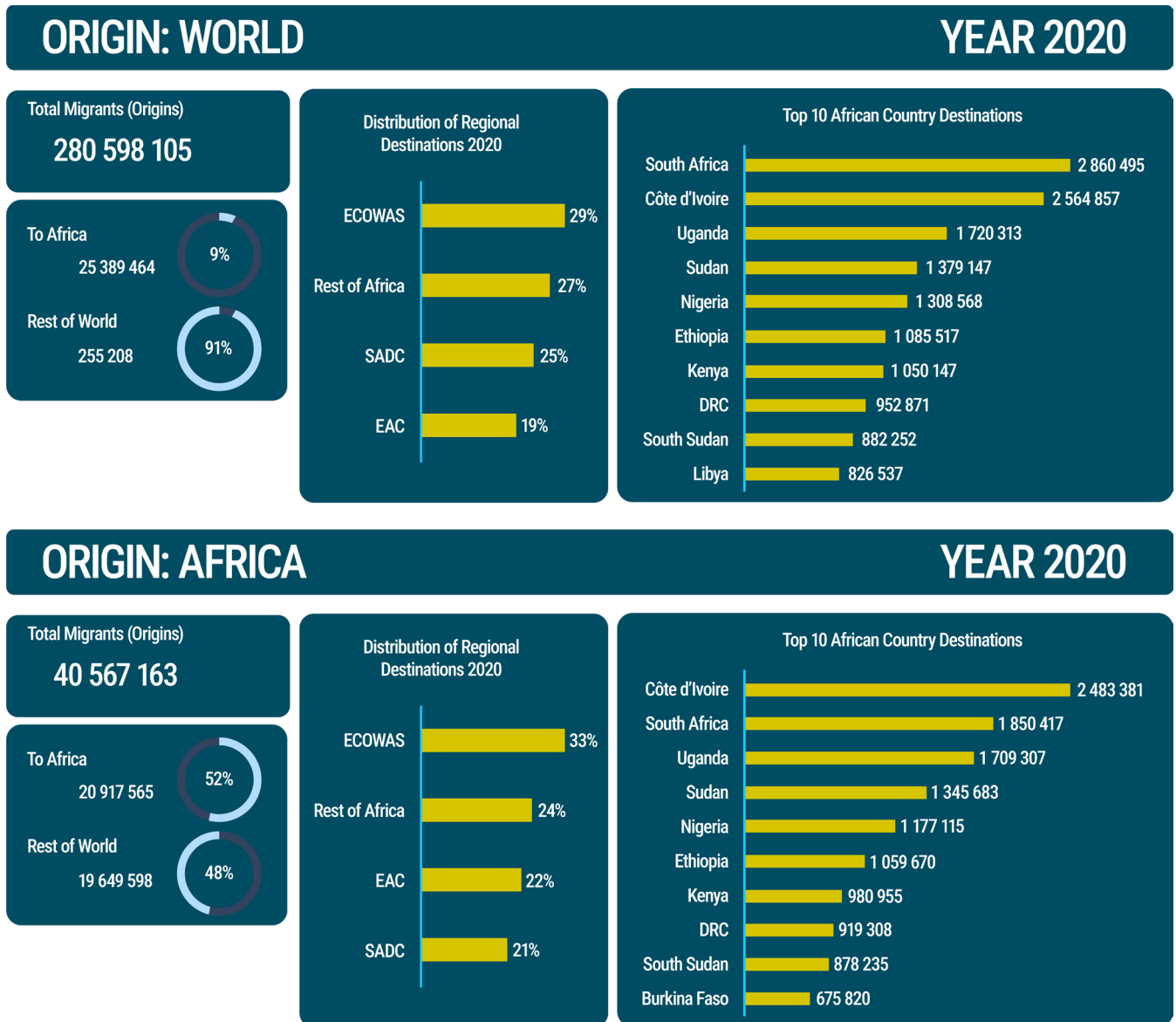


Source: Mutava, 2023 Figure 61

As shown in Figure 3, of 280 million global migrants, only 9% resided in Africa. Further, of 40.6 million emigrants with African origins as of 2020, an estimated 52% (20.9 million)

had their destinations within Africa, leaving an estimated 49% (19.6 million) who had migrated outside the continent.

Figure 3: Origin analysis of African migrants

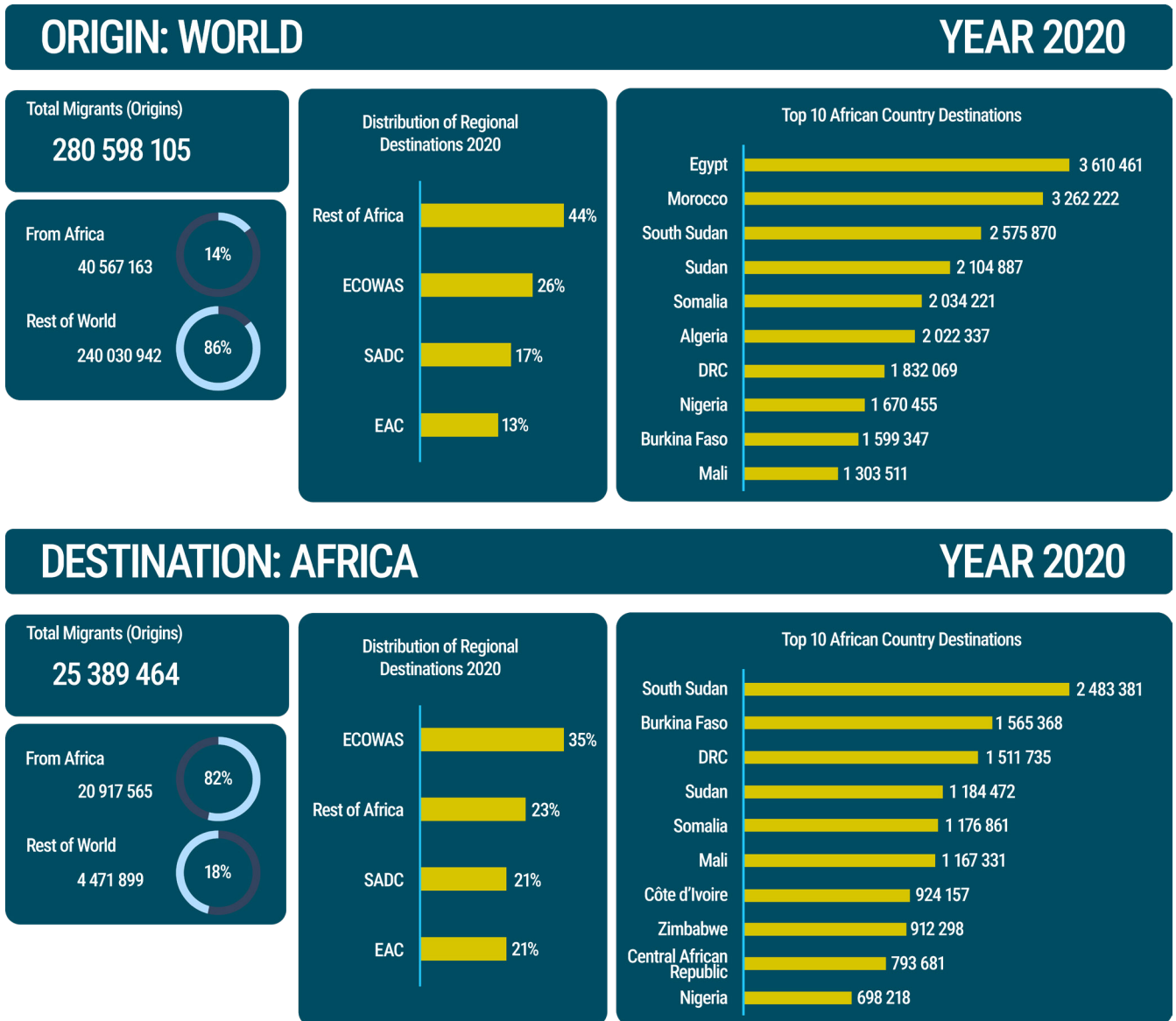


Source: Mutava, 2023

Significant destinations include Côte d'Ivoire, South Africa, Uganda, Sudan and Nigeria, reflecting regional migration dynamics driven by varied factors, such as economic opportunities, political stability and existing migration networks. Notably, Côte d'Ivoire also ranked as the top destination for intra-African migration, with nearly 2.5 million migrants showcasing its role as a migration hub within the Economic Community of West African

States (ECOWAS). South Africa and Uganda are major destinations within the Southern African Development Community (SADC) and East African Community (EAC) respectively.

Figure 4 Destination analysis of African migrants

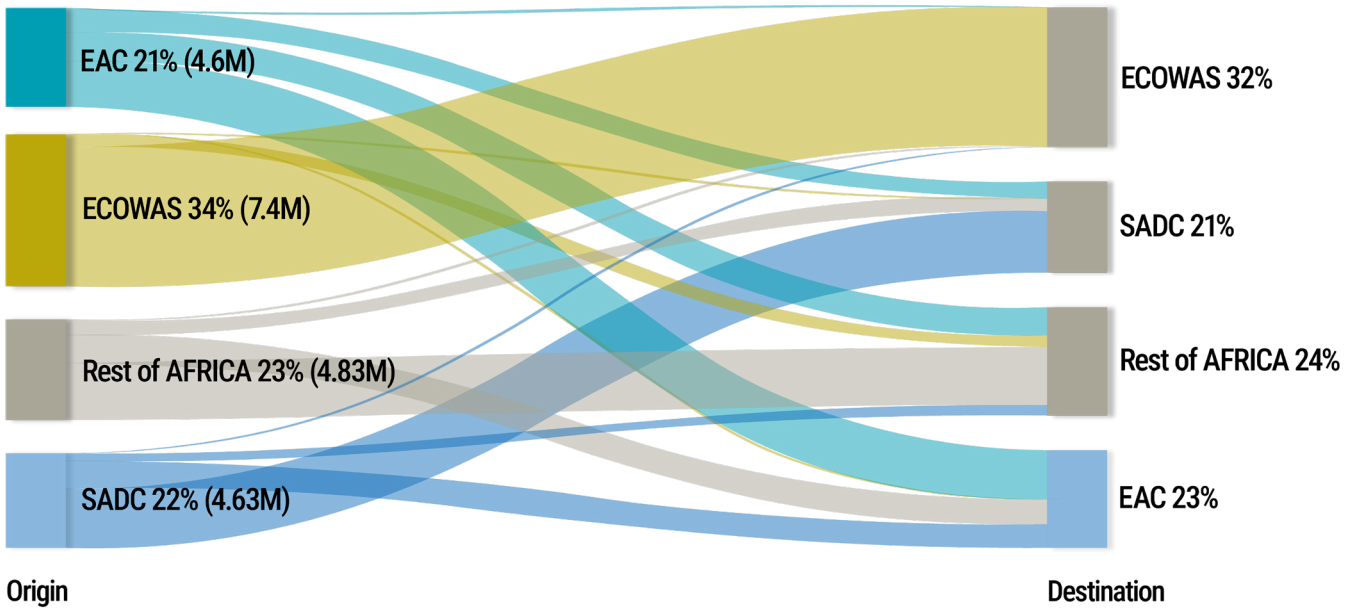


Source: Mutava, 2023

Figure 4 gives context to the destination of African immigrants in 2020; most of the estimated 25.3 million immigrants in Africa (82%) originated within the continent, with 18% originating outside Africa.

The breakdown of migration from African regional blocs in Figure 5 shows that ECOWAS contributes a significant proportion of intra-African migrants at 35%.

Figure 5: Regional migration dynamics within Africa



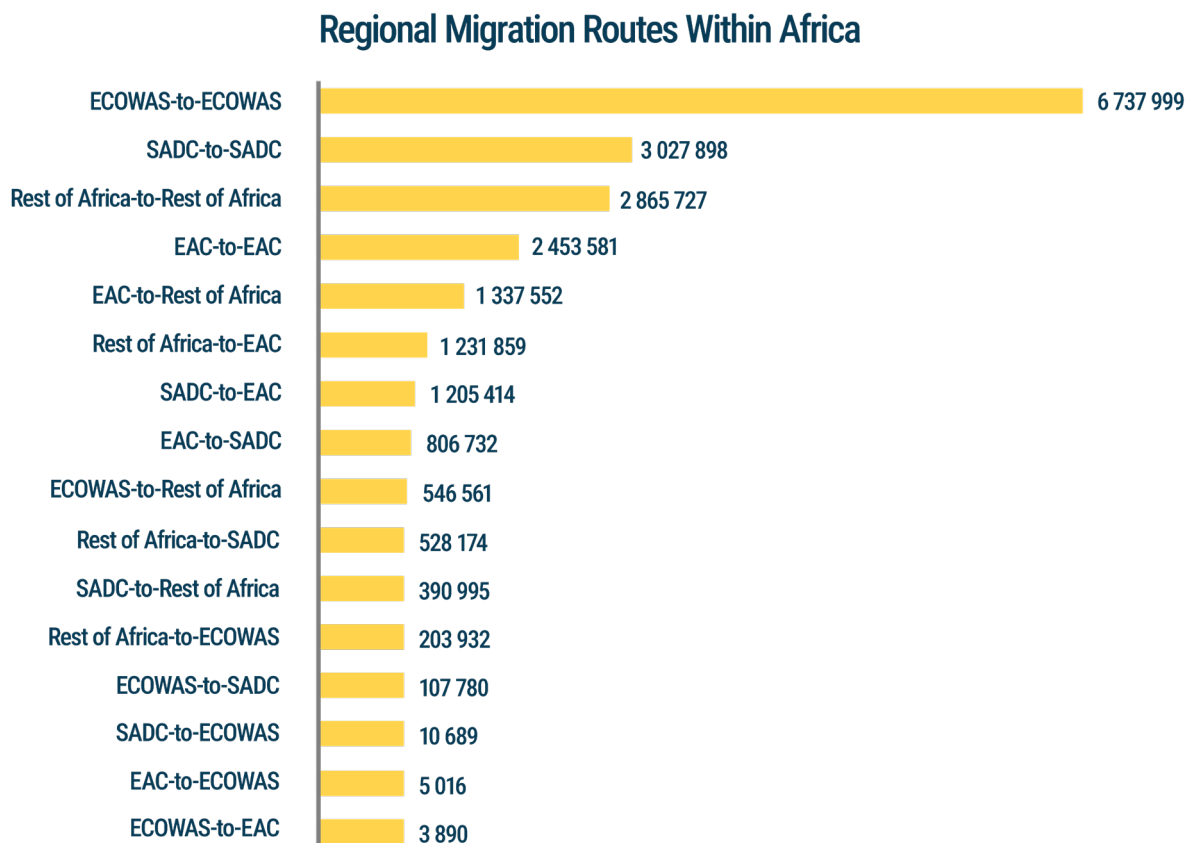
Source: Mutava, 2023

As Figure 5 also shows, intra-regional migration is most prevalent in ECOWAS, followed by SADC, the rest of Africa and EAC. Conversely, EAC is strongly involved in inter-regional migration, notably to or from the rest of Africa and SADC. Although ECOWAS has very high intra-regional migration, it appears

isolated, as its interaction with other regions is low.

Specifically, ECOWAS to EAC is negligible and is the least popular regional migration route, as seen in Figure 6 on the following page.

Figure 6: Regional migration routes within Africa



Source: Mutava, 2023

Significant intra-regional movement within West Africa underscores the mobility pattern within ECOWAS, facilitated by the region's free movement policies and longstanding historical ties and mobility.<sup>44</sup> The SADC-to-SADC flow is the second largest, with over 3 million intraregional migrants. Like ECOWAS, the movement within SADC points to established migration routes within Southern Africa, often driven by historical and economic factors, particularly labour migration to countries like South Africa, which acts as a regional economic hub.<sup>45</sup> The EAC-to-EAC migration flow of approximately 2.45 million migrants further highlights a significant intra-regional movement within East Africa. However, if we include surrounding states and recently joined members of the EAC, the number of migrants is much higher – the

recorded number of refugees located in the EAC, almost entirely from countries in the neighbourhood, reached 5.69 million in March 2025.<sup>46</sup>

The distribution of migration flows reveals that intra-regional movement is generally more common than inter-regional movement, with migrants primarily moving within their regions. Inter-regional routes are still significant, though smaller in scale, and they show that people also migrate across regional boundaries due to various push and pull factors.

An emerging trend in contemporary migration governance is outsourcing migration and asylum processing by European nations to African countries.<sup>47</sup> This is exemplified by the United Kingdom's (UK) now defunct

agreement with Rwanda. Under this arrangement, individuals seeking asylum in the UK were to be relocated to Rwanda for their asylum applications to be assessed, with successful applicants granted asylum in Rwanda rather than the UK.<sup>48</sup> Similar agreements were considered elsewhere, and reports indicate that the UK approached Botswana for comparable agreements, although Botswana declined the proposal.<sup>49</sup> In Germany, discussions were held about outsourcing asylum applications to African countries, with proposals to establish offshore processing centres in countries like Rwanda.<sup>50</sup> Similarly, the US recently discussed the possibility of locating unwanted immigrants in Rwanda and Libya.<sup>51</sup> These developments underscore a growing reliance on third-party states to manage asylum seekers or locate unwanted immigrants, raising critical legal and human rights questions and the long-term implications for global migration governance.

Recently, the United States intensified restrictive immigration measures, excluding all 54 African countries from the 2025 Visa Waiver Program.<sup>52</sup> This exclusion underscores a broader pattern of stringent immigration policies, as evidenced by the administration's contemplation of extensive travel bans affecting numerous countries, predominantly in Africa and the Middle East.<sup>53</sup> This trend towards more insular immigration policies among Western nations raises critical questions about international cooperation and highlights the importance of prioritising regional collaboration to manage migration effectively. Africa may need to assert greater agency in its migration governance, ensuring that policies are self-sustaining and aligned with the continent's developmental goals.

The subsequent section of this paper examines the migration governance frameworks in Africa.

## 5. Africa's Migration Governance Framework

The movement of people in Africa can be viewed within the context of human rights and

the regional integration process towards a common market and economic development. From a human rights perspective, Article 12 of the African Charter on Human and Peoples' Rights (African Charter) guarantees the right to free movement of persons. Expressly, this provision underscores that

1. Every individual shall have the right to freedom of movement and residence within the borders of a state, provided he abides by the law.
2. Every individual shall have the right to leave any country, including his own, and to return to his country. This right may only be subject to restrictions provided by law to protect national security, law and order, public health or morality.<sup>54</sup>

Jurisprudence from the African Court on Human and Peoples' Rights (ACHPR) and the African Commission on Human and Peoples' Rights, a quasi-judicial body, has emphasised the relevance of this right. Some cases from the Court on Human and Peoples' Rights will be explored in more detail later on. Notably, in *Rencontre Africaine pour la Défense des Droits de l'Homme v Zambia*, the Commission stressed that Article 12 of the Charter imposes an obligation on the contracting State to secure the rights protected under the Charter for all parties within their jurisdiction, nationals or non-nationals alike.<sup>55</sup>

The Abuja Treaty of 1991 under Article 4(2) (h)-(i) and Article 43 commits member states to 'establish a common market and gradually remove obstacles to the free movement of persons, goods, services, and capital and the right of residence and establishment'.<sup>56</sup> Further, it obligates member states to 'either through bilateral, regional or unilateral means, take the necessary measures to achieve progressively the free movement of persons, and to ensure the enjoyment of the right of residence and the right of establishment by their nationals within the African Economic Community'.<sup>57</sup>

Considering these commitments, this section

expounds on the extant migration governance frameworks at the continental level, focusing on four relevant legal frameworks within the AU: the MPFA and Plan of Action, the Joint Labour Migration Programme (JLMP) and the AU Free Movement of Persons Protocol. These frameworks are crucial to this discussion. Further, the AfCFTA Agreement will be discussed, underscoring the intersection and importance of people's movement in actualising the objectives of the AfCFTA Agreement.

### **5.1 The Migration Policy Framework for Africa (MPFA) and Plan of Action (2018–2030)**

The MPFA and Plan of Action outline the AU's approach to governing migration. The MPFA was first adopted by the AU Executive Council in 2006. Subsequently, in 2018, it was revised to reflect prevailing migration dynamics on the continent and address the challenges associated with cross-border migration. This revision came with adopting the AU Free Movement of Persons Protocol in 2018, which will be examined in greater detail.

The MPFA is a strategic and forward-thinking document that provides comprehensive guidance to AU member states and Regional Economic Communities (RECs) on managing migration effectively and leveraging its potential to contribute to development.<sup>58</sup> The MPFA integrates key global and regional initiatives, including the Sustainable Development Goals (SDGs), the AU Agenda 2063 and the Global Compact for Migration (GCM), reflecting its recognition and alignment with international norms and ensuring it remains relevant to contemporary migration challenges.<sup>59</sup>

The policy framework is notable for its broad scope, addressing migration governance, labour migration, diaspora engagement, border governance, irregular migration, forced displacement, internal migration and migration's intersection with trade.<sup>60</sup> By encompassing such diverse themes, it underscores the multi-dimensional nature of

migration and the desire for holistic policy responses. Furthermore, the emphasis on cross-cutting issues, such as gender, children, the environment and human rights,<sup>61</sup> demonstrates a commitment to inclusive policy responses, ensuring that migration policies are all-encompassing and cater to the most vulnerable groups. Further, the MPFA's explicit focus on trade and facilitating the free movement of persons highlights its ambition to harness migration as a driver of economic growth. By linking migration governance to the AfCFTA and the AU Free Movement of Persons Protocol, the policy framework underscores the transformative potential of the movement of people to achieve economic integration.<sup>62</sup> Further, the MPFA acknowledges the role of reliable migration data in crafting evidence-based policies.<sup>63</sup>

Despite its strengths, the policy framework faces significant challenges, particularly regarding implementation. While the framework provides detailed objectives and recommendations across various themes, there is an evident gap in establishing robust mechanisms for monitoring and evaluating progress and resource mobilisation across member states. These aspects are to be determined by states or regions based on their migration policies and dynamics.<sup>64</sup> Arguably, this shortfall with no baseline guidelines or institutional oversight could create implementation inconsistencies and undermine the framework's effectiveness. On the institutional front, the MPFA needs an institutional mechanism to monitor or track AU member states' compliance with the framework's tenets and provisions. Indeed, the MPFA itself is non-binding, and no member state can be held accountable for failing to implement it. However, through its Department of Humanitarian and Social Affairs, the African Union Commission can be critical in facilitating implementation.

Overall, the MPFA represents a commendable effort to address the multifaceted nature of migration and its implications for the continent's development. Its success, however, depends on the extent to which member states commit to implementing

its recommendations, allocating adequate resources, and establishing effective monitoring and evaluation mechanisms. While the framework offers a strong foundation for migration governance, its implementation requires sustained political leadership, regional cooperation and continuous refinement to adapt to the evolving migration dynamics in Africa.

## **5.2 AU Free Movement of Persons Protocol**

Adopting an AU Free Movement of Persons Protocol has long been envisioned. In 1991, member states of the AU, under Article 43(2) of the Abuja Treaty, obligated themselves to 'agree to conclude a Protocol on the Free Movement of Persons, Right of Residence and Right of Establishment'.<sup>65</sup> To actualise this commitment, in celebrating the golden jubilee of the OAU/AU in 2013, the AU Assembly resolved to 'facilitate African citizenship to allow free movement of people through the gradual removal of visa requirements'.<sup>66</sup> To further actualise African citizenship and allow for the free movement of people, an initiative emphasised in the subsequently adopted AU Agenda 2063 document is the introduction of an 'African passport and free movement of people', which underscored abolishing visa requirements for all Africans in all African countries by 2018,<sup>67</sup> a rather ambitious timeline that has not come to fruition even in 2025.

In 2015, following discussions on the strategic issue of migration at an Ordinary Session of the AU Assembly in South Africa, member states individually and collectively re-emphasised commitment to 'expedite operationalising the African passport that would, as a start, facilitate free movement of persons that the Member States will issue'.<sup>68</sup> The Assembly also requested that the AU Commission urgently set up a meeting of the AU Executive Council to issue mobility and free movement of people in Africa and develop the Protocol on Free Movement of Persons'.<sup>69</sup> Following this mandate, the AU Commission and Executive Council worked on developing<sup>70</sup> the Free Movement of Persons

Protocol, which the AU Assembly adopted in January 2018 at the 13th Ordinary Session of the Assembly in Ethiopia.<sup>71</sup> As of writing, since the adoption of the Protocol in 2018, 32 AU member states have signed the Free Movement of Persons Protocol, while only four have ratified it, namely Mali, Niger, Rwanda and São Tomé and Príncipe.<sup>72</sup> The Protocol's coming into force requires 15 ratifications, as mentioned earlier.

The AU Free Movement of Persons Protocol is designed to create a legal framework that facilitates implementing the Abuja Treaty by progressively implementing the free movement of Africans across the continent.<sup>73</sup> This protocol envisages multifaceted outcomes if the free movement of persons is actualised in the Preamble. First, it will enhance regional and continental integration by allowing African citizens to travel, work and reside in any member state without stringent visa requirements. Second, it seeks to boost economic productivity and employment opportunities by facilitating cross-border labour movement. Finally, the protocol encourages social and cultural exchanges to foster a sense of African identity and unity.<sup>74</sup>

The Protocol emphasises core principles, including non-discrimination,<sup>75</sup> transparency, and respect for the laws and policies protecting national security, public order, health, the environment and any other factor detrimental to the host state.<sup>76</sup> The Protocol defines key terms, including the concept of 'free movement of persons', which under Article 1 means

*the right of nationals of a member state to enter, move freely and reside in another member state following the laws of the host member state and to exit the host member state under the laws and procedures for exiting that member state.*<sup>77</sup>

In analysing this definition, Adeola observes quite critically that 'while incorporating the rights of entry and residence, this definition does not include the right of establishment, which is an integral phase of the free movement of persons'.<sup>78</sup> Article 5 outlines

these integral phases as follows: the right of entry (phase 1), right of residence (phase 2) and right of establishment (phase 3).<sup>79</sup>

Notably, the Protocol under Article 5(3) suggests that

*nothing in this Protocol shall affect more favourable provisions for the realisation of the free movement of persons, right of residence and right of establishment contained in national legislation, regional or continental instruments; or prevent the accelerated implementation of any phase of the free movement of persons, right of residence and right of establishment by a regional economic community, sub-region or member state before the time set in this protocol or the Assembly for the implementation of that phase.*<sup>80</sup>

This provision reflects a deliberate effort to balance harmonisation at the continental level with the flexibility required to accommodate regional and national progress on mobility. Ensuring that the Protocol does not override more favourable provisions in national legislation or regional frameworks, entrenches the idea of non-regression, encouraging states and RECs to maintain or enhance existing standards for the free movement of persons. Further, allowing for accelerated implementation by RECs or member states fosters a dynamic approach to integration, enabling more ambitious actors to act as pathfinders while ensuring the Protocol remains a baseline for others. This flexibility aligns with Africa's diverse political, economic and social contexts.

Flexibility poses the risk of uneven progress, as it may exacerbate disparities between regions and states, creating a fragmented landscape. However, uneven progress might encourage stragglers to follow pioneer reformers, especially if those early movers are influential regional powers. In sum, the provision embodies a pragmatic and enabling approach to African integration and the movement of people, leveraging existing regional and national successes to build trust

and incentivise broader participation. Its effectiveness depends on the states' political will and the AU's institutional capacity to harmonise and coordinate efforts.

The first phase prescribed in the Protocol involves abolishing visa requirements and allowing citizens the right to enter, reside, move freely and exit other member states based on their laws.<sup>81</sup> This right obligates a member state to permit nationals of member states to enter their territory without the requirement for a visa and to move freely and stay for a maximum period of 90 days from the date of entry or such further period determined by member states or through bilateral or regional arrangements.<sup>82</sup> Further, should a member state's national wish to stay in a host member state beyond the prescribed 90 days or another period permitted by the host state, they shall seek an extension based on the procedures established by the host member state.<sup>83</sup> Notably, this right of entry is permitted for a person entering the member state through a designated point or official port of entry<sup>84</sup> with a recognised and valid travel document<sup>85</sup> and who is not prohibited from entering the member state by the laws of that member state.<sup>86</sup>

It is important to note that the right of entry is not absolute and is subject to a specific limitation clause under Article 7(1)(c), in which a member state can deny entry in situations where such denial is predicated on the protection of national security, public order, public health or other conditions that are not inconsistent with the Protocol.<sup>87</sup> The Protocol mandates states to adopt an African passport and, with the support of the AU Commission, facilitate its issuance.<sup>88</sup> A standard African passport was officially launched in Kigali, Rwanda, in 2016, but the implementation has repeatedly been postponed.<sup>89</sup>

The second phase grants the right of residence, allowing citizens, their spouses and dependents to live in any member state, and the third phase, the right of establishment,

permits citizens to set up businesses and engage in economic activity as self-employed persons in any member state.<sup>90</sup> While phase 1 would commence with 15 ratifications and phase 2 would follow that, the commencement of phase 3 would follow a review with the AU.

It is important to note that though rights are afforded to nationals to reside and establish in a host member state, the realisation of these rights is subject to the laws and policies of the host member state. Chime and others posit this condition as enabling 'vast national discretion', which presents an implementation issue.<sup>91</sup> They propose adopting model immigration laws and procedures to ensure national policies and laws are uniform.<sup>92</sup> The Protocol prescribes that member states and RECS coordinate and harmonise their laws, policies and systems relating to the movement of persons,<sup>93</sup> of which there is no prescription for a model law. To the author's knowledge and at the time of writing, while a migration policy exists, as discussed earlier, there is no continental model law on immigration.

Other notable provisions in the Protocol involve the free movement of residents of border communities. States are mandated to facilitate mobility through bilateral or regional agreements.<sup>94</sup> States must also develop programmes and issue student permits or passes to exchange students and researchers.<sup>95</sup> Adeola posits this is 'imperative in building an inter-continental knowledge base and for the portability of qualifications and skills'.<sup>96</sup>

It is notable to mention that aside from the extant regional frameworks and initiatives on mobility, as noted by Hirsch, 'African countries are adopting more liberal travel regimes for citizens of other African countries and often too for citizens from other parts of the world'.<sup>97</sup> These liberal initiatives are captured in the yearly African Development Bank (AfDB) Visa Openness Report, including 'reciprocity between countries relaxing visa

requirements, unilaterally opening visas or relaxing visa processes, and visa on arrival'.<sup>98</sup> The data comparing visa openness in Africa between 2019 and 2024 indicates modest progress in facilitating the free movement of people across the continent. The average visa openness score improved from 0.459 in 2019<sup>99</sup> to 0.479 in 2024,<sup>100</sup> reflecting incremental efforts by African states to ease visa restrictions. One notable development is the increase in visa-free travel, with the proportion of intra-African travel scenarios not requiring a visa rising from 25% in 2019<sup>101</sup> to 28% in 2024.<sup>102</sup> Although this represents some progress, the overall pace of change remains slow.

2019 Visa Openness Findings	2024 Visa Openness Findings
Average score for all countries, 0.459	Average score for all countries, 0.479
Africans do not need a visa to travel to 25% of other African countries	Africans do not need a visa to travel to 28% of other African countries
Africans can get a visa on arrival in 26% of other African countries	Africans can get a visa on arrival in 25% of other African countries
21 African countries offer electronic visas (eVisas)	26 African countries offer electronic visas (eVisas)
Africans need visas to travel to 48% of other African countries	Africans need visas to travel to 47% of other African countries

Source: Author's evaluation based on the 2019 and 2024 AfDV Visa Openness Reports

The availability of visas on arrival for African citizens shows a slight decline. In 2019, 26% of African countries allowed Africans to obtain a visa upon arrival; by 2024, this figure declined to 25%.<sup>103</sup> However, a significant improvement is evident in the expansion of eVisa availability. In 2019, 21 African countries offered the option for African travellers to apply for visas online.<sup>104</sup> By 2024, this number had risen to 26 countries, representing 44% of the continent.<sup>105</sup> The increased adoption of digital visa processing reflects a growing recognition of technology's role in streamlining immigration procedures and enhancing accessibility for travellers.

Despite these improvements, the overall progress in visa openness across Africa remains gradual. While there has been an expansion of eVisa options and a slight increase in visafree access, the limited change suggests that significant barriers to movement persist. At a recent meeting, Africa's leaders expressed their frustration at the slow progress of the movement of people in Africa. At the High-Level Strategic

Dialogue on Accelerating Visa Free Movement for Africa's Transformation on 12 February 2025, AU officials, policymakers and business leaders highlighted the contradiction between Africa's regional integration goals and the reality.<sup>106</sup> The data in the Africa Visa Openness Report underscores the need for more robust policy initiatives to accelerate the realisation of free movement across the continent, particularly in the context of regional integration efforts such as the AfCFTA.

In addition to national policy reform on eVisas and visa-free travel, extensive improvements have been made in the policies and practices of RECs, especially ECOWAS and the EAC, in plurilateral arrangements in subgroups within RECs, and bilateral agreements, such as arrangements for passport-free travel for border communities.<sup>107</sup>

Nevertheless, the question arises: why has the AU Free Movement of Persons Protocol failed to be ratified by more than four states? Several reasons have been put forward. As

outlined by Hirsch, one argument is that the richer and more attractive countries in Africa fear a sudden inflow of economic migrants who abuse the visa exemption, which is meant for short-term stays. Another is that there is a risk of criminals and or terrorists abusing this privilege. There are concerns about the integrity of population registration systems, identification documents and passport issuing, and information systems regarding crime and terrorism in some less developed countries.<sup>108</sup> The securitisation of engagements around migration policy often amplifies these concerns and fears. If the conversation over migration reform is led by officials from home affairs or similar government departments, security concerns can trump the economic and social arguments supporting freer movement.<sup>109</sup>

Some argue that while national governments focus on their sovereignty and national policies and the RECs are focused on integration, the AU has not devoted sufficient resources to advancing the free movement of people initiative.<sup>110</sup> Others contend that the issues of sovereignty were comprehensively discussed in the preparations for the Protocol's signing and addressed in its content, supporting the view that the alarmist framing of the challenge was unfortunate and inappropriate.<sup>111</sup>

Beyond these reasons for the lack of adoption of the AU Free Movement of Persons Protocol are the arguments that there is a lack of familiarity between the citizens and officials of some countries with other countries in this vast continent of 55 countries and many languages. Progress is easier when countries are in relative proximity, share a common history, have some languages in common and have a long history of migration relationships.<sup>112</sup>

### **5.3 The Joint Labour Migration Programme (JLMP)**

In 2015, the AU adopted the AU Declaration and Plan of Action on Employment, Poverty Eradication, and Inclusive Development

in Africa and the Joint Labour Migration Programme (JLMP), which promotes critical areas of facilitating the free movement of workers as a means of advancing regional integration and development. The JLMP's key activity areas include skills portability, the mutual recognition of qualifications, and developing an African Qualification Framework (AQF). The JLMP is also working on Labour Market Information Systems, skills forecasting and migration statistics to aid labour mobility. These collectively support market-driven skills development and skills pooling across the continent.

### **5.4 The Agreement Establishing the African Continental Free Trade Area (AfCFTA)**

The AfCFTA Agreement is a legally binding framework focused on trade. It was approved by the same AU leaders' Assembly in 2018 that supported the Free Movement Protocol. Preferential or regional trade agreements, such as the AfCFTA Agreement, classify the temporary movement of 'natural persons'<sup>113</sup> as a form of service supply towards trading in services in the Protocol on Trade in Services.<sup>114</sup> This mode enables the mobility of specific individuals, mostly highly skilled professionals related to particular service sectors, which are to be listed under an Annex.<sup>115</sup> AfCFTA commitments to freedom of travel are focused on travel, transport, finance, business and the communication sector.<sup>116</sup>

The Protocol on Trade in Services establishes general obligations for states parties considering trade in services liberalisation. Some key commitments include an obligation on the 'most-favoured nation' where each state party must give services and service suppliers of other partner states the same treatment it affords to like services and service suppliers of any third party state.<sup>117</sup> In this regard, state parties are to enable market access and accord services and service suppliers of any other state party treatment no less favourable than that provided under the agreed-upon terms and conditions specified in

their schedules.<sup>118</sup>

Concerning market access, partner states are not allowed to

- Limit the number of service suppliers, whether in the form of numerical quotas, monopolies or exclusive service suppliers;
- Limit the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- Limit the total number of service operations or the total quantity of service output;
- Limit the number of natural persons that may be employed in a particular service sector;
- Place restrictions on the types of legal entities through which a service supplier may supply a service.<sup>119</sup>

Secondly, there is a commitment to 'national treatment', where each state party must treat other state parties' services and service suppliers with the same treatment it provides to its own services and service suppliers.<sup>120</sup>

Despite these commitments, a state party may adopt measures inconsistent with the Protocol to protect public morals or maintain public order; protect human, animal or plant life or health; and security interests.<sup>121</sup> These measures must be applied in a manner that does not constitute arbitrary or unjustifiable discrimination between state parties or a disguised restriction on trade in services.<sup>122</sup>

Partner states enlist or identify the service sectors to which they apply market access and national treatment obligations and any limitations they intend to maintain on each mode of service supply. These commitments are outlined in a country's 'schedules of specific commitments'.<sup>123</sup> Within their respective schedules, partner states typically make horizontal commitments stipulating limitations applicable to all service sectors, referring to a particular mode of supply,

notably the presence of natural persons. Further, partner states also make sector-specific commitments, which apply to trade in services for a specific sector or sub-sector.

Amanda Bisong has proposed that, in the absence of significant progress in the implementation of the Free Movement of Persons Protocol, an opportunity for progress lies within the Services Protocol of the AfCFTA.<sup>124</sup> Drawing on the greater enthusiasm for the 'continental free trade' protocol than for its 'movement of persons' twin, member states of the AU could drive forward the proposed cross-border mobility embodied within the services protocol. There is good reason to consider this a potentially viable option. In Southeast Asia, while ASEAN member states are reluctant to open borders to the numerous low-skilled migrant workers, several categories of business and professional people have been permitted visa-free travel. In South America, after decades of agreement on the freer movement of business and professional people, greater freedom to move, reside and establish oneself is now part of the Mercosur and Andean Pact agreements regime.<sup>125</sup>

Bisong's proposal that the enthusiasm for the implementation of the AfCFTA and the fact that the mobility of persons provision in the Services Protocol designates skilled professionals in relevant sectors could provide a way forward on a continent-wide free movement system is strategically insightful. This may well be a significant path along which progress is made towards continental free movement.

## 5.5 Institutional Framework

The AU Assembly is comprised of heads of state from all member states and usually meets at least once a year in an ordinary session. However, if necessary, it can meet in an extraordinary session if most member states approve a request.<sup>126</sup> The Assembly is the AU's highest decision-making body, and its decisions are primarily based on consensus.<sup>127</sup> It is mainly tasked with

determining the Union's policy direction and monitoring member states' implementation and compliance with its policies and decisions.<sup>128</sup>

Below the Assembly is the Executive Council, comprised of one minister from each member state, usually the Minister of Foreign Affairs.<sup>129</sup> The Executive Council meets at least twice a year to coordinate and make decisions on common policy areas determined by the Assembly, such as residency and immigration matters, and to oversee the activities of other AU institutions.<sup>130</sup>

The Permanent Representatives Committee (PRC) manages the AU's daily operations on behalf of the Assembly and the Executive Council. It comprises representatives from all member states and acts under the Executive Council's instructions. The PRC has a subcommittee on refugees, returnees and internally displaced persons for cross-border movements.<sup>131</sup>

The African Union Commission (AUC) is the administrative body or Secretariat of the AU and is responsible for implementing the decisions of the AU Assembly. It is headed by the Chairperson, whom the AU Assembly appoints alongside a Deputy Chairperson and eight Commissioners.<sup>132</sup> The AUC is based at the AU headquarters in Addis Ababa, Ethiopia. It plays a pivotal role as it is tasked with following up on and evaluating the implementation of the AU Free Movement of Persons Protocol.<sup>133</sup> Within the AUC, the central departments which cover migration-related issues are the Department of Health, Humanitarian and Social Development (HHS) and its Division of Labour, Employment and Migration. With the current election of the AU Chairperson and Commissioners, HHS will be led by Ambassador Amma Twum-Amoah. Further, the Departments of Political Affairs and Peace and Security work with Member States to implement the AU Free Movement of Persons Protocol, particularly in areas of border management.<sup>134</sup>

Further, within the institutional structure, the Constitutive Act of the AU prescribes the formation of a Specialised Technical Committee (STC) comprised of ministers or senior officials responsible for their area of competence and answerable to the Executive Council.<sup>135</sup> These STCS work closely with the AUC to harmonise AU projects. Regarding migration, the relevant STCs are the STC on Migration, Refugees and Internally Displaced Persons and the STC on Social Development, Labour and Employment.<sup>136</sup>

Though it is not formed to make laws, the Pan African Parliament (PAP) as an institution plays an advisory and consultative role to the Assembly and all other policy organs.<sup>137</sup> It represents Africans in the AU's policy discussions and decision-making. It comprises five parliamentarians from each member state, representing both ruling and opposition parties, and at least one must be a woman.<sup>138</sup> That notwithstanding, a key limitation of the PAP is that its powers are limited to making recommendations and passing resolutions.

Regional Consultative Processes (RCPs) on migration provide a platform for dialogue on migration issues of common interest to Member States, helping them bridge the gap between policy and implementation. The International Organization for Migration (IOM) notes that RCPs have been instrumental in piloting regional migration initiatives, collating data, and shaping national policies to reflect convergent regional approaches.<sup>139</sup> In Africa, several RCPs have been established at REC levels, each tailored to the unique migration dynamics of their respective regions. For instance, the Migration Dialogue for West Africa (MIDWA) under ECOWAS and the Migration Dialogue for Southern Africa (MIDSA), mainly to SADC member states and the IGAD-RCPs. Though focused on regional and not continental migration policy issues, these dialogues have been pivotal in promoting regional integration and ensuring the protection of migrants' rights.<sup>140</sup>

Despite their contributions, RCPs face several challenges that hinder their effectiveness. A significant issue is the lack of political will among some member states to implement the agreed-upon recommendations fully.<sup>141</sup> Another challenge is the limited capacity and resources allocated to migration governance. Many RCPs and their member states grapple with inadequate funding and human resources, which hampers their ability to develop and enforce cohesive migration policies. This resource constraint often leads to reliance on external donors, who can influence the agenda and priorities of RCPs, sometimes at the expense of regional needs.<sup>142</sup> Further, coordination among diverse stakeholders presents an additional hurdle. Effective migration management necessitates collaboration between various national ministries, regional bodies and international organisations. However, overlapping mandates and bureaucratic inertia can lead to fragmented approaches, reducing the overall efficacy of RCPs. Moreover, the informal and non-binding nature of RCPs, while fostering open dialogue, can also limit their impact. Without binding commitments, member states may prioritise national interests over regional agreements, leading to the selective implementation of policies.<sup>143</sup>

In the broader African context, the Pan-African Forum on Migration (PAFOM) is a pivotal platform within Africa's migration governance framework, complementing existing RCPs. Established in 2015 under the auspices of the AU, PAFOM facilitates dialogue among AU member states, RECs and other stakeholders to address migration and human mobility across the continent. Its primary objectives include promoting intra-regional migration, facilitating the free movement of persons, and enhancing integrated border management.<sup>144</sup> PAFOM's thematic focus has evolved to address pressing migration issues. For instance, the 7th PAFOM in 2022 centred on the impact of climate change on migration and human mobility in Africa, emphasising the need for adaptation strategies and resilient communities. The subsequent 8th

PAFOM in 2023 explored the nexus between free movement and trade within the AfCFTA, aiming to optimise the benefits of migration and labour mobility for development.<sup>145</sup>

Despite its contributions, PAFOM faces challenges that mirror those of RCPs. Coordinating among diverse stakeholders remains a complex task. PAFOM endeavours to harmonise efforts across various national ministries, regional bodies and international organisations. However, overlapping mandates and bureaucratic challenges can lead to fragmented approaches, reducing overall efficacy.

While the non-binding nature of PAFOM's recommendations may limit their impact, PAFOM engagements are important because they can foster open dialogue on migration policies. RCPs and fora like PAFOM are crucial in promoting cooperation, vigorous dialogue and engagement about migration and free movement across Africa. Without PAFOM and the RCPs, there would be fewer opportunities for officials from different states, RECs, international organisations (IOs) and experts to exchange ideas and learn about and understand each other.

#### **5.5.1 Judicial mechanisms and limits to their powers**

The African Court on Human and Peoples' Rights (ACHPR)<sup>146</sup> is among the key institutions within the AU architecture, currently operating as the judicial arm.<sup>147</sup> Composed of judges appointed by the heads of state, it holds regular sessions to hear and decide cases on human rights violations. It is tasked with interpreting and implementing the African Charter on Human and Peoples' Rights (AfCHPR).<sup>148</sup> The AfCHPR has adjudicated some cases concerning violations of Article 12, which guarantees the right of individuals to move and reside freely within a state. Though the cases referred to below primarily address the right to nationality, they offer some insights on the rights to leave and return to one's country and protection against arbitrary expulsion.

In *Anudo Ochieng Anudo v. United Republic of Tanzania*,<sup>149</sup> the applicant, Anudo Ochieng Anudo, was stripped of his Tanzanian nationality by the respondent state (United Republic of Tanzania) on the basis that his passport was issued based on fake documents. The applicant was arrested and deported to Kenya. In Kenya, a Magistrate Court declared him to have an 'irregular status' in the country, and he was expelled back to Tanzania.<sup>150</sup> The applicant contended that the seizure of his passport, the illegal immigrant status issued against him and his expulsion from Tanzania violated and deprived him of his right to nationality. He further contended that the deprivation of his right to nationality violated his right to freedom of movement and residence under Article 12 of the Charter, among other fundamental rights.<sup>151</sup> On the case's merits, the Court had to determine 'whether the withdrawal of the applicant's nationality was arbitrary or conformed with international human rights standards'.<sup>152</sup> Relying on the Universal Declaration of Human Rights (UDHR), which forms part of customary international law and recognises the right to nationality under Article 15, the court noted that the evidence supported Anudo's claim to Tanzanian nationality and that the government's actions were arbitrary, infringing upon his right to nationality as enshrined in Article 15(2) of the UDHR and the freedom to return to his country under Article 12(2) of the Charter.<sup>153</sup> The Court emphasised that a 'State cannot turn its citizen into a foreigner, after depriving their nationality for the sole purpose of expelling them'.<sup>154</sup> Also, the Court noted that in expelling the applicant, the respondent could not do so arbitrarily and had to do so based on the law to prevent the applicant from being stateless.<sup>155</sup>

Also, in *Robert John Pennessis v. United Republic of Tanzania*,<sup>156</sup> the applicant, Robert John Pennessis, born in Tanzania, was arrested, convicted and sentenced to two years in prison for illegal entry and presence in Tanzania, despite his claim to Tanzanian nationality.<sup>157</sup> The applicant prayed for the

Court to find that his imprisonment violated his constitutional right and that Tanzania acted contrary to Article 12(1) and (2) of the Charter.<sup>158</sup> The Court noted, though subject to specific limitations,<sup>159</sup> this 'right is guaranteed to every individual lawfully present within the territory of a State, regardless of their national status, that is, regardless of whether they are a national of that State'.<sup>160</sup> Further, they found that the applicant was presumed to be a Tanzanian national and, therefore, lawfully present in the country.<sup>161</sup> His arrest and continued detention without justification violated his right to freedom of movement under Article 12 of the Charter.<sup>162</sup>

Another notable case is *Gihana & Others v. Republic of Rwanda*,<sup>163</sup> where the applicants, Rwandan nationals, had their passports invalidated and revoked by the Rwandan government without due process, rendering them stateless.<sup>164</sup> Among other issues, the applicants alleged that the Rwandan government's invalidation of their passports violated their right to freedom of movement.<sup>165</sup> The Court noted that while a government can revoke passports, such actions must comply with international standards and not be arbitrary. In essence, the revocation of the passports was to protect national security, public order, health, morals or the rights and freedoms of others.<sup>166</sup> The Court relied on its reasoning in *Anudo Ochieng v Tanzania*, referred to earlier, and noted that.

*there are few, if any, circumstances in which deprivation of the right to enter one's own country could be reasonable. A State Party must not, by stripping a person of nationality or expelling an individual to a third country, arbitrarily prevent this person from returning to their own country.*<sup>167</sup>

The arbitrary revocation of the applicants' passports violated their right to freedom of movement under Article 12(2), as it prevented them from returning to their country and travelling to other countries.<sup>168</sup> These cases collectively reinforce the principle that freedom of movement, particularly the right to

move within and leave one's country freely, is fundamental and can only be restricted under specific and justified circumstances.

The AfCHPR's judgments are legally binding on states that have ratified the 1998 Protocol and accepted the Court's jurisdiction. If the Court finds a human rights violation, it shall make appropriate orders to remedy it, including paying fair compensation or reparation.<sup>169</sup> Regarding compliance, Article 30 mandates that 'State Parties undertake to comply with the Court judgment in any case to which they are parties within the time stipulated by the Court, and to guarantee its execution'.<sup>170</sup> This commitment is rooted in the African Charter, as Article 1 requires all states to 'adopt legislative or other measures' to give effect to Charter rights.<sup>171</sup> This implies an obligation to honour Court judgments. While the Court must report to the Assembly annually on its activities, including any non-compliance,<sup>172</sup> there is no consequential provision for non-compliance in the Protocol.

The AU's political organs generally oversee compliance, with the AU Constitutive Act mandating that member states implement AU policies and decisions. For instance, Article 9(e) tasks the Assembly to monitor the 'implementation of AU policies and decisions' and ensure 'compliance by all Member States'.<sup>173</sup> Furthermore, Article 23 of the Constitutive Act permits the Assembly to sanction members who fail to comply with the AU's decisions and policies.<sup>174</sup> However, as noted by Sibanda, this provision 'is not an effective enforcement mechanism but is a provision of general application'.<sup>175</sup> Notably, the Rules of Procedure of the Executive Council afford it the responsibility to follow up on and monitor the execution of judgments. Specifically, after a judgment, the AU Executive Council should put the implementation issue of a particular state on its agenda until the respondent state complies.<sup>176</sup>

In summary, there is no dedicated enforcement mechanism within the AfCHPR, and execution depends on the states' political will and the AU's willingness to pressure non-compliant members.

## 6. Reflection on the Implementation, Discursive and Efficacy Gaps

African migration governance is characterised by complex discursive, efficacy and implementation gaps that undermine coherent policy responses to the continent's dynamic migration realities. The analytical filter using gap analysis in migration policy is derived from Czaika and De Haas's work on the effectiveness of migration policy.<sup>177</sup> Discursively, African migration management is often framed through externalised, securitised lenses prioritising border control, reflecting global North concerns over irregular migration.<sup>178</sup> This narrative obscures the human rights imperative of migration and localised understandings of mobility as a historical, socio-economic and cultural practice integral to African livelihoods with potential developmental impacts.<sup>179</sup>

Frameworks, such as the AU's MPFA and the Free Movement of Persons Protocol, expressly embrace mobility as a developmental tool. This discursive dissonance is reflected in a policy environment in which African states are pressured to adopt and maintain restrictive measures incongruent with intra-continental migration patterns, predominantly voluntary and intra-regional, in contradiction to the rhetoric of freer movement. It should be possible to reasonably address African countries' security concerns and promote freer movement within a developmental rubric, with coherent policies and support for less developed countries to manage cross-border movements adequately. And the Free Movement of Persons Protocol does not require all countries to liberalise simultaneously – it allows for a progressive but differentiated approach.<sup>180</sup>

From a public perception perspective, it is noteworthy that views on African migration are multifaceted and vary significantly by region and national context. Many Africans recognise the potential economic and social benefits of migration. This leads to relatively favourable attitudes towards regional free movement, particularly in West and East Africa. Survey findings from Afrobarometer

indicate that many African citizens in these regions support the idea of free movement for work and trade, even though, in practice, they also acknowledge the challenges that border crossing entails and often advocate for some regulation of migrant inflows.<sup>181</sup> At the same time, concerns remain about the negative impacts of migration, particularly regarding job competition, pressures on public services and security risks. In countries like South Africa, for instance, media narratives, political rhetoric and periodic episodes of xenophobic violence have contributed to a more negative public perception of migrants, particularly towards irregular or illegal migrants.<sup>182</sup> While some African citizens are receptive to the idea of migration as a development driver, there is also support for managing and sometimes limiting the number of migrants entering a specific country. This reflects an underlying tension between the benefits of migration and its perceived risks.

In a 2025 Afrobarometer working paper, the authors reveal that African governments' free movement and trade policies do not always reflect popular opinion.<sup>183</sup> The working paper highlights a critical discursive gap in migration governance between elite-driven policy formulation and citizens' lived economic experiences. Citizens seem relatively more inclined towards liberal migration policies in many African countries. The paper argues for the need to reframe African migration policy as an arena where both domestic public preferences and external economic dependencies shape policy outcomes, elevating the role of popular opinion in foreign policy decision-making.<sup>184</sup>

Efficacy gaps exist from the limited operationalisation of continental and regional frameworks. Instruments like the AU's Free Movement of Persons Protocol aim to facilitate safe, regular migration, yet ratification and domestication are inconsistent, reflecting divergent national interests and capacity constraints.<sup>185</sup> Implementation challenges further exacerbate these gaps, exposing systemic institutional weaknesses. National migration policies often lack harmonisation with regional frameworks,

while domestic institutions – essential for implementation – are excluded from policy design.<sup>186</sup> Corruption, weak judicial systems and underfunded agencies increase exploitation risks, particularly for vulnerable groups like displaced populations and informal labourers. While crucial in advocacy, civil society actors encounter restricted political space to influence governance structures.<sup>187</sup> These structural barriers are intensified by geopolitical asymmetries, as extra-continental actors like the European Union (EU) externalise border management through funded programmes, diverting attention from the root causes of migration, African interests and the developmental impact of cross-border movements.<sup>188</sup> As a result, migration governance in practice arguably remains reactive, prioritising short-term crisis management over holistic strategies that integrate migration into broader development agendas.

Addressing these gaps necessitates centring African policy sovereignty, fostering multi-stakeholder coalitions, and strengthening institutional capacities. Reconciling discursive tensions requires elevating grassroots narratives that frame mobility as a normative strategy for resilience and development, countering securitised paradigms. Enhancing efficacy demands aligning regional aspirations with national implementation through technical assistance, peer-to-peer learning mechanisms and equitable resource allocation. Finally, addressing implementation gaps will require empowering local actors and embedding transparency and accountability frameworks to ensure that policies translate into tangible developmental outcomes. Through such transformative approaches, African states can reconfigure migration governance to reflect continental realities, uphold migrants' rights, and harness mobility's developmental potential.

## 7. Political Economy of Migration in Africa: Leveraging the Complementarity of the AfCFTA and the AU Protocol on Free Movement of Persons

The continent's migration systems are not merely responses to demographic or environmental pressures but are structured by colonialism's systemic effects. Colonial-era borders, drawn to serve extractive colonial interests, persist as a key issue, fragmenting labour markets and ethnic communities while enabling states to regulate mobility as a tool of political control.<sup>189</sup> These legacies influence migration governance as African states navigate appeasing domestic populations, attracting foreign investment, and complying with external donor conditionalities that often conflate migration management with security agendas. The political economy of migration in Africa is complicated by the role of external actors, particularly the EU and its member states, whose financial and technical assistance is often tied to migration control objectives towards irregular migration.<sup>190</sup> As noted by Moyo and others, initiatives like the EU Border Modernisation Programme in Morocco and Algeria prioritise border securitisation.<sup>191</sup> The impact of external pressures on migration policies has even been blamed, to some degree, for violent regime change in the Sahel.<sup>192</sup> Externalisation of migration management can entrench dependency relationships and place African states in the awkward position of being gatekeepers for external interests.

Within Africa, there are political economy tensions between states too. We noted earlier the tension between richer and poorer states over immigration. Middle- and upper-middle-income countries have played a constructive leadership role in driving regional integration in some regions. Still, at a continental level, none of these countries has seen fit to ratify and domesticate the continental free movement protocol.

Informal economies, which absorb over 80% of Africa's workforce,<sup>193</sup> illustrate a disjuncture between extant policy frameworks

and migration realities. Informal cross-border traders (ICBTs) include many informal actors engaged in cross-border movements across border communities.<sup>194</sup> Arguably, the lack of formalisation of informal actors like ICBTs can sustain a cycle of vulnerability, where certain migrants' lack of status heightens their exposure to exploitation by corrupt border practices. Remittances, which exceed official development aid in the continent, can have an underwhelming developmental impact.<sup>195</sup>

Transformative governance of migration frameworks requires confronting these political economy tensions and centring African agencies in redefining mobility not as a crisis but as an endogenous development feature.<sup>196</sup> Domestically, aligning migration policies with broader economic development agendas, such as migrant welfare and cross-border social security recognition and protection, could mitigate the precarity driving irregular migration. Ultimately, bridging Africa's migration governance gaps necessitates not only technocratic fixes but also a radical re-imagining of political and economic systems that have long treated human mobility as a problem to be managed rather than a manifestation of global inequities to be redressed.<sup>197</sup>

Within this transformative and developmental reasoning, the AfCFTA can be leveraged to pave the way for cross-border mobility. While the AU Free Movement of Persons Protocol remains under-ratified due to various concerns or misunderstandings, the AfCFTA's economic imperatives necessitate facilitating greater mobility of individuals engaged in trade, services and investment.<sup>198</sup> The AU and its partners' commitment to the AfCFTA is much greater than their resource commitment to the free movement protocol. By early 2024, the AfCFTA's staff had reached 150 in the dedicated AfCFTA secretariat.<sup>199</sup> The AU Free Movement of Persons Protocol lacks a dedicated secretariat and only a few dedicated staff members, indicating a lack of enthusiasm for the latter. But now there is also a clear pathway towards freer movement through the AfCFTA process.

By positioning itself as an enabler of mobility within structured economic activities, the AfCFTA can provide a pragmatic pathway for states to gradually accept and institutionalise free movement that aligns with their economic interests. The AfCFTA can advance movement by facilitating mobility for businesspeople, service providers and skilled professionals.<sup>200</sup> If state parties successfully provide market access and implement mechanisms that ease visa requirements or introduce special mobility arrangements for traders and professionals,<sup>201</sup> it would set a precedent for extending such privileges to other categories of people over time. In this way, states would not adopt free movement towards 'all persons' but rather through a gradual and controlled process that aligns with economic growth imperatives.

An argument for positioning the AfCFTA as a stepping stone to the AU's Free Movement of Persons Protocol is the economic necessity of intra-African migration. The expansion of trade, facilitated by the AfCFTA, will require a mobile workforce that can respond to emerging market demands. As noted earlier, ICBTs contribute significantly to Africa's economic activity, yet they often operate in grey regulatory areas due to cumbersome border measures and restrictive immigration policies.<sup>202</sup> The AfCFTA's focus on the capacity building of informal service suppliers<sup>203</sup> enables the prospect of a re-imagined and inclusive focus towards informal actors. It recognises that a large portion of cross-border economic activity in Africa is driven by informal actors who depend on mobility as an economic necessity. By proposing investment in the capacities of these service providers, the AfCFTA legitimises their contributions to intra-African trade and establishes a practical groundwork for broader mobility reforms. A capacity-building initiative could help improve data collection, skills recognition and market access, which are all crucial for integrating informal service providers into regulated economic activities. Moreover, by focusing on support and training for informal service providers, the AfCFTA could foster an environment where innovative programmes

and corridor or border community-based initiatives can be implemented, enabling states to test and improve the mechanisms of free movement. This grassroots approach can alleviate uncontrolled migration concerns by showcasing organised mobility's concrete developmental benefits.

The legal and institutional connection between the AfCFTA and the AU's Free Movement of Persons Protocol strengthens the case for their complementary implementation. Both frameworks are premised on deepening regional integration, and their success is based on reducing barriers that currently fragment Africa's markets and labour mobility. Developing cross-border transport systems and interoperable customs procedures under the AfCFTA can strengthen the institutional foundation required for the AU's Free Movement of Persons Protocol, and these developments can arguably provide the technical capacity necessary for managing larger-scale mobility. By embedding mobility-enabling policies within trade facilitation mechanisms under the AfCFTA, states can build confidence in structured mobility before making more politically sensitive commitments to full-scale free movement.

While political resistance remains a key challenge to adopting the AU's Free Movement of Persons Protocol,<sup>204</sup> The AfCFTA could provide a practical avenue for building political will. Many states are reluctant to embrace free movement, citing security, poor civil registration systems, unemployment, weak border management and irregular migration concerns.<sup>205</sup> However, linking mobility to economic integration under the AfCFTA shifts the conversation from an open-ended migration discourse to a more structured, economically beneficial mobility. Countries that see tangible economic gains from enabling business-related mobility may become more inclined to extend similar privileges to other categories of individuals over time. In the examples of South America and South-East Asia cited earlier, we have seen that the resistance to opening borders to professionals and businesspeople is

much lower than for low-skilled workers. In the South American case, we have also seen how the migration systems and processes developed for professionals and businesspeople resulted in a framework that could be extended more broadly later.<sup>206</sup>

In a practical sense, the AfCFTA could serve as a preparatory mechanism for states to adopt mobility measures incrementally. States can manage risks by first anchoring discussions on movement within trade-related mobility while reaping economic benefits. Over time, as structured mobility becomes normalised, expanding these measures into broader free movement commitments will be more feasible. Thus, the AfCFTA, if leveraged effectively, could create the conditions necessary for a more politically palatable and economically justifiable implementation of the AU's Free Movement of Persons Protocol.

While leveraging the AfCFTA to pave the way for the AU Free Movement of Persons Protocol appears promising, several criticisms can be raised. One significant concern is that this approach relies on a gradual, incremental process that may inadvertently delay the comprehensive implementation of the free movement of people in Africa. By prioritising economic or trade-related mobility as the primary driver, political, social and human rights dimensions inherent in the free movement of people may be sidelined. The focus on enhancing trade facilitation and the movement of business professionals may create a two-tier system where economic actors benefit. At the same time, the broader population, particularly vulnerable groups and informal traders or workers, remain excluded. In South America, this was referred to as a neo-liberal form (or, in retrospect, phase) of migration reform.<sup>207</sup>

Another criticism lies in the assumption that economic integration naturally leads to greater political will for broader mobility measures. The political dynamics within some AU member states are complex and often resistant to changes threatening perceived national sovereignty, as in SADC.<sup>208</sup> As a testing ground for mobility measures,

AfCFTA may not adequately address deep-seated concerns related to security, irregular migration and labour market competition. These concerns could undermine trust and slow the momentum towards fully embracing the AU's Free Movement of Persons Protocol. Furthermore, the approach assumes a degree of homogeneity among AU member states regarding economic priorities and regulatory capacities, which may not exist in practice. Divergent national interests, varying levels of economic development, and differences in institutional capacities could hinder the harmonisation necessary for the AfCFTA and the AU Free Movement of Persons Protocol. The incremental steps proposed could exacerbate existing state inequalities, disadvantaging less developed or politically resistant countries.

To address the criticisms of using the AfCFTA as a primer for the AU Free Movement of Persons Protocol, it is fundamental that economic integration does not sideline broader mobility objectives, that political buy-in is strengthened, and that institutional challenges are effectively managed. Further, it is essential to expand the scope of mobility provisions beyond just business professionals and formal service providers. While the phased approach of starting with economic actors is pragmatic, it should be complemented by targeted frameworks such as the AU Free Movement of Persons Protocol with provisions that recognise and facilitate the mobility of Africans along border communities, which can be accommodating of ICBTs, seasonal workers and low skilled labourers and also affords portability of social securities and qualifications.<sup>209</sup> A complementary approach would benefit high-skilled individuals while accommodating the broader population.

Second, addressing political resistance requires stronger linkages between the AfCFTA's economic benefits and the political advantages of free movement. To build trust, the AU and RECs should encourage pilot programmes where groups of states with shared economic interests implement controlled mobility schemes, demonstrating

that free movement does not lead to security risks or economic displacement. These pilot programmes could include regional or bilateral agreements on mutual recognition of skills, special economic zones with freer movement provisions, or harmonised visa policies for specific categories of persons. If successful, these models could be scaled up to encourage broader adoption of the AU Free Movement of Persons Protocol. Additionally, an evidence-based approach to policy implementation should be adopted to counteract fears of security risks and labour market disruption. The AUC and AfCFTA Secretariat, in collaboration with RECs and research institutions, should invest in continuous monitoring and impact assessment mechanisms that track the effects of incremental mobility measures on economies, labour markets and security conditions. Providing empirical evidence that structured mobility does not lead to large-scale unemployment or insecurity would help shift the political discourse from one driven by fear to one grounded in factual economic benefits.

Thirdly, it is necessary to ensure that countries with weaker institutional capacities are not left behind in integrating mobility into AfCFTA implementation. Capacity-building programmes, including financial and technical assistance, should be provided to states that struggle with border management, migration governance or digital infrastructure.

Finally, it is important to establish more frequent and more focused forums to monitor the implementation of policies and discuss the systematic deepening of reforms. These should be facilitated by dedicated staff in the AU and the RECs, working with the AfCFTA Secretariat when appropriate.

By adopting these measures, the AfCFTA can be a stepping stone towards full-scale free movement and can be made more inclusive, politically acceptable and institutionally feasible. This would ensure that economic integration and migration governance reforms reinforce each other in a structured and equitable manner.

## 8. Conclusion

The success of the AfCFTA is closely tied to the realisation of the AU's free movement objectives. While the AfCFTA has gained significant traction, the AU Free Movement of Persons Protocol continues to experience political hesitancy, influenced by securitised narratives surrounding migration and uneven implementation across RECs. However, the free movement of people is not a secondary objective; it is a central pillar without which Africa's economic integration and development remain incomplete. To separate the movement of goods and services from the movement of the people who deliver, trade and consume them ignores the interconnected nature of modern economies. This paper argues that a gradual and targeted approach to mobility, beginning with professionals and service providers and accommodating informal actors, offers a practical pathway to operationalise the AU's Free Movement of Persons Protocol to support the AfCFTA's goals. Furthermore, by recognising and formalising informal trade and mobility practices, the AU and its member states can create more inclusive and effective policy frameworks that reflect lived realities. With their varying levels of progress on free movement, the RECs provide valuable entry points and models for implementing the Protocol in alignment with continental objectives.

The AU Free Movement of Persons Protocol's goals will inevitably be achieved unevenly and incrementally. However, finding and expanding the limited pathways can ultimately result in the goal of free, regularised movement, which seems unattainable today.

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<sup>73</sup> Article 2 of the AU Free Movement of Persons Protocol, 2018.

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<sup>82</sup> Articles 6(2) and (4) of the AU Free Movement of Persons Protocol, 2018.

<sup>83</sup> Article 6(5) of the AU Free Movement of Persons Protocol, 2018.

<sup>84</sup> See Article 8 on the provision on a designated point of entry, which prescribes the sharing of information among members and keeping these points open to facilitate free movement.

<sup>85</sup> A travel document means a passport that complies with the International Civil Aviation Organization's standards for travel documents or any other document identifying a person issued by or on behalf of a member state or the Commission, which is recognised by the host member state. See Article 1, read with

Article 9 of the AU Free Movement of Persons Protocol, 2018.

<sup>86</sup> Article 7(1) of the AU Free Movement of Persons Protocol, 2018.

<sup>87</sup> Article 7(1)(c) of the AU Free Movement of Persons Protocol, 2018.

<sup>88</sup> Article 10 of the AU Free Movement of Persons Protocol, 2018.

<sup>89</sup> Staff Writer, 'An African passport is expected to roll out in 2021 – what it means for South Africa', Business

Tech, available at <https://businesstech.co.za/news/lifestyle/459032/an-african-passport-is-expected-to-roll-out-in-2021-what-it-means-for-south-africa/>, accessed 10 November 2024.

<sup>90</sup> Articles 16 and 17 of the AU Free Movement of Persons Protocol, 2018.

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<sup>92</sup> Ibid, p. 14.

<sup>93</sup> Article 26 of the AU Free Movement of Persons Protocol, 2018.

<sup>94</sup> Article 12(1) of the AU Free Movement of Persons Protocol, 2018.

<sup>95</sup> Article 13 of the AU Free Movement of Persons Protocol, 2018.

<sup>96</sup> Adeola, 'The African Union Protocol on Free Movement of Persons in Africa', p. 272.

<sup>97</sup> Hirsch, A., 'The African Union's Free Movement of Persons Protocol: Why has it faltered and how can its objectives be achieved?', *South African Journal of International Affairs*, 28(4), 2021, p. 503.

<sup>98</sup> Ibid, pp. 503–504.

<sup>99</sup> African Development Bank (AfDB), 'Africa Visa Openness Report 2019', p. 13, available at [https://www.visaopenness.org/fileadmin/uploads/afdb/Documents/visa\\_openness\\_2019.pdf](https://www.visaopenness.org/fileadmin/uploads/afdb/Documents/visa_openness_2019.pdf), accessed

15 March 2025. Hereafter, 'Visa Openness Report 2019'.

<sup>100</sup> AfDB, 'Visa Openness Report 2019', p. 11.

<sup>101</sup> AfDB, 'Visa Openness Report 2019', p. 10.

<sup>102</sup> African Development Bank (AfDB), 'Visa Openness Report 2024', p. 13, available at xxxx, accessed xxxx. Hereafter 'Visa Openness Report 2024'.

<sup>103</sup> AfDB, 'Visa Openness Report 2024', p. 13.

<sup>104</sup> AfDB, 'Visa Openness Report 2019', p. 13.

<sup>105</sup> AfDB, 'Visa Openness Report 2024', p. 15.

<sup>106</sup> African Development Bank, 'African ministers hold strategic dialogue on visa-free movement to propel regional integration agenda for Africa's Transformation', available at <https://www.afdb.org/en/news-and-events/press-releases/african-ministers-hold-strategic-dialogue-visa-free-movement-propel-regional-integration-agenda-africas-transformation-81034>, accessed 23 April 2025.

<sup>107</sup> These developments are covered in earlier reports of the MIGRA programme such as Hirsch, A., 'Framing a Study of African Migration Governance Reform—Towards Freer Movement', New South Institute, 2023, available at <https://nsi.org.za/wp-content/uploads/2023/07/Framing-a-Study-of-African-Migration-Governance-Reform-Towards-Freer-Movement>, accessed 23 April 2025; Amadi, V.,

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<sup>109</sup> Hirsch, A. and Amadi, V., 'Can Africa accelerate initiatives towards the freer movement of Africans in Africa?', in Mangeni, F. and Attah-Mensah, J. (eds), *Existential Priorities of the AfCFTA*, UNECA, Addis Ababa, 2022.

<sup>110</sup> Okunade, S., 'Africa moves towards intracontinental free movement for its booming population', Migration Policy Institute, 2021, available at <https://www.migrationpolicy.org/article/africa-intracontinental-free-movement>, accessed 15 January 2025.

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<sup>112</sup> Maunganidze, O., 'Africa's migration governance structure is built bloc by bloc', Institute for Strategic Studies, 2024, available at <https://issafrica.org/iss-today/africa-s-migration-governance-structure-is-built-bloc-by-bloc>, accessed 23 April 2025; Hirsch, 'The African Union's Free Movement of Persons Protocol'.

<sup>113</sup> Natural Person is someone who resides in the territory of that other State Party or any other State Party and who, under the law of that other State Party, is a national or has the right of permanent residence. See Article 1(i) of the AfCFTA Protocol on Trade in Services, 2018.

<sup>114</sup> Other modes include cross-border supply (Mode I), consumption abroad (Mode II) and commercial presence (Mode III). Article 1(p) of the AfCFTA Protocol on Trade in Services, 2018.

<sup>115</sup> Article 28(1)(d) of the AfCFTA Protocol on Trade in Services, 2018.

<sup>116</sup> Mold, A. and Mangeni, F., 'The status of the African Continental Free Trade Area – the dawn of a new era: The momentum is there, and external partners should recognise that the time for the AfCFTA has come and support it, rather than frustrate it', *The Pan African Review*, 2002.

<sup>117</sup> Article 4 of the AfCFTA Protocol on Trade in Services, 2018.

<sup>118</sup> Article 19(1) of the AfCFTA Protocol on Trade in Services, 2018.

<sup>119</sup> Articles 19(1) and 19(2)(a)-(f) of the AfCFTA Protocol on Trade in Services, 2018

<sup>120</sup> Article 20 of the AfCFTA Protocol on Trade in Services, 2018.

<sup>121</sup> Articles 15 and 16 of the AfCFTA Protocol on Trade in Services, 2018.

<sup>122</sup> Ibid.

<sup>123</sup> The commitments in a country's schedule may be modified or withdrawn at any time after three years of entry into force (i.e. after the adoption of the schedule by the AU Assembly) of the commitment. See Articles 22 and 23 of the AfCFTA Protocol on Trade in Services, 2018.

<sup>124</sup> Bisong, A., 'Labour mobility as a key element of the AfCFTA: What role for the AU's free movement protocol?', ECDPM, 2022, available at <https://ecdpm.org/work/labour-mobility-key-element-afcfta-role-au-free-movement-protocol>, accessed 23 April 2025.

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- <sup>127</sup> Article 6(2) read with Article 7(1) of the Constitutive Act of the African Union, 2001.
- <sup>128</sup> Article 9(1)(a) and (e) of the Constitutive Act of the African Union, 2001.
- <sup>129</sup> Article 10(1) of the Constitutive Act of the African Union, 2001.
- <sup>130</sup> See Articles 10(2) and 13(1) of the Constitutive Act of the African Union, 2001.
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- <sup>145</sup> The PAFOM-8 theme, 'Bolstering free movement and trade nexus in AfCFTA: Optimising benefits of migration, labour migration for development' is available at <https://au.int/en/news-events/20231031/8th-pan-african-forum-migration-pafom-8-theme-bolstering-free-movement-and-trade>, accessed 15 January 2025.
- <sup>146</sup> Established through the Protocol to the African Charter on Human and Peoples' Rights on establishing an African Court on Human and Peoples' Rights, 1998, which came into force in 2004, available at <https://africanlii.org/akn/aa-au/act/protocol/1998/establishment-of-african-court-on-human-and-peoples-rights/eng@1998-06-10>, accessed 21 May 2025.
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<sup>148</sup> See Article 3 of the Protocol to the African Charter on Human and Peoples' Rights on establishing an African Court on Human and Peoples' Rights, 1998.

<sup>149</sup> Anudo Ochieng Anudo v. United Republic of Tanzania Application No. 012/2015, Jud 22/03/2018. See <https://africanlii.org/akn/aa-au/judgment/afchpr/2018/5/eng@2018-03-22>, accessed 21 May 2025.

<sup>150</sup> *Ibid*, paras 4 to 11.

<sup>151</sup> *Ibid*, paras 13 and 14(i).

<sup>152</sup> *Ibid*, para 75.

<sup>153</sup> *Ibid*, paras 76 to 88.

<sup>154</sup> *Ibid*, para 98 to 99.

<sup>155</sup> *Ibid*, paras 100 to 106.

<sup>156</sup> Robert John Penessis v. United Republic of Tanzania Application No. 013/2015, Jud 28/11/2019. See <https://africanlii.org/akn/aa-au/judgment/afchpr/2019/50/eng@2019-11-28>, accessed 21 May 2025.

<sup>157</sup> *Ibid*, paras 4 to 8.

<sup>158</sup> *Ibid*, para 22(ii).

<sup>159</sup> Any restrictions on this right must align with the protection of national security, law and order, public health or morality, as stipulated in the Charter.

<sup>160</sup> *Ibid*, para 123 to 124.

<sup>161</sup> *Ibid*, para 125.

<sup>162</sup> *Ibid*, para 126.

<sup>163</sup> Kennedy Gihana & Others v. Republic of Rwanda Application No. 017/2015, Jud 28/11/2019. See <https://africanlii.org/akn/aa-au/judgment/afchpr/2019/47/eng@2019-11-28>, accessed 21 May 2025.

<sup>164</sup> *Ibid*, paras 3 to 5.

<sup>165</sup> *Ibid*, para 77.

<sup>166</sup> *Ibid*, paras 87 to 92.

<sup>167</sup> *Ibid*, para 106.

<sup>168</sup> *Ibid*, paras 108 and 109.

<sup>169</sup> Article 27(1) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, 1998. See Rule 63 of the Rules of Court, 2020.

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<sup>172</sup> Article 31 of the African Charter.

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