

Free Movement in Africa

Challenges and Opportunities for the Ratification
and Popularisation of the African Union
Free Movement Protocol and
Lessons Learned
from the Regional Economic Communities,
the European Union, and Free
Movement Regimes from Around the World

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Emmerentia Erasmus, Study Team Leader

Dr. Diego Acosta, Expert on Free Movement Regimes

Dr. Willi Eselebor, Expert on Border Management and Security

Brian Chigawa and Cham Etienne Bama, Experts on Socio-Economic and Trade Aspects

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I. Acknowledgements

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The study was conducted by a team of experts, led by Ms. Emmerentia Erasmus as Study Team Leader and lead author; Dr. Diego Acosta as Expert on Free Movement Regimes; Dr. Willi Eselebor as Expert on Border Management and Security; Mr. Brian Chigawa as Expert on Socio-Economic and Trade Aspects for East and Southern Africa; and Mr. Cham Etienne Bama as Expert on Socio-Economic and Trade Aspects for West, North and Central Africa. The Study Team closely coordinated with the African Union Commission (AUC) and ICMPD and would like to express their sincere gratitude to Ms. Rita Amukhobu, Dr. Nancy Adossi, Frehiwot Kebede from the AUC, as well as Ms. Monica Zanette, Ms. Barbara Cuzuioc-Weiss and Ms. Sara Landstroem from ICMPD for their guidance and support throughout this process. The Study Team would also like to thank the numerous AU Member States, Regional Economic Communities, civil society organisations, private sector actors, and international organisations who gave their time and shared their insights to provide the rich data that made the drafting of this study possible. Many of these discussions took place at the *Consultation on the challenges and opportunities for the ratification and popularisation of the AU FMP and lessons learned from the RECs and the EU*, which took place in Zanzibar from 1-2 August 2024. This study was made possible through collaboration with the African Union Commission's Humanitarian Affairs Division.



II. List of Abbreviations and Acronyms

AEC	African Economic Community
AfCFTA	African Continental Free Trade Area
APIS	Advanced Passenger Information Systems
APSA	African Peace and Security
AU	African Union
AUC	African Union Commission
AU FMP	Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment (AU Free Movement Protocol)
AVOI	Africa Visa Openness Index
G2CMMD	AU-EU Continent-to-Continent Migration and Mobility Dialogue
CARICOM	Caribbean Community and Common Market
CBC	COMESA Business Council
CBCM	Cross-Border Coordination Mechanism
CEN-SAD	Community of Sahel-Saharan States
CEWARN	Conflict Early Warning and Response Mechanism
CEWS	Continental Early Warning System
COMESA	Common Market for Eastern and Southern Africa
CVQ	Caribbean vocational qualification certificate
DDF	Demand Driven Facility
DRC	Democratic Republic of the Congo
EABC	East Africa Business Council
EAC	East African Community
EAPCCO	Eastern Africa Police Chiefs Cooperation
ECCAS	Economic Community of Central African States
ECOWAS	Economic Community of West African States
ENBIC	ECOWAS National Biometric Identity Card

FMM West Africa	Support to Free Movement of Persons and Migration in West Africa
FMP	Free Movement Protocol
GCM	Global Compact for Safe, Orderly and Regular Migration (Global Compact for Migration)
GTTC	Groupement des Transporteurs Terrestres du Cameroun
ICMPD	International Centre for Migration Policy Development
IGAD	Intergovernmental Authority on Development
ILO	International Labour Organization
IOM	International Organization for Migration
LMS	Labour Mobility Schemes
NCM	National Coordination Mechanism on Migration
NMC	National Monitoring Committee
JPPC	Joint Permanent Commission of Cooperation
LMIS	Labour Market Information System
MERCOSUR	Mercado Común del Sur, Southern Common Market
MIDCOM	Migration Dialogue from the Common Market for Eastern and Southern Africa Member States
MLA	Mutual Legal Assistance
MMD	EU-funded Africa-EU Migration and Mobility Dialogue Support Programme
OSBP	One Stop Border Post
PNR	Passenger Name Record
RECs	Regional Economic Communities
SADC	Southern African Development Community
SAMM	Southern Africa Migration Management Programme
STR	Simplified Trade Regime
UMA	Arab Maghreb Union
UNECA	United Nations Economic Commission for Africa
UNODC	United Nations Office on Drugs and Crime
UNTOC	UN Convention against Transnational Organized Crime



III. Foreword

This study explores the challenges and opportunities surrounding the ratification and popularisation of the African Union Free Movement Protocol (AU FMP). Drawing on lessons from the European Union and Africa’s Regional Economic Communities (RECs), it responds to the growing recognition among African Union (AU) Member States and RECs that the continent’s aspiration for deeper regional integration and socio-economic transformation cannot be fully realised without the free movement of persons. While political will to enhance mobility exists, practical implementation remains constrained by security concerns, socio-economic issues, and limited institutional and technical capacity.

The state of free movement in Africa reflects both the aspirations of unity and the complex legacy of colonial-era borders. While various initiatives have promoted greater mobility across the continent, practical implementation remains constrained by divergent policies, historical divisions, and uneven regional infrastructure.

In 2018, the AU adopted the Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment—commonly referred to as the AU Free Movement Protocol (AU FMP). The Protocol stands as a cornerstone of Agenda 2063 and the vision for an integrated, prosperous, and peaceful Africa. Yet, despite its potential to boost trade, labour mobility, and development across the continent, the pace of ratification has been slow. Together with the African Continental Free Trade Area (AfCFTA), AU FMP represents a vital pillar for advancing Africa’s economic integration, enhancing intra-African trade, and promoting inclusive development.

As part of its mandate to facilitate the entry into force and implementation of this Protocol, the African Union Commission (AUC), with the support of international and regional partners, has undertaken a series of assessments and engagements to better understand the barriers to ratification. This study, benefitting from inputs of regional and subject-matter experts, draws on consultations with stakeholders from the Member States and the RECs, as well as comparative experiences from other free movement regimes around the world to identify practical challenges and actionable strategies for Member States, RECs, and the AUC.

Above all, the study underscores the importance of building the institutional foundations, interoperable civil registration systems (CVRS), border management infrastructure, mutual recognition of travel documents, and coordinated security frameworks required to operationalise the AU FMP. It further highlights that misconceptions about the Protocol, particularly concerns about irregular migration and national security, which can be addressed through evidence-based dialogue and effective safeguards, need to be addressed through awareness-raising and informed dialogue among policymakers, stakeholders, and the public.

The study identifies key challenges to free movement, including bureaucratic visa regimes, underdeveloped transportation infrastructure, security threats such as terrorism and trafficking, and economic disparities that shape migration flows. These barriers require coordinated policy responses and strengthened cross-border cooperation.

We commend the collaborative work led by the International Centre for Migration Policy Development (ICMPD), and extend appreciation to all Member States, RECs, and partners who contributed to this important process.

This study is both a diagnostic and a guide. It identifies current constraints while offering forward-looking solutions that can be adapted to varying national and regional contexts. It offers Member States, RECs, the AUC, and partners actionable strategies for navigating the legal, institutional, and political complexities surrounding the ratification and implementation of the Free Movement Protocol. As we work toward a continent where borders are bridges, not barriers, I encourage all stakeholders to draw on the study's findings to transform aspiration into action toward a more integrated, united, and prosperous Africa.



IV. Glossary of Key Terms

African Continental Free Trade Area

The African Continental Free Trade Area aims to create a single continental market for goods and services, which is to be facilitated by the movement of persons and deepen the economic integration of the continent.¹

African Economic Community

The African Economic Community is to be built through successive stages and culminate in the free movement of people, goods, capital and services across Africa.²

Circular migration

A form of migration in which people repeatedly move back and forth between two or more countries.³

Free movement of persons

The right to entry, residence and establishment in the countries that are participating in a free movement regime and includes the right to work.⁴

Irregular migration

Movement of persons that takes place outside the laws, regulations, or international agreements governing the entry into or exit from the State of origin, transit or destination.⁵

Migration

The movement of persons away from their place of usual residence, either across an international border or within a State.⁶

Mobility

A generic term covering all the different forms of movements of persons, also including short-term periods, such as movement for tourism, that is generally not considered as migration.⁷

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- 1 AUC (date unknown), *The African Continental Free Trade Area*. Available at: <https://au.int/en/african-continental-free-trade-area> [Accessed 3 April 2025].
 - 2 AU (1991), *Treaty establishing the African Economic Community*.
 - 3 International Organization for Migration (IOM) (2019), *Glossary on Migration, International Migration Law No 34*. Geneva: IOM.
 - 4 Definition developed by the Study Team and applied in this study.
 - 5 IOM (2019), *Glossary on Migration, International Migration Law No 34*. Geneva: IOM.
 - 6 *ibid.*
 - 7 Derived from IOM (2019), *Glossary on Migration, International Migration Law No 34*. Geneva: IOM.

Regional Economic Communities

Regional groupings of states that facilitate regional economic integration between members of the individual regions and through the wider African Economic Community.⁸

Regular migration

Migration that occurs in compliance with the laws of the country of origin, transit and destination.⁹

Visa liberalisation

States waiving visa requirements for nationals from certain countries or making it easier for nationals from certain countries to access visas, such as providing them with visas on arrival.

8 AUC (date unknown), *Regional Economic Communities*. Available at: <https://au.int/en/recs> [Accessed 3 April 2025].

9 IOM (2019), *Glossary on Migration, International Migration Law No 34*. Geneva: IOM.



V. Executive Summary

The Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment (AU FMP) was adopted in 2018 and is a cornerstone of the African Union's (AU) regional integration, political unification and poverty reduction agenda. Facilitating the movement of people through the AU FMP could assist in filling skills gaps that are needed for economic development, boost trade in goods and services, and multiply the socio-economic benefits of the African Continental Free Trade Area (AfCFTA).

To date, of the 32 AU Member States that have signed the AU FMP, four have ratified it. For it to enter into force, a further 11 Member States need to ratify it. The AU commissioned this study to identify the challenges and opportunities for the ratification and implementation of the AU FMP. This study was conducted within the framework of the AU-EU Continent-to-Continent Migration and Mobility Dialogue (C2CMMD), which is implemented by the International Centre for Migration Policy Development (ICMPD), and forms part of the EU-funded Africa-EU Migration and Mobility Dialogue Support Programme (MMD). A team of experts, led by Ms. Emmerentia Erasmus undertook the study. The team included Dr. Diego Acosta, Expert on Free Movement Regimes; Dr. Willie Eselebor, Expert on Border Management and Security; and Mr. Brian Chigawa and Mr. Cham Etienne Bama, experts on Socio-Economic and Trade Aspects.

A two-day consultation between AU Member States that have signed the AU FMP, Regional Economic Communities (RECs), civil society and private sectors actors, and the AU Commission served as the primary data collection methodology for the study. The participants mapped out challenges and opportunities associated with the ratification and implementation of the AU FMP, as well as practical strategies to harness these opportunities, tackle the challenges and increase the number of ratifications. Desk research and interviews with key stakeholders provided additional data.

In this study, the free movement of persons refers to the right to entry, residence and establishment and includes the right to work. The AU FMP proposes a phased approach to progressively provide for these rights, with the right to enter introduced in phase 1, the right to residence following in phase II and the right to establishment realised in phase III.¹⁰

The study aims to contribute to the advancement of the AU FMP ratification process in three ways. **Firstly, it captures good practices, strategies and initiatives that have helped to address the challenges associated with the free movement of persons and harness the opportunities it offers.** These strategies include: systems that facilitate mobility while reinforcing border management and security, such as One Stop Border Posts (OSBPs) and Advanced Passenger Information Systems (APIS); and interstate cooperation mechanisms that build trust and collaboration on mobility, such as Joint Border Commissions and Cross-Border Coordination Mechanisms (CBCMs).

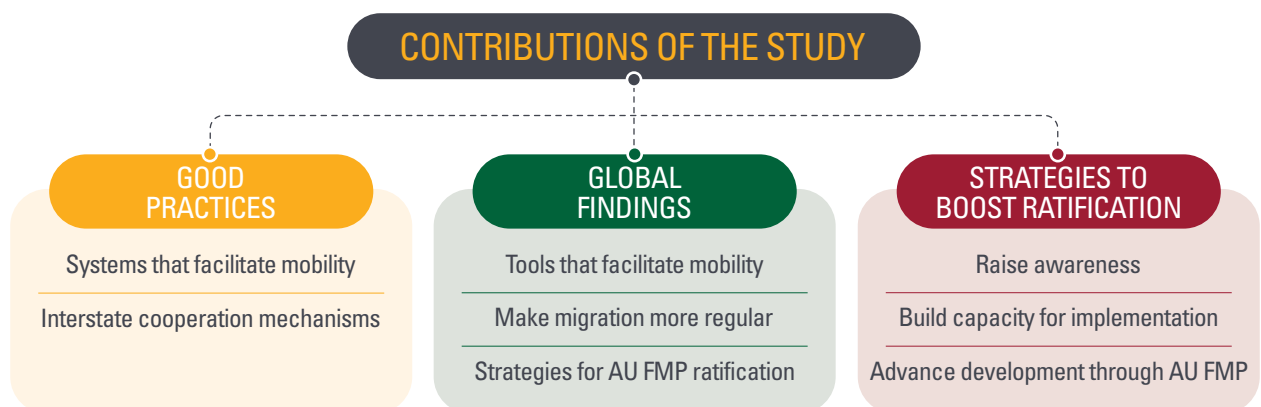
¹⁰ See Article 5 of the AU FMP on Progressive Realization.

Secondly, this study identifies findings and good practices from free movement regimes across the globe. The findings highlight that free movement regimes are not open borders; they are legal tools that facilitate the mobility of nationals of participating states. Free movement regimes make migration more regular and increase a state’s ability to know who is on their territory and control their stay. The findings from this study can sharpen our understanding of the AU FMP and inform strategies to advance its ratification.

Thirdly, the study identifies practical strategies that may assist in increasing the number of ratifications of the AU FMP. Raising awareness of the concept of the free movement of persons is one such strategy. The term is often misunderstood to mean cross-border mobility without rules or regulations. In truth, the AU FMP will facilitate mobility, but all movement across borders will be subject to the rules, regulations and laws of the participating AU Member States. Another strategy is geared towards building the capacity of Member States to ratify and implement the AU FMP through the establishment of a targeted demand-driven facility that would provide Member States with bespoke technical assistance and capacity development.

Free movement regimes touch on various aspects of integration including: regulating labour markets; the recognition of qualifications; preventing and countering epidemics and international crime; and mobility laws and regulations. Consequently, free movement regimes are implemented through building systems in various sectors. The AU FMP allows for variable geometry, whereby Member States can implement its provisions at different speeds and times.¹¹ AU Member States may therefore progressively implement the AU FMP’s provisions over time, while building the systems and mechanisms that buttress the free movement of persons.

The East African Community (EAC) and the Economic Community of West African States (ECOWAS) stand out as the two regional blocks in Africa that are already implementing free movement regimes. Like other regions in Africa, these regional blocks need to further strengthen the systems, hardware and software that reinforce the free movement of persons. This study identifies numerous mechanisms and initiatives that are being implemented in Africa and elsewhere that support and strengthen these systems. Implementation of the AU Free Movement of Persons should help to advance the development gains that the free movement of persons will have in Africa.



¹¹ See Article 5 of the AU FMP on Progressive Realization.



VI. Introduction

1. The African Union adopted the Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment (AU FMP) in January 2018. The AU FMP is key to the AU's regional integration agenda and its socio-economic and poverty reduction objectives for the continent. It contributes to and forms part of the AU's regional integration efforts and flagship projects, such as the African Continental Free Trade Area (AfCFTA) and the Single African Air Transport Market (SAATM). The AU FMP is also one of the flagship projects of Agenda 2063, which envisions an integrated and politically-united Africa, and calls for the free movement of people, capital, goods and services.
2. AU data indicates that 32 of the 55 AU Member States have signed the AU FMP¹², four of which have ratified it; Mali, Niger, Rwanda, São Tomé and Príncipe. No new signatures or ratifications of the Protocol have taken place since 2019. A total of 15 Member States need to ratify the AU FMP for it to enter into force.
3. The AU is addressing the political and technical hurdles that must be overcome before the AU FMP can enter into force. As part of this work, the AU commissioned this study to identify the challenges and opportunities for the ratification and implementation of the AU FMP, with a specific focus on socio-economic and trade issues as well as border management and security. The study was conducted within the framework of the AU-EU Continent-to-Continent Migration and Mobility Dialogue (C2CMMD), which is implemented by the International Centre for Migration Policy Development (ICMPD), and forms part of the EU-Funded Africa-EU Migration and Mobility Dialogue Support Programme.
4. The study was conducted by a team of experts, with Ms. Emmerentia Erasmus as Study Team Leader; Mr. Brian Chigawa as Expert on Socio-Economic and Trade Aspects for East and Southern Africa; Mr. Cham Etienne Bama as Expert on Socio-Economic and Trade Aspects, for West, North and Central Africa; Dr. Willi Eselebor as Expert on Border Management and Security; and Dr. Diego Acosta as Expert on Free Movement Regimes.

12 AU Member States that have signed the AU Free Movement Protocol: Angola, Burkina Faso, Central African Republic, Chad, Comoros, Congo, Cote D'Ivoire, Djibouti, DRC, Equatorial Guinea, Gabon, Gambia, Ghana, Guinea, Kenya, Lesotho, Liberia, Malawi, Mali, Mozambique, Niger, Rwanda, Sao Tome and Principe, Senegal, Sierra Leone, Somalia, South Sudan, Sudan, Tanzania, Togo, Uganda, Zimbabwe.



VII. Rationale for the Study

5. In this study the free movement of persons refers to the right to entry, residence and establishment and includes the right to work. The AU FMP proposes a phased approach to progressively provide for these rights, with the right to enter introduced in phase 1, the right to residence following in phase II and the right to establishment realised in phase III.¹³



6. Numerous studies and reports have been written on the obstacles to the ratification of the AU FMP.¹⁴ Obstacles to the free movement of persons in Africa are well known. They include: limited civil registry systems, which serve as the basis for the issuing of travel documents; porous borders and deficient infrastructure at borders, which hamper the regulation of mobility; and transnational crime and terrorism, which threaten the security of states. Moreover, the protection of national labour markets and public services, such as schools and hospitals, have in some cases led to policies aimed at curbing immigration. The various benefits associated with the free movement of persons have also been extensively written about and include increased trade, tourism, remittances, scientific development and plugging skills gaps to aid economic development.

13 AU Member States that have signed the AU Free Movement Protocol: Angola, Burkina Faso, Central African Republic, Chad, Comoros, Congo, Cote D'Ivoire, Djibouti, DRC, Equatorial Guinea, Gabon, Gambia, Ghana, Guinea, Kenya, Lesotho, Liberia, Malawi, Mali, Mozambique, Niger, Rwanda, Sao Tome and Principe, Senegal, Sierra Leone, Somalia, South Sudan, Sudan, Tanzania, Togo, Uganda, Zimbabwe.

14 These studies and reports include:

UNECA & AU. (2023), *Free Movement of Persons for Trade: Towards an Accelerated Ratification of the AU Free Movement of Persons Protocol in support of the implementation of the AfCFTA*.

- Hirsch, A. (2021), *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, December 2021.
- AU (2019), *Progress Report on the Free Movement of Persons in Africa*.
- IOM (2018), *Study on the Benefits and Challenges of Free Movement of Persons in Africa*.
- Erasmus, E. and Harley, H. (2018), *The Development of the AU Free Movement of Persons Protocol: Origins, Objectives and Key Concerns*.



7. This study aims to contribute to the process of moving forward the ratification of the AU FMP in three ways. Firstly, the study captures good practices, strategies and initiatives that have helped to address the challenges associated with the free movement of persons and harness the opportunities it offers. It showcases African models that can be learned from and built upon to increase safe, orderly, and regular migration and the various benefits associated with it.
8. Secondly, it identifies findings and good practices from free movement regimes from around the world. It highlights key characteristics and trends of free movement regimes, how they reduce irregular migration and constitute a new normal at the global level. These findings can help to broaden understanding of the AU FMP as a free movement regime and inform strategies to advance its ratification.
9. Thirdly, the study identifies practical strategies that may assist in increasing the number of ratifications of the AU FMP. These strategies were developed through a two-day consultation¹⁵ with AU Member States that have signed the AU FMP, as well as RECs, civil society organisations and private sector actors. The AU, RECs, Member States, International Organisations and other partners can contribute to the successful implementation of these strategies to increase the number of ratifications of the AU FMP.

¹⁵ Referred to hereafter as the Study Consultation.



VIII. Structure of the Study

10. The first chapter of this study briefly describes the free movement of persons agreements that are in place in the AU geographical regions, namely North Africa, East Africa, Central Africa, Southern Africa and West Africa, and the extent to which they have entered into force and are implemented. The study only surveys the eight RECs recognised by the AU, which are regarded as building blocks for achieving continent-wide free movement, and the African Economic Community. These RECs are the Arab Maghreb Union (AMU), the Common Market for Eastern and Southern Africa (COMESA), the Community of Sahel-Saharan States (CEN-SAD), the East African Community (EAC), the Economic Community of Central African States (ECCAS), the Economic Community of West African States (ECOWAS), the Intergovernmental Authority on Development (IGAD), and the Southern African Development Community (SADC).
11. The second chapter outlines the socio-economic and trade, as well as the security and border management opportunities and challenges associated with ratification of the AU FMP. These opportunities and challenges were mapped out by participants at the Study Consultation, which served as the main data gathering tool for the study. The third chapter details good practices and strategies that have been adopted to address the challenges and harness the opportunities that greater mobility and the free movement of persons present. Most of these are success stories that come from the participants at the Study Consultation and are examples from the AU, RECs and AU Member States that have signed the AU FMP. In addition, desk research and interviews with relevant stakeholders provided other examples of good practice.
12. The fourth chapter identifies findings and good practices from free movement regimes from around the world. These findings can help to broaden understanding of the AU FMP and its provisions and inform strategies to advance its ratification. The last chapter identifies practical strategies identified by participants at the Study Consultation and informed by research and interviews, that may assist in increasing the number of ratifications of the AU FMP.



IX. Methodology

13. The primary data collection methodology for the study was the two-day consultation that took place in Zanzibar, Tanzania, from 1-2 August 2024, which brought together 63 participants.¹⁶ The Study Consultation was structured around regional working groups, representing the AU geographical regions¹⁷ of East, Southern, West and Central Africa, which include Member States that have signed the AU FMP. The table below shows the five AU regions to which the AU Member States belong. At the Study Consultation, AU Member States participated in the working group for their region, while other participants from the RECs, private sector and civil society organisations generally participated in the working group of the region from which they originate or with which they have a professional affiliation.

REGION	AU MEMBER STATES
North Africa	Algeria, Egypt, Libya, Mauritania, Morocco, Sahrawi Arab Democratic Republic, Tunisia
East Africa	Comoros, Djibouti, Eritrea, Ethiopia, Kenya, Madagascar, Mauritius, Rwanda, Seychelles, Somalia, Sudan, South Sudan, Tanzania and Uganda.
Central Africa	Burundi, Cameroon, Central African Republic, Chad, Congo, Democratic Republic of Congo, Equatorial Guinea, Gabon and São Tomé and Príncipe.
Southern Africa	Angola, Botswana, Eswatini, Lesotho, Malawi, Mozambique, Namibia, South Africa, Zambia and Zimbabwe.
West Africa	Benin, Burkina Faso, Cabo Verde, Côte d'Ivoire, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.

14. The regional working groups identified challenges and opportunities associated with the free movement of persons, as well as good practices and initiatives from the AU, RECs and regions that have helped to address these challenges and harness these opportunities. The regional working groups also debated strategies to advance the ratification and technical implementation of the AU FMP. In addition, a panel discussion delved into lessons learned and good practices on the free movement of persons.

15. The recommendations developed by the working groups and the points made by the panel discussion were instrumental in shaping the structure of the study and determining its content. Discussions at the Study Consultation showed that the AU regions face largely similar challenges regarding ratification of the AU FMP and expect the same benefits from its implementation. The study is therefore structured around the shared free movement-related concerns, opportunities and strategies that emerged from the Study Consultation and does not contain separate chapters on each of the AU regions. Desk research and interviews with the AUC, AU Member States, RECs, civil society organisations, private sector actors, international organisations, and UN agencies complement data collected at the Study Consultation.

¹⁶ AU Member States that have signed the AU FMP; RECs; AU bodies; civil society organisations; private sector actors; the African Union Commission, EU, ICMPD and the study team participated in the Study Consultation.

¹⁷ The Council of Ministers (26th Ordinary Session in Addis Ababa, Ethiopia) adopted resolution CM/Res. 464 (XXVI) in 1976, creating the five regions - Northern, Western, Central, Eastern, and Southern - of the Organisation of African Unity (OAU), predecessor of the AU.



1. Overview of the State of Free Movement in the AU Regions

Visa liberalisation at the national level:

16. The Africa Visa Openness reports, which are researched and produced by the African Development Bank Group, show that in many cases crossing borders for temporary stays is becoming easier for Africans in Africa, with more countries offering visa-free entry. The Africa Visa Openness Index (AVOI) measures the extent to which African countries are open to visitors from other African countries.¹⁸



¹⁸ For more information, see: <https://www.visaopenness.org/about-the-report/>

The AVOI is the most up-to-date publicly available source on the extent to which African countries are facilitating the right to entry, which constitutes phase 1 of the AU FMP. It reports that in 2024, four countries – Rwanda, Benin, The Gambia, and Seychelles – offered visa-free entry to citizens of other African countries, up from three in 2022.¹⁹ Also, 48 countries offer visa-free entry privileges to the citizens of at least one other country, while 33 countries offer visa-free travel to at least 10 countries. Evidence from the AVOI shows that numerous AU Member States are already implementing the provisions of phase 1 of the AU FMP, which cover the right to entry, and culminate in the elimination of visa requirements for short-term stays. Thus, at the national level, political decision makers in AU Member States are encouraging more short-term mobility.

Progress in the free movement of persons at the regional level:

17. At the regional level, progress in the free movement of persons has been varied among the RECs, with the most tangible achievements in East and West Africa, through the implementation of the EAC Common Market Protocol and the ECOWAS free movement regime. The RECs' free movement regimes are building blocks for the AU's objective of continent-wide free movement which will culminate in the establishment of the African Economic Community (AEC). The Treaty Establishing the AEC, also known as the Abuja Treaty,²⁰ is an agreement that aims to establish the deepest level of economic integration in Africa. The AEC will facilitate the free movement of people, goods, capital and services across Africa. The RECs constitute the pillars of the AEC. The harmonisation of their regional integration frameworks, such as their free trade areas and free movement of persons protocols, are envisioned by the Abuja Treaty to build the AEC.
18. Different actors have proposed that a free movement regime between the EAC and ECOWAS could facilitate the AU FMP entering into force. Moreover, as these RECs are already implementing free movement regimes, they may be willing to expand them by joining others. However, as this chapter will show, the EAC and ECOWAS free movement regimes work in different ways and face their own challenges, and the feasibility of such an initiative would have to be explored through further consultation and research.
19. Free movement of persons agreements have also been developed in North, Central and Southern Africa. Advances in easing movement in these regions have occurred through bilateral and sub-regional initiatives that have enabled differing degrees of visa liberalisation.²¹

19 https://www.visaopenness.org/fileadmin/uploads/afdb/Documents/2024_AVOI_final_R3_20nov24_2.pdf

20 The Abuja Treaty was adopted in 1991 and entered into force in 1994. For more information, see: <https://au.int/en/treaties/treaty-establishing-african-economic-community>

21 Erasmus. E and Harley, L. (2017), *The Development of the AU Free Movement of Persons Protocol: Origins, Objectives and Key Concerns*.

Free Movement Agreements of the Regional Economic Communities:

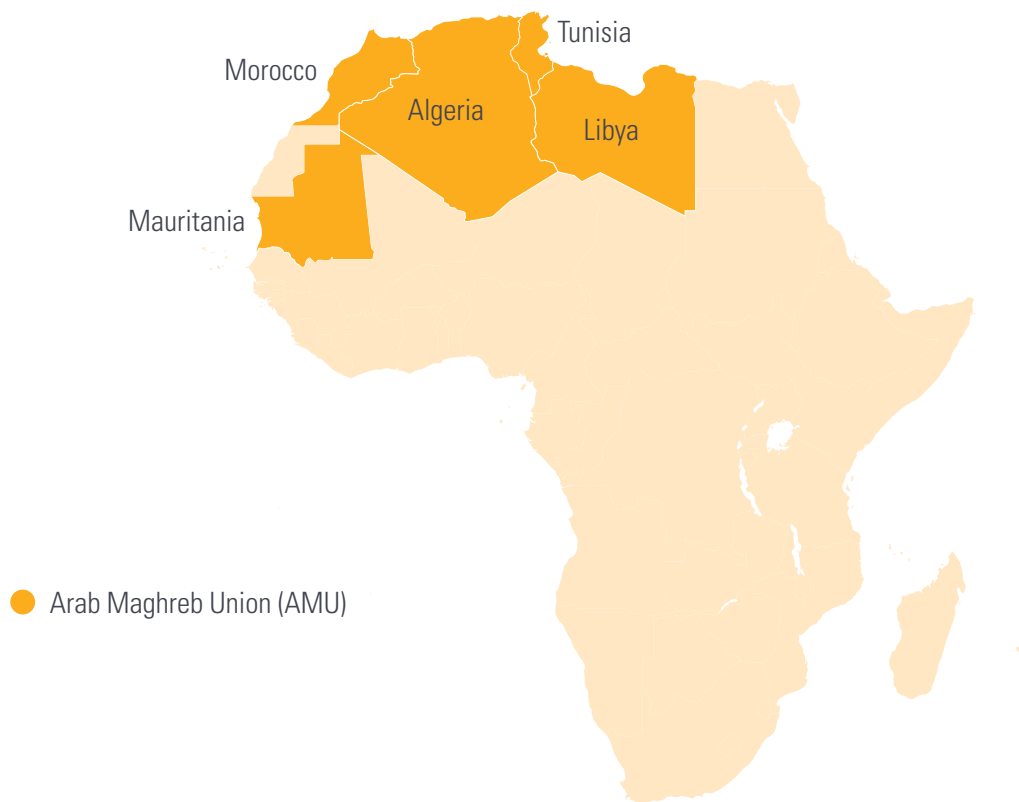
20. This chapter will briefly describe the REC free movement of persons agreements that are in place in the five AU regions and the extent to which they have entered into force and are implemented. It is important to note that the eight AU RECs have overlapping memberships, and their Member States originate from different AU regions.



- Arab Maghreb Union (AMU)
- Community of Sahel-Saharan States (CENSAD)
- The Common Market for Eastern and Southern Africa (COMESA)
- East African Community
- The Economic Community of Central African States (ECCAS)
- The Economic Community of West African States (ECOWAS)
- The Intergovernmental Authority on Development (IGAD)
- The Southern African Development Community (SADC)

The Arab Maghreb Union (AMU)

21. The AMU was established in 1989 and has five Member States: Algeria, Libya, Mauritania, Morocco and Tunisia. Article 2 of the 1989 AMU founding Treaty commits Member States to gradually working towards achieving the free movement of persons, but the AMU has not yet adopted any protocol or other legal instrument on the free movement of persons.²² Tunisia provides visa free entry to the AMU Member States.²³ The Freemove Project has identified bilateral free movement agreements between AMU Member States, namely Algeria and Morocco, Algeria and Tunisia, Libya and Tunisia, but implementation of these agreements varies.²⁴ However, none of the states from the AU North Africa region have signed the AU FMP. Lack of political support for the free movement of persons, inter-state conflict, domestic crises, insecurity and limited transport connections have been highlighted as some of the obstacles that have prevented the free movement of persons agenda from moving forward in the AMU.²⁵ The AMU's membership overlaps with COMESA and CEN-SAD.



22 Munyuki, E. (2013), *Continental Report: Freedom Of Movement Of People Study*. Centre for Citizens Participation for the African Union.

23 African Development Bank Group (2024), *Visa Openness when travelling to a country: Tunisia*. [online]. Available at: <https://www.visaopenness.org/> [Accessed 12 December 2024].

24 The Freemove Project is currently conducting a mapping, analysis and comparison of all bilateral and multilateral free movement regimes at global level. In the case of Africa, it has identified and studies ten such bilateral free movement regimes. For more information, please see Acosta, D. and van der Baaren, L. (2024), Freemove Project, Free Movement Regimes Dataset. Indicators on entry, residence, rights, and security of residence: <https://www.freemovehub.com/regimes/>

25 Schöfberger, I. (2020), *Free movement policies and border controls: regional migration governance systems in West and North Africa and Europe, and their interactions in Migration in West and North Africa and across the Mediterranean*. Geneva: International Organization for Migration.

The Community of Sahel-Saharan States (CEN–SAD)

22. CEN–SAD was created in 1998 and established as an AU REC in 2000.²⁶ CEN-SAD is the largest AU REC and has 25 Member States: Benin, Burkina Faso, Central African Republic, Chad, Comoros, Côte d'Ivoire, Djibouti, Egypt, Eritrea, The Gambia, Ghana, Guinea, Guinea Bissau, Libya, Mali, Mauritania, Morocco, Niger, Nigeria, Senegal, Sierra Leone, Somalia, Sudan, Togo, and Tunisia.²⁷ The Treaty that established CEN-SAD set the free movement of persons as a central objective. CEN-SAD developed a draft agreement on Free Movement and Establishment of Persons within the territory of Member States of the Community of Sahel-Saharan States, which drew from the ECOWAS free movement regime, but never adopted it. Free movement among Member States of CEN-SAD is largely attributed to ECOWAS which overlaps with it.²⁸ CEN-SAD's membership overlaps with the AMU, COMESA, the EAC, ECCAS, ECOWAS, IGAD and SADC.



The Common Market for Eastern and Southern Africa (COMESA)

23. COMESA is the second largest REC and has 21 Member States: Burundi, Comoros, Democratic Republic of Congo (DRC), Djibouti, Egypt, Eritrea, Eswatini, Ethiopia, Kenya, Libya, Madagascar,

26 European Council on Foreign Relations (date unknown), *Mapping African Regional Cooperation_ CEN-SAD*. 2024. [online]. Available at: <https://ecfr.eu/special/african-cooperation/censad/> [Accessed 20 November 2024].

27 CENSAD (2024), *Member States*. [online]. Available from: <https://censad.int/en/who-are-we/member-states/> [Accessed 2 April 2025].

28 Wood, T. (2019), *The role of free movement of persons agreements in addressing disaster displacement - a study of Africa*, commissioned by the Platform on Disaster Displacement.

Malawi, Mauritius, Rwanda, Seychelles, Somalia, Sudan, Tunisia, Uganda, Zambia and Zimbabwe. COMESA was established in 1994 and replaced the Preferential Trade Area which was formed in 1981.²⁹ COMESA’s free movement regime consists of the Protocol on the Gradual Relaxation and Eventual Elimination of Visa Requirements, 1984 (known as the Visa Protocol); and the Protocol on Free Movement of Persons, Labour, Services, the Right of Establishment and Residence, 1998 (the Free Movement Protocol).³⁰ The Visa Protocol, which is in force, only covers the right to entry. It requires Member States to offer a visa on arrival as a first step and a ninety-day visa-free regime in a second phase. Some COMESA Member States are, to different extents, implementing the Protocol by providing visas on arrival and ninety-day visa access to some of the other COMESA Member States. Burundi, Kenya, Malawi, Mauritius, Rwanda, and Seychelles require no visa from COMESA citizens and Zambia, as the seat of the COMESA Secretariat, waived visas and visa fees for all COMESA citizens on official business in 2013.³¹ COMESA’s Free Movement Protocol has only been signed by four Member States, namely Kenya, Rwanda, Zimbabwe and Burundi and ratified by Burundi and Rwanda. Seven Member States need to ratify the Protocol for it to enter into force.³² COMESA’s membership overlaps with the AMU, CEN–SAD, the EAC, ECCAS, IGAD and SADC.



29 COMESA (2024), *COMESA Objectives and Priorities*. [online]. Available at: <https://www.comesa.int/what-is-comesa/> [Accessed 20 November 2024].

30 Erasmus. E and Harley, L. (2017), *The Development of the AU Free Movement of Persons Protocol: Origins, Objectives and Key Concerns*.

31 COMESA (2024), *Programme activities: immigration and free movement of persons*. [online]. Available at: <https://www.comesa.int/programme-activities-immigration-and-free-movement-of-persons/> [Accessed 20 November 2024].

32 Acosta, D. and van der Baaren, L. (2024), *Freemove Project, Free Movement Regimes Dataset. Indicators on entry, residence, rights, and security of residence (2024), Common Market for East and Southern Africa – Multilateral not in force*. [online]. Available at: <https://www.freemovehub.com/regimes/comesa/>

The East African Community (EAC)

24. The EAC has a long history of cooperation between the founding Partner States which involve successive regional integration arrangements dating back to 1917 with a customs union agreement between Kenya and Uganda.³³ The current EAC Treaty was signed in 1999 by the founding Partner States: Kenya, Uganda and Tanzania. The EAC has since grown to eight Partner States, which includes Rwanda, Burundi, South Sudan, the DRC and Somalia.
25. The treaty that established the EAC and the 2010 Protocol for the Establishment of the EAC Common Market (CMP) form the legal basis for the free movement of goods, persons, labour, services and capital in the EAC. The CMP and the EAC Common Market (Free Movement of Persons) Regulations (Annex I to the CMP) provide for the right to enter the territory of a Partner State without a visa, the right to move freely in the territory of a Partner State, the right to stay in the territory of a Partner State and the right to exit without restrictions, and the right to full protection by the laws of a Partner State.³⁴
26. The three newest members (South Sudan joined in 2016, DRC in 2022 and Somalia in 2024) are each implementing their own roadmaps which indicate how they will meet the commitments of the CMP over time.³⁵ All Partner States are implementing Article 7(1) of the CMP that provides for visa-free entry of citizens of EAC Partner States into territories of other EAC Partner States.³⁶ An EAC citizen is issued with a 6-month pass when visiting another EAC Partner State, which does not entitle them to seek employment or set up a business during their stay. EAC citizens need to apply for a work permit to access employment and self-employment in another EAC Partner State. EAC citizens who are workers or self-employed persons, and their spouses, dependents and children enjoy the right of residence in other EAC Partner States.³⁷
27. The CMP largely facilitates the movement of skilled labour. The Schedule for the Free Movement of Workers (Annex II of the EAC CMP) specifies labour market access in different Partner States for specific skilled categories of workers.³⁸ Moreover, each Partner State³⁹ has shown a commitment to granting labour market access to certain professions in the Schedule. The movement of semi-skilled and unskilled workers and public sector employees is not included in the commitments of the Schedule for the Free Movement of Workers.⁴⁰ While the original Schedule has not been

33 Erasmus, E. et al (2013), East African Community in *MME on the Move, A Stocktaking of migration, Mobility, Employment and Higher Education in Six African Regional Economic Communities*. Vienna: ICMPD, Vienna pp. 43-59.

34 EAC (2024), *Free Movement of Persons*. [online]. Available at: <https://www.eac.int/common-market> [Accessed 22 November 2024].

35 Interview with EAC representative.

36 EAC (2024), *Visa-Free Entry*. [online]. Available at: <https://www.eac.int/immigration/migration-management/visa-free-entry> [Accessed 2 November 2024].

37 Tume, D.M. (2013), *East African Community Common Market Protocol SIMPLIFIED*. Tanzania: East Africa Business Council.

38 Wasalumbi-Mapanga, G. and Bakunda, G. (2013), *An assessment of the implementation of the EAC Common Market Protocol Commitments on the Free Movement of Workers*, technical paper commissioned by the East African Business Council and the East African Employers' Organisations.

39 This refers to the Partner States who were members of the EAC when the CMP entered into force, namely Kenya, Rwanda, Tanzania and Uganda.

40 Alper, E., Chen, W., Dridi, J., Joly, H. and Yang, F. (2017), *A work in progress: integrating markets for goods, labor, and capital in the East African Community*. Washington D.C.: IMF.

officially updated since the CMP entered into force in 2010, the EAC explained that Partner States have opened up access to the labour market to other categories of professional workers not contained in the original Schedule. EAC Partner States inform the EAC of these changes through the EAC monitoring system.⁴¹ This is an online database that experts in the EAC Partner States have access to and which they update every six months. Moreover, there are some agreements in place to facilitate the movement of workers with other skills levels, such as a framework for the mobility of teachers.⁴² A representative from Kenya interviewed for the study indicated that in certain cases, the country has moved beyond its EAC commitments and issues work permits for lower skill categories, such as tea pickers.

28. The EAC still experiences challenges in implementing the free movement of persons including: border closures resulting from tension between members⁴³; delays, difficulties and complex procedures for obtaining work permits; and limited recognition of qualifications.^{44,45} The EAC shares Member States with ECCAS, CEN-SAD, COMESA, IGAD and SADC.



41 Interview with EAC representative.

42 *ibid.*

43 Aljazeera (2024), *Burundi closes border with Rwanda in latest East Africa row*, 12 January 2024. [online]. Available at: <https://www.aljazeera.com/news/2024/1/12/burundi-closes-border-with-rwanda-in-latest-east-africa-row> [Accessed 23 November 2024].

44 Interview with a Kenyan immigration official.

45 Alper, E., Chen, W., Dridi, J., Joly, H. and Yang, F. (2017), *A work in progress: integrating markets for goods, labor, and capital in the East African Community*. Washington D.C.: IMF.

The Economic Community of Central African States (ECCAS)

29. ECCAS was established in 1983. It has 11 Member States: Angola, Burundi, Cameroon, the Central African Republic, Chad, the DRC, Equatorial Guinea, Gabon, and the Republic of Congo, Rwanda and São Tomé and Príncipe.⁴⁶ The ECCAS Treaty was revised in 2019 and entered into force in 2020. A Protocol on Freedom of Movement and Right of Establishment is annexed to both the original treaty and the revised one. In principle the Free Movement Protocol became legally binding when the founding Treaty entered into force in 1984. However, it appears that it is not being implemented, with most countries requiring visas from nationals of other Member States.⁴⁷ The ECCAS region overlaps with CEN-SAD, COMESA, the EAC and SADC.



⁴⁶ Acosta, D. and van der Baaren, L. (2024), Freemove Project, Free Movement Regimes Dataset. Indicators on entry, residence, rights, and security of residence (2024). *Econ. Community of Cent. Afr. States (ECCAS) Multilateral in force*. [online]. Available at: <https://www.freemovehub.com/regimes/eccas/> [Accessed 23 November 2024].

⁴⁷ *ibid.*

The Economic Community of West African States (ECOWAS)

30. ECOWAS was established in 1975 and has 12 Member States: Benin, Cabo Verde, Côte d'Ivoire, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Nigeria, Senegal, Sierra Leone and Togo.^{48,49}
31. ECOWAS is deemed to have the most advanced free movement regime on the continent and the 2024 AVOI states that, 'ECOWAS scores highest both in terms of being the region with the highest average visa openness generally, and the highest reciprocal visa free access with respect to intra REC movement.'⁵⁰ Free movement of persons is one of the key objectives of the ECOWAS Treaty and in 1979 the Protocol A/P.1/5/79 on the Free Movement of Persons, the Right of Residence and Establishment was adopted. Additional protocols were adopted to reinforce the free movement regime, which was to be fully achieved through three phases within 15 years.



48 ECOWAS (2025), *ECOWAS Member States*. [online]. Available from: <https://ecowas.int/member-states/> [Accessed 2 April 2025].

49 On 29 January 2025 ECOWAS formally recognised the withdrawal of Burkina Faso, Mali and Niger from the bloc. (Source: Obiezu, T. (2025), *Niger, Mali and Burkina Faso officially quit ECOWAS*, in Voice of America. [online]. Available from: <https://www.voanews.com/a/west-africa-bloc-announces-formal-exit-of-three-junta-led-states-7955666.html> [Accessed 2 April 2025]. On 6 July 2024 Burkina Faso, Mali and Niger signed a treaty to form a new confederation - the Alliance of Sahel States (Source: Ewonor, C. and Rukanga, B. (2024). *West African bloc risks 'disintegration' if juntas quit*, 8 July 2024, in BBC News. [online]. Available at: <https://www.bbc.com/news/articles/ce782jzyl76o> [Accessed 23 November 2024].

50 African Development Bank Group (2024), *Economic Community of West Africa States (ECOWAS)*. [online]. Available at: <https://www.visaopenness.org/> [Accessed 12 December 2024].

The Africa Visa Openness Index measures the extent to which African countries are open to visitors from other African countries. It analyses each country's visa requirements to show which countries on the continent most facilitate travel to their territory.

32. Phase 1, the right to entry and abolition of visas, has been achieved across the region with visa-free entry available to ECOWAS citizens for 90 days.⁵¹ Phase 2, the right of residence and Phase 3, the right of establishment are not equally implemented across the region as national laws are not fully aligned to implement these rights.⁵² Other obstacles to this free movement regime include: citizens from Member States within the REC lacking identification documents related to a shortfall in birth registration; different Member States using different forms of identification documents; deportations; border closures; and harassment at border crossing points.⁵³
33. The ECOWAS Heads of Immigration meeting in September 2024 decided to deepen the ECOWAS free movement regime by abolishing the 90-day stay for ECOWAS citizens in other ECOWAS Member States as well as the required residence permit. ECOWAS citizens will therefore be allowed to stay in other ECOWAS Member States indefinitely.⁵⁴ It remains to be seen how effectively this decision will be implemented. The ECOWAS region overlaps with CEN-SAD.

The Intergovernmental Authority on Development (IGAD)

34. The Intergovernmental Authority on Drought and Development, which was formed in 1986, became the Intergovernmental Authority on Development (IGAD) in 1996. The IGAD region comprises: Djibouti, Eritrea, Ethiopia, Kenya, Somalia, South Sudan, Sudan and Uganda.⁵⁵ IGAD has developed two protocols to launch a free movement regime, the Protocol on Free Movement of Persons in the IGAD Region, 2020 and the IGAD Protocol on Transhumance, 2020. Neither protocol has entered into force.⁵⁶ The Free Movement Protocol has been signed by five countries: Ethiopia, Somalia, South Sudan, Sudan, and Uganda.⁵⁷ The Protocol on Transhumance aims to promote 'free and safe seasonal cross-border mobility of livestock and herders in search of pasture and water as an adaptation and survival mechanism.'⁵⁸ It has been signed by Djibouti, Ethiopia, Kenya, South Sudan and Sudan.⁵⁹

51 Acosta, D. and van der Baaren, L. (2024), Freemove Project, Free Movement Regimes Dataset. Indicators on entry, residence, rights, and security of residence (2024). *Econ. Community of W. Afr. States (ECOWAS) Multilateral in force*. [online]. Available at: <https://www.freemovehub.com/regimes/eccas/> [Accessed 23 November 2024].

52 *ibid.*

53 Zankar, F. (2022), *Free Movement in West Africa: Necessity and Challenges*, 10 October 2022, in African Liberty. [online]. Available at: <https://www.africanliberty.org/2022/10/10/free-movement-in-west-africa/> [Accessed 23 November 2024].

54 Information provided by StudyTeam's Border Management and Security Expert.

55 IGAD (2024), *The IGAD Region*. [online]. Available at: <https://igad.int/about/?tab=the-igad-region> [Accessed 24 November 2024].

56 Interview with IGAD staff.

57 *ibid.*

58 IGAD (2021), *IGAD Protocol on Transhumance*.

59 Interview with IGAD staff.



The Southern African Development Community (SADC)

35. The 1992 SADC Treaty and Declaration transformed the Southern African Development Co-ordination Conference, established in 1980 as an anti-apartheid configuration, into the Southern African Development Community.⁶⁰ SADC has 16 Member States: Angola, Botswana, the Comoros, the DRC, Eswatini, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Tanzania, Zambia and Zimbabwe.
36. The SADC Treaty calls for the progressive elimination of obstacles to the free movement of capital and labour, goods and services, which is central to SADC’s regional economic integration and socio-economic development agenda.⁶¹ SADC’s 2005 Protocol on the Facilitation of Movement of Persons replaced the 1995 Draft Protocol on the Free Movement of Persons. The Protocol was adopted in 2005 and states that ratification is required by two-thirds of Member States (11 Member States) for it to enter into force. To date, only seven Member States have ratified the Protocol, namely Botswana, Eswatini, Lesotho, Mozambique, Namibia, South Africa and Zambia.⁶² At the Study Consultation, Zimbabwe expressed its intention to ratify the SADC’s Protocol on the Facilitation of Movement of Persons.

⁶⁰ Erasmus, E. (2015), *Situational Analysis of the Tripartite RECs Migration Regimes – Recommendations for Future Policy*.

⁶¹ SADC (2021), *SADC Regional Migration Policy Framework*.

⁶² Crush, J., Dhakal, A., Williams, V. and Ramachandran, S. (2021), *Stocktaking of work on labour migration in the Southern African region - final report for the Southern African Migration Management (SAMM) Project*.



Comparative Table: Free Movement Progress Across RECs

REC	VISA LIBERALISATION	REC PROTOCOL RATIFICATION STATUS	AU FMP RATIFICATION STATUS
AMU	Limited (Some bilateral agreements)	Not applicable (No REC-wide protocol)	None of the AMU countries have signed the AU FMP
CEN-SAD	No community-wide implementation	Draft agreement on Free Movement and Establishment of Persons exists, but not adopted)	Signed: Burkina Faso, Central African Republic, Chad, the Comoros, Cote d'Ivoire, Djibouti, The Gambia, Ghana, Guinea, Kenya, Liberia, Senegal, Sierra Leone, Somalia, Sudan, Togo, Ratified: Mali, Niger, São Tomé and Príncipe
COMESA	Partial (Visa on arrival by some states)	Visa Protocol is in force, but only covers the right to entry; Free Movement Protocol has been signed by four and ratified by two Member States. It requires seven ratifications to enter into force	Signed: The Comoros, Congo, Djibouti, Kenya, Malawi, Sudan, Uganda, Zambia, Zimbabwe; Ratified: Rwanda
EAC	Visa-free entry for Partner States	EAC Common Market Protocol (CMP) in force since 2010, newer states implementing roadmap)	Signed: DRC, Kenya, Uganda, Somalia, South Sudan, Tanzania Ratified: Rwanda
ECCAS	Visa requirements for nationals of other Member States	Free Movement Protocol annexed to ECCAS founding treaty, however, not being implemented, due to visa requirements	Signed: Angola, Central African Republic, Chad, DRC, Equatorial Guinea, Gabon; Ratified: Rwanda, São Tomé and Príncipe
ECOWAS	Full (Visa-free for citizens, 90 days; plans to abolish limit) ⁶³	ECOWAS Free Movement Protocol in force since 1979	Signed: ⁶⁴ Cote d'Ivoire, The Gambia, Ghana, Guinea, Liberia, Senegal, Sierra Leone, Togo
IGAD	No community-wide implementation	Draft protocols on Free Movement & Transhumance, but not in force	Signed: Djibouti, Kenya, Somalia, Sudan, South Sudan, Uganda
SADC	Partial (Some bilateral easing, not full)	Protocol on Facilitation of Movement ratified by seven countries (11 required for it to enter into force)	Signed: Angola, the Comoros, DRC, Lesotho, Malawi, Mozambique, Tanzania, Zimbabwe

63 <https://wadr.org/ecowas-immigration-chiefs-pledge-to-abolish-90-day-stay-limit/>

64 Mali, Niger and Burkina Faso have withdrawn from ECOWAS



2. The AU FMP – Challenges and Opportunities for Member States

37. This chapter outlines the socio-economic and trade, as well as security and border management opportunities and challenges associated with ratification of the AU FMP. Participants at the Study Consultation mapped out these opportunities and challenges. Desk research and interviews with relevant stakeholders also facilitated the identification of opportunities and challenges associated with the AU FMP.

Socio-economic and trade opportunities and challenges related to the ratification of the AU FMP

Socio-economic and trade benefits of the AU FMP

38. Participants of the Study Consultation pointed out the multiple benefits and opportunities that implementation of the AU FMP could bring. Facilitating the movement of people through the AU FMP could assist in filling the skills gaps that are needed for economic development, which in turn could boost skills development as migrant workers transfer skills to countries of destination. Easing the movement of people is expected to boost trade in goods and services and the socio-economic benefits of the AfCFTA. World Bank research indicates that the AfCFTA could lift 50 million people out of extreme poverty by 2035, largely by increasing trade between African countries.⁶⁵ Intra-African trade currently accounts for only 18 % of Africa's total trade.⁶⁶

39. Migrants build networks between countries of origin and destination that erode information barriers and enhance trade and investment flows between these countries⁶⁷, as well as tourism and transport. Reinforcing the migration and trade nexus boosts industrialisation and the structural transformation of the continent. It also supports vulnerable groups, such as economically disadvantaged women and unemployed youth, by enhancing small-scale cross-border trade. This trade plays an important role in sustaining livelihoods and food security, especially in border regions. Most small-scale traders are women - up to 70-80% in some regions - and it is often their only source of livelihood.⁶⁸ In the SADC region, small-scale traders account for 30-40% of SADC

65 GuerMazi, G. and Haddad, M. (2023), *Africa pursues free trade amid global fragmentation* in World Bank Blogs. [online]. Available at: <https://blogs.worldbank.org/en/trade/africa-pursues-free-trade-amid-global-fragmentation> [Accessed 10 June 2024].

66 Like, D. (2023), *Understanding African trade is key to helping its development*. [online]. Available at: <https://www.lse.ac.uk/research/research-for-the-world/economics/understanding-african-trade-is-key-to-helping-its-development> [Accessed 10 June 2024].

67 IOM (2019), *World Migration Report 2020*. Geneva: IOM.

68 <https://www.tralac.org/news/article/13116-small-scale-cross-border-trade-in-africa-why-it-matters-and-how-it-should-be-supported.html>

trade.⁶⁹ To reinforce the migration and trade nexus, participants at the Study Consultation noted that the hard and soft infrastructure that facilitates the movement of people need to be improved, including road networks, processing times at borders, and legal and policy frameworks that regulate mobility.

40. Implementation of the AU FMP will reduce the cost of doing business by removing some of the red tape that companies encounter in hiring the necessary labour. To fully reap these benefits, efforts need to continue to strengthen the systems that facilitate labour mobility. This includes Labour Market Information Systems (LMIS) which identify the skills that are lacking and those in surplus. The recognition of skills, qualifications and experience also need to be further developed. Moreover, mechanisms need to be put in place to ensure portability of social security benefits.



41. Remittances are expected to increase as more AU nationals would be able to work, provide services and establish businesses in other African countries. They would send more money home which could be invested in education, health, housing and business development. Remittances serve as a buffer against economic and climatic shocks and may prevent households from selling their productive assets and being pulled into a cycle of deepening poverty, which is increasingly important with the growing impact of climate change.

42. It is expected that tourism, foreign direct investment, business development and job creation would grow with the implementation of the AU FMP. Free movement boosts intraregional tourism as it reduces the relative costs of visiting other African countries. A participant from ECCAS pointed out that implementation of the AU FMP would lead to greater competitiveness of African businesses as they face more competition from one another and are pushed to deliver high quality services which could attract high-income travellers. Moreover, numerous participants at the Study Consultation cited the economic benefits that Rwanda has accrued since introducing visa free access for AU nationals, which has led to an increase in business travel, tourism and investment in various sectors. Importantly, the development that would result from greater mobility would also bring better transport infrastructure, facilitating trade and mobility.

69 SADC (2020), *SADC Framework for a Simplified Trade Regime*.

Socio-economic challenges associated with the AU FMP

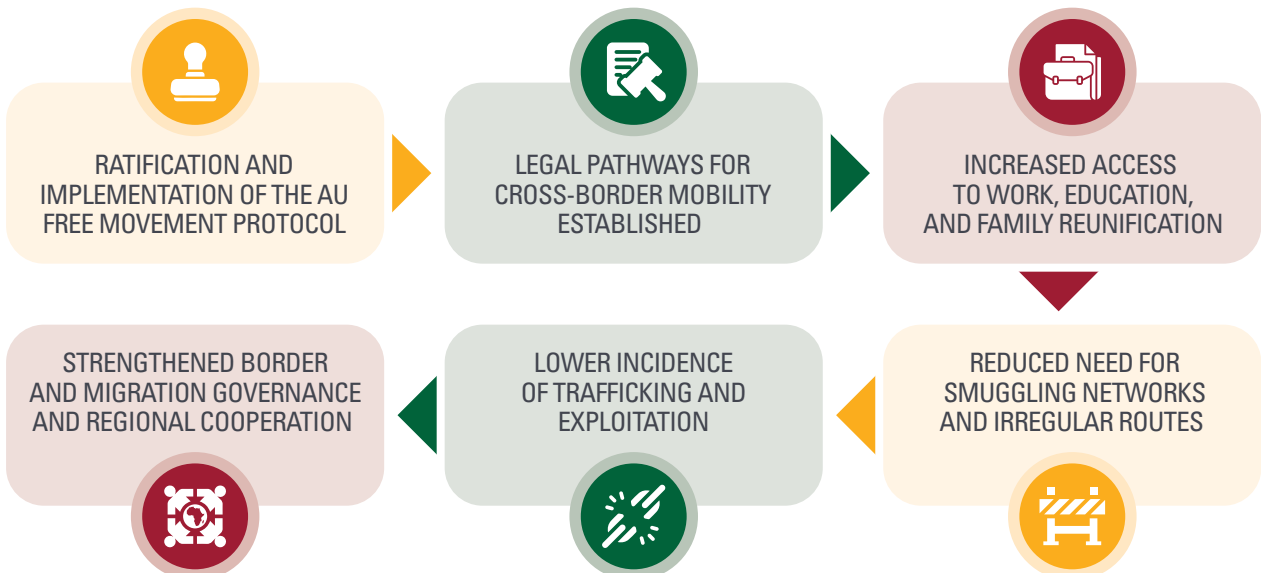
43. Participants at the Study Consultation raised the concern that implementing the AU FMP might result in stronger economies experiencing a large influx of migrants. **However, research suggests that free movement regimes typically encourage circular migration, as migrants know they can move freely between countries of origin and destination.** Moreover, migrants tend to move to countries where there are economic opportunities and free movement regimes by themselves do not lead to an influx of migrants.⁷⁰

Security and border management opportunities and challenges related to the ratification of the AU FMP

Security and border management benefits of the AU FMP

44. Free movement regimes present opportunities to improve security. As free movement regimes entail the expansion of legal migration channels, they are expected to reduce irregular migration and potentially some of the crime associated with migrant smuggling. Migrant smuggling is largely driven by material gain, and removing barriers to movement reduces the value of services provided by smugglers. These services may also be linked to other criminal activities connected to the exploitation of migrants, such as human trafficking. Migrants who are smuggled may become victims of trafficking during the journey and reducing migrant smuggling may therefore also reduce human trafficking.⁷¹ Free movement regimes can therefore reduce irregular migration and the exploitation of migrants with irregular status.

HOW THE IMPLEMENTATION OF THE AU FMP CAN CONTRIBUTE TO REDUCING IRREGULAR MIGRATION



70 De Haas, H. (2023), *How Migration Really Works*. London: Penguin/Viking.

71 European Parliament (2021), Understanding EU action against migrant smuggling, EU Policies – Insights. [online]. Available at: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/659450/EPRS_BRI\(2021\)659450_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/659450/EPRS_BRI(2021)659450_EN.pdf) [Accessed 13 December 2024].

45. Free movement regimes regularise the status of migrants, thereby allowing national administrations to have better knowledge of, and control over, who resides in their territory, thus aiding migration management and security. Furthermore, a free movement regime may also reduce corruption and harassment at borders if citizens are well-informed of their rights under the provisions of the regime.

Security and border management challenges associated with the AU FMP

46. During the Study Consultation, participants pointed out that concerns regarding security threats, such as international crime syndicates and terrorism, and the perception that implementation of the AU FMP could lead to increased cross-border crime, are obstacles to the ratification of the AU FMP. Participants highlighted insufficient interstate coordination and information sharing on security and mobility, such as a lack of intelligence sharing among border security agencies. Member States emphasised that porous borders and weak border management systems and infrastructure contribute to the challenges they face regarding irregular migration flows, human trafficking and the smuggling of migrants.
47. Participants also raised concerns about the challenges surrounding civil registration and legal identity management, which are exploited by criminal groups who falsify travel documents. Civil registry systems in parts of Africa require reinforcement to issue travel documents that are trusted by states across the continent. Some Africans still lack birth certificates or other foundational documents which serve as the basis for issuing legitimate travel documents.⁷² Various building blocks that reinforce effective governance need to be strengthened to address security and border management challenges. These include: civil registry; border governance and infrastructure; and intelligence and information sharing between states.

⁷² Erasmus, E. et al (2024), *Draft Background Note for the Consultation on the challenges and opportunities for the ratification and popularization of the AU FMP and lessons learned from the RECs and the EU*.



3. Strategies and Good Practices from the AU, RECs and Regions to Address Free Movement Challenges and Harness Free Movement Opportunities

48. This chapter details good practices and strategies that have been adopted to address the challenges and harness the opportunities that more mobility and the free movement of persons present. Participants at the Study Consultation shared information about the success stories and models developed by AU entities, RECs and AU Member States. In addition, desk research and interviews with relevant stakeholders also contributed to identifying the examples of good practices and strategies captured in this chapter.

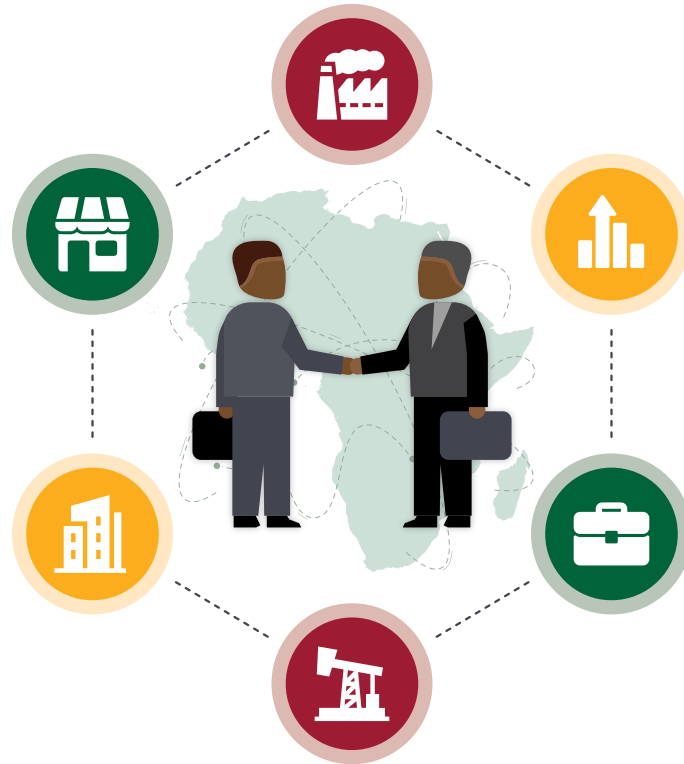
1. Engaging the private sector to advocate for and advance the free movement of persons

49. Private sector actors are well placed to highlight the limitations imposed on businesses by the red tape of cumbersome immigration procedures and the economic opportunities forgone because of restrictive immigration regimes. The AU FMP touches on a broad range of issue areas, including business development, female entrepreneurship and transport workers. Engaging different interest groups will help to raise the profile of the AU FMP and build broad-based support for its implementation.

50. During the Study Consultation, the Federation of West African Chambers of Commerce (FEWACCI) identified the need to engage with the private sector to popularise and ratify the AU FMP. The West Africa working group pointed out that women's groups were mobilised in ECOWAS Member States to promote its free movement regime. Participants recommended engaging the ECOWAS Federation for Business Women and Entrepreneurs (FEBWE), the Federation of West African Chambers of Commerce and Industry and the West African Association for Cross-Border Trade in Agro-forestry-pastoral and Fisheries Products (WACTAF), to mobilise support for the AU FMP in West Africa. Moreover, participants recommended engaging with the Groupement des Transporteurs Terrestres du Cameroun (GTTC), which brings together transport employers, to mobilise support for the AU FMP in Central Africa.

51. The participant from the East Africa Business Council (EABC) reiterated the key role the private sector plays in advocating and lobbying for developing or deepening free movement regimes. The EABC has contributed to the development of the EAC's free movement regime. As an apex

body for business associations from the Partner States, the EABC has observer status at the EAC, allowing it to actively participate in relevant EAC activities and discussions.⁷³



52. In the COMESA region, the COMESA Business Council (CBC) plays an important role in promoting the FMP agenda. The CBC organises the annual COMESA Business Forum, which is a gathering of the public and private sector, including entrepreneurs, policy makers and civil society organisations from across the COMESA region. The business declarations resulting from the Forum are presented to Heads of State at the COMESA Summit, and feed into the communiqué that is issued at the end of the summit.⁷⁴

2. Engaging national coordination mechanisms on migration to promote the free movement of persons

53. IGAD has been supporting its Member States to establish national coordination mechanisms (NCMs) on migration to bolster cooperation and coordination on migration management at the national level. The NCMs are encouraged to follow a whole-of-government approach and generally benefit from the participation of various government agencies whose work affects migration management. Similarly, the COMESA Secretariat has been supporting COMESA Member

73 Erasmus, E. et al (2013), East African Community in: *MME on the Move, A Stocktaking of migration, Mobility, Employment and Higher Education in Six African Regional Economic Communities*. Vienna: ICMPD, Vienna pp. 43-59.

74 Interview with CBC staff.

States to establish National Monitoring Committees (NMCs), which are also geared towards a whole-of-government and whole-of-society approach to migration management and bring together government agencies and other relevant actors. The NCMs and NMCs can be engaged to promote the free movement of persons and identify the steps that are needed and the stakeholders to involve to ratify the AU FMP.



3. Mapping out solutions for migration challenges through REC dialogue processes

Migration Dialogue

54. Common migration concerns are discussed in the migration dialogues or regional consultative processes of the RECs, including COMESA, ECOWAS, IGAD and SADC, where plans to address these concerns are outlined. The Migration Dialogue for the Common Market for Eastern and Southern Africa Member States (MIDCOM) is one such example. MIDCOM is a platform for dialogue and network building on migration management that was established in 2013.⁷⁵ Discussions at MIDCOM are informal which allows COMESA Member States to speak openly and share concerns and ideas to improve interstate coordination on migration. While MIDCOM's decisions

⁷⁵ IOM (2024), *Migration Dialogue from COMESA Member States (MIDCOM, formerly COMESA RCP)*. [online]. Available at: <https://www.iom.int/migration-dialogue-comesa-member-states-midcom-formerly-comesa-rcp> [Accessed 25 November 2024].

are non-binding, they feed into the discussions of the relevant COMESA policy bodies and lead to the development of policies and programmes that strengthen migration management. For example, in 2023, the Council of COMESA Ministers, the second highest policy body in COMESA, endorsed the MIDCOM decision directing the COMESA Secretariat to undertake an assessment of existing policy and legal frameworks in the region to come up with decisions that promote safe, regular, and orderly migration in the COMESA region.⁷⁶

55. IGAD’s Regional Consultative Process established in 2008, facilitates informal dialogue and regional cooperation on migration.⁷⁷ Its discussions have, inter alia, contributed to the development of the IGAD Free Movement of Persons Protocol and regional agreements to support forcibly displaced people, such as the 2019 Kampala Declaration on Jobs, Livelihoods and Self-Reliance of Refugees and the 2022 Mombasa Declaration on Refugee and Cross-Border Health Initiatives.

Heads of Immigration Meetings

56. Participants at the Study Consultation recommended REC Heads of Immigration meetings as a forum to discuss challenges around free movement and harmonisation of national mobility instruments. The COMESA, EAC, ECOWAS and SADC Heads of Immigration meetings are important gatherings for forging regional strategies to achieve shared migration goals. The decision taken by the ECOWAS Heads of Immigration at the September 2024 meeting in Banjul, The Gambia, to speed up implementation of the ECOWAS National Biometric Identity Card (ENBIC) and abolish the 90-day stay limit and resident permit requirement for ECOWAS citizens, is a good example of the effectiveness of such meetings. These are significant steps towards deepening the free movement regime in the ECOWAS region.

4. Bilateral and multilateral cooperation between Member States that build trust and cooperation on mobility

Joint Border Commissions

57. Participants at the Study Consultation highlighted Joint Border Commissions as a good practice that helps to facilitate the movement of people and protects the security of states. Kenya, for example, has Joint Border Commissions with Uganda, Tanzania and Ethiopia. Border authorities and communities participate in these Joint Border Commissions where they discuss security threats and make decisions after consultation with the respective national movements. They also facilitate the movement of small-scale cross-border traders and discuss the sharing of common resources, such as rivers and health facilities.⁷⁸

⁷⁶ COMESA (2023), *Official Gazette, Volume 29*.

⁷⁷ IGAD (2023), *IGAD Convenes the 14th Regional Consultative Dialogue on Durable Solutions to Forced Displacement*. [online]. Available at: <https://igad.int/igad-convenes-the-14th-regional-consultative-process-meeting-on-durable-solutions-to-forced-displacement/> [Accessed 25 November 2024].

⁷⁸ Interview with Kenyan immigration official.

Joint Permanent Commission of Cooperation

58. The Southern Africa working group highlighted Joint Permanent Commissions of Cooperation (JPCC) as a good practice in inter-state cooperation and cited the example of the Zambia-Zimbabwe JPCC. The JPCC cooperates in several areas, including tourism, border management and security, transport and communications, and infrastructure development.⁷⁹ JPCCs are also employed by Member States in other regions to strengthen cooperation in numerous fields, including security and health.

Cross-Border Coordination Mechanisms

59. The first Cross-Border Coordination Mechanism (CBCM) in Southern Africa was initiated between South Africa and Zimbabwe with the support of Save the Children in 2008. Local and national government authorities from the border areas of both countries came together to discuss the protection of unaccompanied and separated migrant children. The following seven CBCMs have been established in Southern Africa: South Africa and Zimbabwe; Mozambique and Zimbabwe; Zambia and Zimbabwe; Eswatini, Mozambique and South Africa; Malawi, Mozambique and Zambia; Lesotho and South Africa; and Namibia and Zambia. The CBCMs generally bring together local as well as national government authorities on both sides of a border whose mandate touch on border management or service provision for children. CBCMs have broadened their cooperation and discuss other common concerns including: increasing the protection of vulnerable migrants; identifying victims of human trafficking; countering human trafficking; and addressing transnational health concerns, such as diseases.⁸⁰



79 Zimbabwean Ministry of Foreign Affairs and International Cooperation (2024), *Zambia and Zimbabwe hold 18th Joint Permanent Commission of Cooperation*. [online]. Available at: <https://www.mofaic.gov.zm/?p=2442> [Accessed 26 November 2024].

80 Erasmus, E. and Llonch, M. (2019), *Assessment, Analysis, and Evaluation of Cross-Border Approaches in the ECOWAS and SADC regions for the Protection of Child Migrants and their Applicability to the Horn of Africa Region*, for the Better Migration Management Programme, October 2019.

5. Peer-to-peer learning to boost mobility

60. Participants at the Study Consultation emphasised the importance of peer-to-peer learning to advance knowledge sharing on migration best practices. Member States expressed their interest in learning from Rwanda which provides visas on arrival to all visitors. The participant from IGAD explained that IGAD visited and learned from the EAC and ECOWAS when it was developing its two protocols to launch a free movement regime.

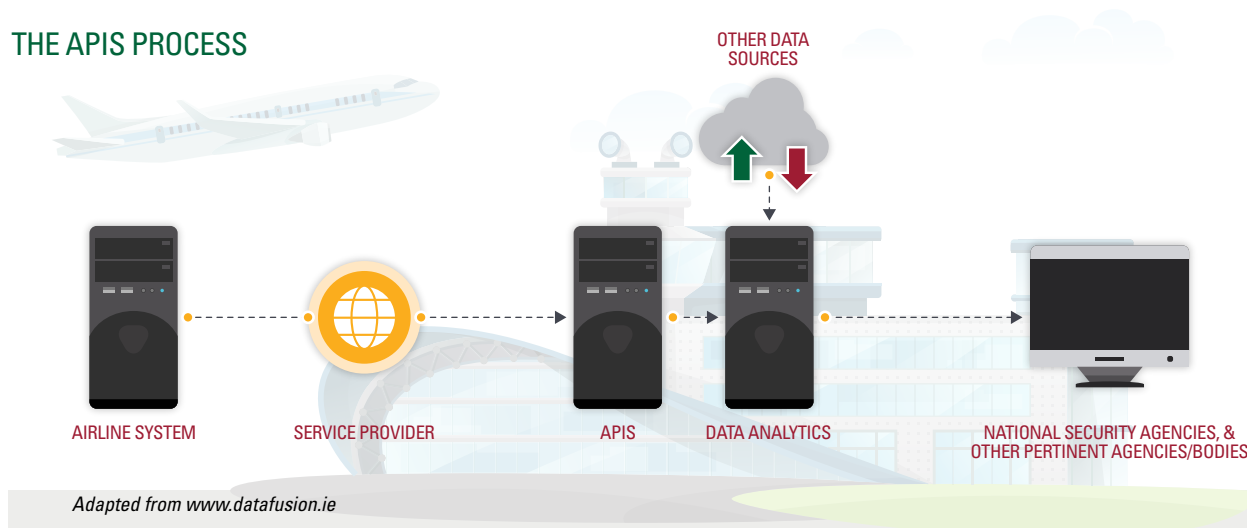
6. Strengthening systems that facilitate mobility and enhance security

61. Strengthening systems that facilitate mobility could reinforce border management and security and foster regular mobility. It could enhance the capacity of states to control and monitor who enters their territory.

Advanced Passenger Information Systems and Passenger Name Record

62. Participants at the Study Consultation recommended Advanced Passenger Information Systems (APIS) to strengthen the security of borders. The participant from Rwanda pointed out that APIS is key to maintaining Rwanda’s security while allowing citizens of all countries to obtain a visa upon arrival without prior application. APIS enhances border security by providing officers with pre-arrival and departure manifest data on all passengers and crew members.⁸¹ APIS captures a passenger’s identity, such as their name, date of birth and flight number that is transmitted to a border agency before, or as the flight departs, and is a useful tool for border control and security processing.^{82 83}

THE APIS PROCESS



81 ICAO (date unknown), *The Implementation Steps of Advance Passenger Information (API) System*. [online]. Available at: https://www.icao.int/Security/FAL/TRIP/Documents/APIFlyer-v6_190925_Bleed-forPrint.pdf [Accessed 26 November 2-24].

82 European Council of the European Union (2024), *Passenger Data*. [online]. Available at: <https://www.consilium.europa.eu/en/policies/fight-against-terrorism/passenger-name-record/> [Accessed 26 November 2024].

83 ICAO (date unknown), *The Implementation Steps of Advance Passenger Information (API) System*. [online]. Available at: https://www.icao.int/Security/FAL/TRIP/Documents/APIFlyer-v6_190925_Bleed-forPrint.pdf [Accessed 26 November 2024].

63. A representative of Kenya interviewed for the study, indicated that APIS and passenger name records (PNR) are central to border security as they let border agencies know who is coming to their country, and thwart potential threats before the passenger enters. PNR is personal passenger data collected by airlines, such as the name of the passenger, travel dates, itineraries, and seat allocation.⁸⁴ Collecting Advanced Passenger Information speeds up the processing of bona fide travellers and increases the efficiency of border officials, complementing existing data vetting processes, such as checking travellers' passports against watch lists and INTERPOL databases.⁸⁵

One-Stop Border Posts

64. Several participants at the Study Consultation cited the One Stop Border Posts (OSBPs) in various regions as an example of good practice in facilitating the movement of people and goods. OSBPs strengthen border management and security by bringing together and ensuring coordination and information sharing between all border agencies. OSBPs reduce processing times at borders and boost trade in goods and services.

65. A participant from the EABC highlighted that investment in and development of innovative technological solutions, such as the use of smart cards at the OSBP between Goma, DRC and Rubava, Rwanda, amplify the benefits of OSBPs. Discussions at the Study Consultation pointed out that developing OSBPs often entails upgrading the infrastructure around borders and thus the conditions for the movement of people and goods, such as at the Namanga OSBP between Kenya and Tanzania. The EAC adopted the OSBP Act in 2016 to promote the effective establishment and implementation of the OSBPs.

Migration Information and Data Analysis System

66. The West Africa working group at the Study Consultation highlighted the use of the Migration Information and Data Analysis System (MIDAS) as a single gateway for border control.

67. MIDAS is a user-friendly and customisable Border Management Information System that can collect, store, and analyse traveller information, enabling states to more effectively monitor those entering and exiting their territory while providing a sound statistical basis for migration policy-related planning.⁸⁶

84 European Council of the European Union (2024), Passenger Data. [online]. Available at: <https://www.consilium.europa.eu/en/policies/fight-against-terrorism/passenger-name-record/> [Accessed 26 November 2024].

85 ICAO (date unknown), *The Implementation Steps of Advance Passenger Information (API) System*. [online]. Available at: https://www.icao.int/Security/FAL/TRIP/Documents/APIFlyer-v6_190925_Bleed-forPrint.pdf [Accessed 26 November 2024]. https://www.icao.int/Security/FAL/TRIP/Documents/APIFlyer-v6_190925_Bleed-forPrint.pdf

86 IOM (2024a). *MIDAS*. [online]. Available at: <https://www.iom.int/midas> [Accessed 27 November 2024].

Migration management capacity development initiatives

68. There are various ongoing initiatives to support Member States to strengthen their migration management capacities that can help Member States with the effective implementation of the free movement of persons. In West Africa, within the framework of the EU-funded Support to Free Movement of Persons and Migration in West Africa (FMM West Africa) programme implemented by the International Organization for Migration (IOM), ICMPD and the International Labour Organization (ILO), AU Member States have benefitted from migration management capacity development through the Demand Driven Facility (DDF). FMM West Africa aims to maximise the development potential of free movement of persons and migration in West Africa by supporting the effective implementation of the ECOWAS Free Movement of Persons' Protocols and the ECOWAS Common Approach on Migration.
69. ICMPD leads the DDF, which offers tailored technical assistance to national institutions in ECOWAS Member States to strengthen the free movement of persons and migration management, based on requests made by states.
70. The labour migration governance priorities of COMESA, the Indian Ocean Commission and SADC have been supported by the EU-funded 2020-2024 Southern Africa Migration Management (SAMM) Programme, which was implemented by the ILO, IOM, the UN High Commissioner for Refugees and the UN Office on Drugs and Crime (UNODC). SAMM has, inter alia, supported the development of Labour Market Information Systems (LMIS) and labour migration policies.
71. Furthermore, a key programme supporting Member States and RECs to strengthen labour migration governance is the Joint Programme on Labour Migration Governance for Development and Integration in Africa (JLMP), which is implemented by the AU, the ILO, IOM and the United Nations Economic Commission for Africa (UNECA). For example, the JLMP supported the development of an assessment report on the status of the LMIS in Côte d'Ivoire. This report served as a benchmark for LMIS development both in Côte d'Ivoire and West Africa. In July 2024, the JLMP trained national experts on improving the collection and use of labour migration statistics.⁸⁷ At the continental level, the JLMP has supported the development of Guidelines for the Implementation of the AU FMP and the development of the continental Report on Labour Migration Statistics in Africa.⁸⁸
72. Moreover, IOM's African Capacity Building Centre (ACBC), established in 2009 in Moshi, Tanzania, provides various migration and border management projects and training courses that benefit Member States. The ACBC has supported more than 8,500 migration practitioners with training, border assessments and study visits since its inception.⁸⁹

87 IOM (2024b), *Côte d'Ivoire Leads West Africa's Push for Better Labour Migration Data and Statistics*. [online]. Available at: <https://ethiopia.iom.int/news/cote-divoire-leads-west-africas-push-better-labour-migration-data-and-statistics> [Accessed 27 November 2024].

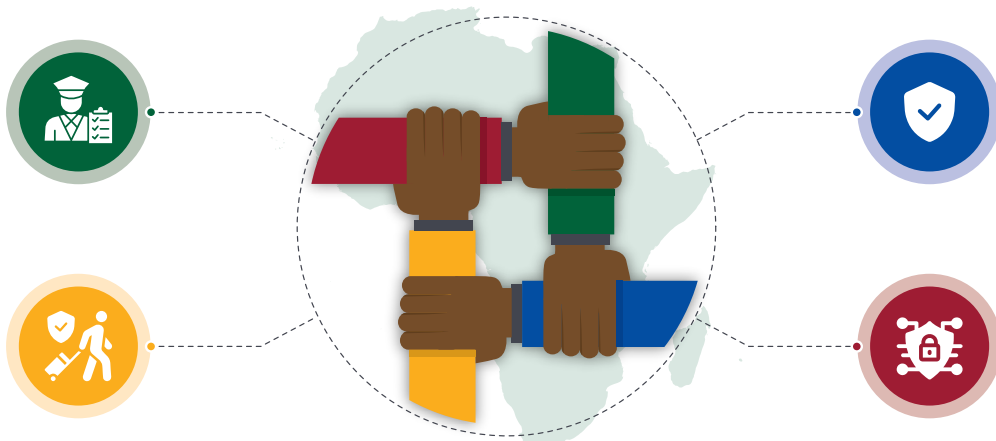
88 Interview with JLMP staff.

89 IOM (2024c), *IOM's African Capacity Building Centre for Migration Management Info Sheet 2024*.

7. Cooperation between Member States to fight crime

Regional police chiefs' organisations

73. Participants at the Study Consultation highlighted the important role that regional police chiefs' organisations play in strengthening interstate cooperation on security. The Eastern Africa Police Chiefs Cooperation (EAPCCO) is a regional police body that consists of police chiefs from 14 countries who cooperate to fight transnational organised crime, including sharing of crime-related information and harmonisation of laws to enhance the capacity of law enforcement agencies to combat transnational organised crime.⁹⁰
74. The East Africa working group recommended that cooperation on security concerns associated with migration should be channelled through EAPCCO. West, Central, North and Southern Africa also have regional police chiefs' organisations with similar aims. The Central Africa working group highlighted the regional police chiefs' organisation for Central Africa as a good practice for transnational cooperation on security and the fact that it linked the cooperating states to the INTERPOL database for border security purposes.



Mutual Legal Assistance agreements and cooperation on criminal matters

75. Mutual Legal Assistance (MLA) in criminal matters is the provision of legal assistance by one state to another in the investigation, prosecution, or punishment of crimes. MLA agreements between states are valuable tools in addressing transnational crimes as they regulate the scope and procedures for MLA between states.

⁹⁰ EAPCCO (2024), *About EAPCCO*. [online]. Available at: <https://eapcco.org/> [Accessed 27 November 2024].

76. The participant from IGAD highlighted the IGAD agreements that can be used for cooperation on security and law enforcement, namely the IGAD Mutual Legal Assistance and Extradition Conventions. The IGAD Convention on Mutual Legal Assistance in Criminal Matters regulates the scope and procedures for MLA between IGAD Member States. The IGAD Convention on Extradition facilitates the extradition of a person who is wanted for prosecution or the imposition or enforcement of a sentence from one IGAD Member State to another. However, these conventions have yet to enter into force.⁹¹
77. The 2002 SADC Protocol on Mutual Legal Assistance in Criminal Matters entered into force in 2007 and covers common assistance on criminal matters in a range of areas, including: locating and identifying persons, property, objects and items; providing information, documents and records; search and seizure; and taking possible measures for locating, restraining, seizing, freezing or forfeiting of the proceeds of crime.⁹²
78. The 2003 AU Convention on Preventing and Combating Corruption entered into force in 2006 and regulates MLA under Article 18 of the AU Convention, which also forms the legal basis for a MLA. Article 18(1) reads: 'In accordance with their domestic laws and applicable treaties, State Parties shall provide each other with the greatest possible technical cooperation and assistance in dealing immediately with requests from authorities that are empowered by virtue of their national laws to prevent, detect, investigate and punish acts of corruption and related offences.'⁹³ Moreover, the AU Convention aims to consolidate and expand mechanisms for States Parties to combat corruption and related offences continent-wide. To this end, it aims to harmonise policies and legislation between the States Parties, promote, facilitate and regulate cooperation among them, and establish necessary conditions to foster transparency and accountability in the management of public affairs.⁹⁴
79. Participants at the Study Consultation pointed out that most AU Member States are party to the UN Convention against Transnational Organized Crime and the Protocols thereto (UNTOC).⁹⁵ The UNTOC, adopted by General Assembly resolution 55/25 on 15 November 2000, promotes cooperation to prevent and combat transnational organised crime and entered into force in 2003. The Convention is further supplemented by three Protocols that target specific areas and manifestations of organised crime: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Protocol against the Smuggling of Migrants by Land, Sea and Air; and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition.⁹⁶

91 Information provided by IGAD staff.

92 UNODC (2024), *Toolkit on mutual legal assistance in Southern Africa*. Vienna: UNODC

93 *ibid.*

94 *ibid.*

95 Fifty-two African countries are parties to the UNTOC. For more information, see <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>

96 UNODC (2024), *United Nations Convention against Transnational Organized Crime and Protocol Thereto*. [online]. Available at: <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html> [Accessed 27 November 2024].

8. Models to learn from that address security concerns

African Peace and Security Architecture

80. The Central Africa working group at the Study Consultation recommended that Member States and regions learn from the African Peace and Security Architecture (APSA) as a model for cooperation to address security concerns and emphasised the need for early warning systems to inform the management of mobility, such as the Continental Early Warning System.
81. APSA is a set of institutions, legislation, and procedures designed to address conflict prevention and promotes peace and security on the African continent. The main pillar of the APSA is the Peace and Security Council (PSC) which is supported by the African Union Commission (AUC), a Panel of the Wise, a Continental Early Warning System (CEWS), an African Standby Force, and African Peace Fund. The CEWS is responsible for data collection and analysis and collaborates with UN agencies, other relevant international organisations, research centres, academic institutions and NGOs. The Chairperson of the Commission uses its data to advise the Peace and Security Council on potential conflicts and threats to peace and security in Africa and recommends the best courses of action.⁹⁷

Regional Early Warning Systems

82. Participants at the Study Consultation highlighted that some RECs have established early warning systems that other RECs and Member States could learn from. ECCAS established the Central African Early Warning System (Mécanisme d'Alerte Rapide de l'Afrique Centrale - MARAC), which collects and analyses data to prevent conflict. It is based at the ECCAS Secretariat and has decentralized structures in Member States that collect and analyse information.⁹⁸ IGAD'S Conflict Early Warning and Response Mechanism (CEWARN) monitors cross-border pastoral and related conflicts and makes recommendations to Member States on how to respond.⁹⁹ CEWARN can help to prevent and manage conflict that arises from cross-border mobility. Moreover, these regional early warning systems feed into the AU's CEWS and contribute to the continental early warning architecture.

Accra Initiative

83. The West African working group recommended the Accra Initiative as a security coordination mechanism that can support the implementation of the AU FMP. The Accra Initiative aims to prevent the spread of terrorism from the Sahel and cooperates with ECOWAS.

97 AU (2018), *The Continental Early Warning System (CEWS)*. [online]. Available at: <https://www.peaceau.org/en/article/the-continental-early-warning-system> [Accessed 27 November 2024].

98 IOM (date unknown), *Central African Early Warning System (MARAC)*. [online]. Available at: <https://micinitiative.iom.int/central-african-early-warning-system-marac> [Accessed 27 November 2024].

99 Erasmus, E. et al (2013), Intergovernmental Authority on Development in: *MME on the Move, A Stocktaking of migration, Mobility, Employment and Higher Education in Six African Regional Economic Communities*. Vienna: ICMPD, Vienna pp. 101 – 112.

84. Benin, Côte d'Ivoire, Ghana, and Togo established the Accra Initiative in 2017 to combat the spread of violent extremism, prevent terrorist attacks, and address transnational organised crime within their territories. Mali and Niger joined in 2020, and Nigeria has maintained observer status since April 2022.¹⁰⁰ One of the main areas of focus of the Accra Initiative is intelligence gathering, collation, and sharing through regular exchanges between security and intelligence agencies through a non-formalised framework of focal points. These engagements have contributed to building rapport across partner governments and their security personnel, thereby fostering stronger cooperation to prevent violent extremism.¹⁰¹

9. Travel documents and travel regimes that facilitate mobility

COMESA

85. Participants at the Study Consultation cited the COMESA Simplified Trade Regime (STR), an arrangement that facilitates cross-border trade and supports livelihoods and food security in the region, as an example of good practice. Launched in 2010, the COMESA STR supports small-scale cross-border traders who cross the border frequently to trade small quantities of goods. The STR reduces the cost of trading by exempting certain goods from customs duty, up to the value of USD 2,000. It reduces delays at border crossings through simplified customs clearance procedures, including the use of a simplified Certificate of Origin and a simplified customs document. Moreover, trade information desk officers at some border posts assist small scale traders with the necessary procedures and border crossing. COMESA Member States implementing the STR include Burundi, Kenya, Malawi, Rwanda, Uganda, Zambia and Zimbabwe.¹⁰²

86. The participants at the Study Consultation recommended the COMESA Yellow Card Scheme, a tool designed to ease cross-border transportation and facilitate trade, as a model to learn from. The COMESA Yellow Card is a third-party motor vehicle insurance scheme that is recognised in the participating states of Burundi, Djibouti, DRC, Egypt, Eritrea, Eswatini, Ethiopia, Kenya, Libya, Malawi, Rwanda, Sudan, Tanzania, Uganda, Zambia and Zimbabwe. The Yellow Card is a standard uniform document throughout the Yellow Card Scheme region and is therefore easily identified and accepted as a certificate of insurance at border posts.¹⁰³ The scheme complies with the laws and regulations of the participating Member States, providing cover for third party motor vehicle liability.

100 Eizenga, D. and Gnanguénon, A. (2024), *Recalibrating Coastal West Africa's Response to Violent Extremism*, Africa Security Brief No.43, July 2024. Washington DC: Africa Center for Strategic Studies.

101 *ibid.*

102 COMESA (2024), *COMESA Simplified Trade Regime (COMESA-STR)*. [online]. Available at: <https://www.comesa.int/programme-activities-trade-liberalization/> [Accessed 18 December 2024].

103 Mayfair Insurance (date unknown), *COMESA PTA Yellow Card*. [online]. Available at: <https://www.tralac.org/news/article/13116-small-scale-cross-border-trade-in-africa-why-it-matters-and-how-it-should-be-supported.html> [Accessed 18 December 2024].

THE COMESA YELLOW CARD



Example Card, credit: COMESA

EAC

87. The East African e-Passport, launched in 2016, is issued in three categories: Diplomatic, Service and Ordinary. The EAC e-Passport is an international passport that can be used for travel in the EAC region.¹⁰⁴ It incorporates biometric data such as fingerprints and facial recognition technology, enhancing security, reducing the risk of identity fraud and boosting confidence in the integrity of the travel document.¹⁰⁵
88. The principle of variable geometry provided for in the EAC Treaty allows for faster progress in cooperation among Partner States, by allowing some who may be further advanced in specific areas to move forward with integration activities. Some Partner States have progressed further in making it easier for their citizens to move between countries. Citizens from Kenya, Rwanda and Uganda can use their national identification documents to travel between the three Partner States.¹⁰⁶ The three countries have also waived work permit fees for East Africans.¹⁰⁷ Moreover, Kenya, Rwanda and Uganda have issued the East African Tourist Visa allowing tourists to visit these three countries for 90 days.¹⁰⁸

104 EAC (2024), The East African e-Passport. [online]. Available at: <https://www.eac.int/immigration/migration-management/ea-e-passport> [Accessed 18 December 2024].

105 EAC (2024), Frequently Asked Questions. [online]. Available at: <https://www.eac.int/frequently-asked-questions> [Accessed 26 November 2024].

106 *ibid.*

107 EAC (date unknown), *Harmonized Classification of Fees, Forms and Procedures for issuance for Entry/Work/Residents Permit Fees*. [online]. Available at: <https://www.eac.int/immigration/migration-management/hamonization-of-permits#> [Accessed 26 November 2024].

108 Ugandan Ministry for Internal Affairs (date unknown), *East African Tourist Visa*. [online]. Available at <https://www.immigration.go.ug/services/east-african-tourist-visa> [Accessed 26 November 2024].

ECOWAS

89. In 2014, to enhance safe, secure, and well-organized intra-regional mobility within the ECOWAS region, the ECOWAS Authority of Heads of State and Government endorsed the machine-readable ECOWAS National_Biometric Identity Card (ENBIC) as the official travel document.¹⁰⁹ The ECOWAS Commission launched advocacy and sensitization campaigns in ECOWAS Member States aimed at educating citizens and border officials about the uses and benefits of the ENBIC.¹¹⁰
90. The machine-readable ENBIC replaces the handwritten ECOWAS travel certificate. It aims to enhance security and data sharing among the six participating Member States: Benin, Ghana, Gambia, Senegal, Sierra Leone and Guinea Bissau. Talks to introduce it are ongoing in Liberia.¹¹¹
91. Moreover, in 2011 ECOWAS adopted the ECOVISA concept to boost foreign investment and tourism.¹¹² ECOWAS has developed procedures for the ECOVISA that will grant access to the entire region to third country nationals. AU citizens will pay USD 40 for the visa, while other nationalities will pay USD 120.¹¹³

SADC

92. SADC citizens are allowed visa-free entry for up to 90 days in most SADC Member States.¹⁷ Moreover, in February 2023 Namibia and Botswana agreed to allow national identity cards to be used for cross-border business and tourism travel for stays of up to 90 days.¹⁸

10. REC bodies and Instruments that support the free movement of persons

COMESA Task Forces on the Implementation of COMESA Legal Instruments on Free Movement of Persons and Related Capacity Building

93. In 2011, the Committee of COMESA Ministers Responsible for Immigration established the COMESA Task Force on the Implementation of COMESA Legal Instruments to study the challenges that Member States are facing in implementing the Visa Protocol and signing and ratifying its regional Free Movement Protocol.¹¹⁴

109 Carvalho, R. (2024), *ECOWAS conducts advocacy on the deployment of the ECOWAS National Biometric Identity Card in Cabo Verde*, 18 June 2024, in Further Africa. [online]. Available at: <https://furtherafrica.com/2024/06/18/ecowas-conducts-advocacy-on-the-deployment-of-biometric-id-in-cabo-verde/> [Accessed 2 April 2025].

110 ECOWAS (2024), *ECOWAS Conducts Advocacy on the Deployment of The ECOWAS National Biometric Identity Card in Cabo Verde*, 16 June 2024. [online]. Available at: <https://www.ecowas.int/ecowas-conducts-advocacy-on-the-deployment-of-the-ecowas-national-biometric-identity-card-in-cabo-verde/> [Accessed 26 November 2024].

111 Erasmus, E. (2024), *Report for the Consultation on the challenges and opportunities for the ratification and popularization of the AU FMP and lessons learned from the RECs and the EU*.

112 ECOWAS (2023), *Progressing Towards ECOVISA Implementation: ECOWAS Experts and Heads of Immigration Engage in Deliberations*. [online]. Available at: <https://www.ecowas.int/progressing-towards-ecovisa-implementation-ecowas-experts-and-heads-of-immigration-engage-in-deliberations/> [Accessed 26 November 2024].

113 Erasmus, E. (2024), *Report for the Consultation on the challenges and opportunities for the ratification and popularization of the AU FMP and lessons learned from the RECs and the EU*.

114 COMESA (2011), *Report of the Fourth Meeting of COMESA Ministers Responsible for Immigration*.

94. At the same time, it established the Task Force on Capacity Building on Migration Issues to identify areas where Member States require reinforcement and to develop capacity building measures to address such gaps.
95. The two task forces conduct consultations with Member States and their reports are submitted to the COMESA ministers responsible for immigration and labour for consideration and decisions. The work of the task forces led to the establishment of the Awareness Creation Programme on the Implementation of COMESA Protocols.

COMESA Model Law on Immigration

96. The harmonization of border procedures and travel documents facilitates secure cross-border movements. In 2006 COMESA adopted a Model Law on Immigration to guide Member States in harmonising immigration laws and procedures.¹¹⁵ The Model Law regulates entry and stay of immigrants and visitors to COMESA Member States, as well as the removal of criminals and other specified persons from COMESA Member States.¹¹⁶

97. Key takeaways

97.1 This chapter highlights good practices and strategies that AU entities, RECs and AU Member States have employed to address the challenges and harness the opportunities associated with the free movement of persons. It therefore provides Member States with a range of tools and strategies that can move ratification and implementation of the AU FMP forwards. It explains how private sector actors have advanced the free movement of persons agenda with RECs by advocating for its benefits. It lists national and regional mechanisms that can be used to develop strategies that reinforce free movement regimes, such as national coordination mechanisms on migration, regional migration dialogue processes, and opportunities presented at heads of immigration meetings. It also details bilateral and multilateral cooperation mechanisms that have built trust and cooperation on mobility, such as Joint Border Commissions and Cross-Border Coordination Mechanisms.

97.2 Moreover, this chapter highlights peer-to-peer learning and migration management capacity building initiatives as mechanisms through which Member States can bolster their capacity to regulate mobility and implement the AU FMP. It also points out various systems that have been implemented across Africa to facilitate mobility while reinforcing border management and security, such as Advanced Passenger Information Systems and One Stop Border Posts. These systems are complemented by the efforts of Member States to fight transnational crime and strengthen security. Regional police chiefs' organisations and Regional Early Warning Systems are examples of regional cooperation to counter international crime and boost security. Furthermore, this chapter explains how mobility is facilitated through regional travel documents and instruments, such as the East African e-Passport and the COMESA Model Law on Immigration.

115 Olivier, M. (2017), *Free Movement of Persons in the Common Market for Eastern and Southern Africa (COMESA) Trainers Manual*. IOM: Lusaka.

116 COMESA (2004), Model Law on Immigration.



4. Findings and Good Practices from Free Movement Regimes from Around the World and Strategies to Advance Ratification and Technical Implementation of the AU FMP

98. This chapter compiles findings from analysing free movement regimes globally and good practices that have helped implement such regimes effectively.¹¹⁷ It is structured around 15 findings and things to consider as to how they can be applied to advocate for the ratification and effective implementation of the AU FMP.



Countries with legally binding free movement regimes in place on 1 January 2024. Adapted from freemovehub.com

¹¹⁷ This chapter is informed by the research of the Freemove Project. The Freemove Project is the first to comprehensively map, analyse, and compare all bilateral and multilateral free movement regimes globally. The aim is to identify every free movement regime in force or adopted between 1992 and 2024 and analyse and compare their provisions. By January 2024, 33 bilateral and 22 multilateral regimes had been identified, involving 114 countries across all continents — the majority, therefore, of the 193 UN member states — demonstrating how governments worldwide engage in a variety of treaties to regulate the movement of people, not only by imposing restrictions but also by facilitating mobility. Further information is available at www.freemovehub.com. Any use of the website must cite Acosta, D. and van der Baaren, L. (2024), Freemove Project, Free Movement Regimes Dataset. Indicators on entry, residence, rights, and security of residence, www.freemovehub.com.

Finding 1. Free movement regimes are enshrined in the Global Compact for Migration

99. The Global Compact for Migration (GCM) is the first inter-governmentally negotiated agreement, prepared under the auspices of the UN, which holistically and comprehensively covers all dimensions of international migration. Although not legally binding, it is the most important political agreement on migration management at the global level. Countries and regions have their regular reviews of the GCM, thereby demonstrating their commitment to the process despite it not being legally binding. Adopted by 152 countries at the UN General Assembly in December 2018, the Compact aims to achieve *safe, orderly, and regular migration along the migration cycle* through several commitments enshrined under 23 objectives.¹¹⁸ As highlighted by various commentators, the GCM primarily intends to facilitate mobility, since it is only when mobility is not actively hindered that safe, orderly, and regular migration can take place.¹¹⁹
100. In this context, Objective 5 stands out as key. It has two main goals: to create additional pathways for regular migration and to make these pathways more flexible and diverse. This should help to facilitate labour mobility and decent work. Indeed, a key criticism of migration management relates to the limited availability of legal migration routes despite the reliance of many countries on migrant labour in various economic sectors.¹²⁰ Objective 5 proposes the adoption of international and bilateral cooperation arrangements to enhance safe and orderly migration. It offers three examples without defining them: visa liberalisation, labour mobility cooperation frameworks, and free movement regimes.

Considerations for the AU FMP ratification and implementation process:

101. Most AU Member States have endorsed the GCM, and only one African country has not endorsed it. By endorsing the GCM, AU Member States have made a political pledge or commitment to improve and broaden the options for legal migration, including through international and bilateral free movement regimes.¹²¹
102. The UN invited countries to serve as “Champion countries” for the implementation of the Global Compact for Migration.¹²² In the case of Africa, the Champion countries are Chad, Egypt, Ethio-

118 United Nations, ‘Global Compact for Safe, Orderly and Regular Migration’ (19 December 2018), UN doc A/RES/73/195. [online]. Available at: documents.un.org/doc/undoc/gen/n18/451/99/pdf/n1845199.pdf [Accessed: 12 December 2024].

119 Guild, E. (2017), ‘The UN’s Search for a Global Compact on Safe, Orderly and Regular Migration’, *German Law Journal*, 18(7), pp. 1779-1796; Carlier, J.Y. and Crépeau, F. (2017), ‘De la “Crise” Migratoire Européenne au Pacte Mondial sur les Migrations: Exemple d’un Mouvement sans Droit?’, *Annuaire Français de Droit International*, 63, pp. 461-499, at 490; Crépeau, F. (2018), ‘Towards a Mobile and Diverse World: “Facilitating Mobility” as a Central Objective of the Global Compact on Migration’, *International Journal of Refugee Law*, 30 (4), pp. 650-656.

120 Motomura, H. (2014), *Immigration Outside the Law*. Oxford : Oxford University Press, at pp. 37–46; Crépeau, F. (2019), ‘L’Émergence d’une Conversation Globale sur les Politiques Migratoires, Retour sur un Mandat de Rapporteur Spécial des Nations Unies sur les Droits de L’Homme des Migrants (2011–2017)’, *Droits Fondamentaux*, 17 (1), pp. 1-12.

121 United Nations, ‘Global Compact for Safe, Orderly and Regular Migration’ (19 December 2018), UN doc A/RES/73/195, Objective 5. [online]. Available at: <https://documents.un.org/doc/undoc/gen/n18/451/99/pdf/n1845199.pdf> [Accessed: 12 December 2024].

122 Global Compact on Migration, Champion Countries Initiative, Information Note, Updated February 2024 [online]. Available at: <https://migrationnetwork.un.org/system/files/docs/Champion> [Accessed: 12 December 2024].

pia, the Gambia, Ghana, Guinea Bissau, Kenya, Malawi, Mali, Morocco, Lesotho, Niger, Nigeria, Senegal, and Sierra Leone. These countries have an even stronger commitment to ensuring the GCM's objectives are achieved, including facilitating mobility under Objective 5. Four AU Member States (Ghana, Kenya, Malawi, and Sierra Leone) have been granted technical assistance to embed the GCM in their national policy frameworks. Kenya was the first AU Member State to launch a GCM National Implementation Plan.¹²³

103. Key takeaways

- 103.1 Most African states have endorsed the GCM, and several of them are now champion countries for its implementation.
- 103.2 Objective 5 of the GCM advocates for more mobility pathways, including free movement regimes, to promote safe, orderly and regular migration.
- 103.3 The AU FMP is an excellent example of a regular mobility pathway and a free movement regime. Any country ratifying the AU FMP would be moving towards fulfilling its pledge under the GCM.
- 103.4 The GCM Demand Driven Facility offers technical assistance that can support AU Member States in implementing their GCM commitments.

Finding 2. Free movement regimes are different from visa liberalisation agreements and from labour cooperation frameworks

104. The GCM refers, without defining them, to three different types of international and bilateral cooperation arrangements to enhance safe and orderly migration: visa liberalisation, labour mobility cooperation frameworks, and free movement regimes. Visa liberalisation treaties allow two or more countries to agree that their citizens can enter each other's territories without prior authorization, but only for a limited time and specific purposes. They facilitate short-term circulation but not residence or access to employment. Labour Mobility Schemes (LMS) are legal tools 'to govern the terms of labour migration'.¹²⁴ LMS aim at recruiting temporary short-term migrant work,¹²⁵ often limited to specific labour sectors,¹²⁶ and regularly subject to admission quotas.¹²⁷ The Freemove project has come up with a definition of free movement regimes after assessing the content of more than fifty such regimes:

123 United Nations Network on Migration, Regional Information Brief – Africa, August 2024. [online]. Available at: https://migrationnetwork.un.org/sites/g/files/tmzbd1416/files/rib_2024/africa/Regional_Information_Brief_Africa.pdf [Accessed: 12 December 2024].

124 ILO (2020), *Geneva Guidelines for Skills Modules in Bilateral Labour Migration Agreements*. [online]. Available at: <https://www.ilo.org/publications/guidelines-skills-modules-bilateral-labour-migration-agreements> [Accessed: 04 May 2025].

125 Chilton, A. and Bartosz, W. (2022), 'The Expanding Universe of Bilateral Labor Agreements', *Theoretical Inquiries in Law*, 23 (1), pp. 1-77.

126 Bobeva, D. and Garson, J.P. (2004) *Overview of Bilateral Agreements and Other Forms of Labour Recruitment*, in MIGRATION FOR EMPLOYMENT BILATERAL AGREEMENTS AT A CROSSROADS 11.

127 *ibid.*

The Freemove project has come up with a definition of free movement regimes. FMRs are legal arrangements, that establish permanent, open pathways of entry and stay, without admission quotas nor economic need tests, for citizens who can positively contribute to the economy of the host state.¹²⁸

105. This definition shows that a free movement regime always includes visa liberalisation. Also, a free movement regime goes beyond labour mobility schemes because they are not limited to specific labour sectors and, generally, allow all nationals of participating states to enter, reside and access the labour market in the territory of another participating state.

Considerations for the AU FMP ratification and implementation process:

106. Over the last few years, visa liberalisation has continued to become more of a reality in Africa, as shown by the Africa Visa Openness Index.¹²⁹ African countries have also ratified a variety of labour mobility schemes providing for temporary mobility for the purposes of work of limited categories of workers in certain sectors.¹³⁰ Countries in Africa that have engaged in these practices have already taken an important step in the direction of an easier ratification and implementation of the AU FMP since, as will be seen below, the AU FMP can be implemented in phases. Phase one includes the implementation of the right of entry and the abolition of visa requirements.

107. Key takeaways

- 107.1** The GCM includes three different mobility pathways: visa liberalisation, labour mobility cooperation frameworks and free movement regimes.
- 107.2** All three pathways intend to contribute to making migration safe, regular, and orderly. The most advanced type is free movement regimes.
- 107.3** The AU FMP can be implemented in phases. Phase one is more representative of a visa liberalisation agreement. This should make it easier for more African states to ratify and then progressively implement the AU FMP, beginning with phase one.

128 This definition has been adopted by Acosta, D. and Martire, J. in 'The Changing Global Migration Law: Free Movement Regimes and the Creation of the New Migrant', forthcoming 2025.

129 African Development Bank Group (2023), *Africa Visa Openness Index 2023: Progress in visa openness in Africa to ease cross border travel, boost trade, investment and regional integration*. [online]. Available at: <https://www.afdb.org/en/news-and-events/press-releases/africa-visa-openness-index-2023-progress-visa-openness-africa-ease-cross-border-travel-boost-trade-investment-and-regional-integration-66992> [Accessed: 12 December 2024].

130 International Labour Organization (2019), *Bilateral Labour Migration Agreements in African Union Member States: taking stock and the way forward*. [online]. Available at: https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_project/@protrav/@migrant/documents/publication/wcms_721949.pdf [Accessed: 12 December 2024].

Finding 3. Free movement regimes constitute a “new normal” at the global level

108. From a comparative perspective, free movement regimes, both bilateral and multilateral, are extremely common. As of January 2024, 114 out of 193 UN Member States were part of at least one functioning free movement regime, either bilateral or multilateral.¹³¹
109. Free movement regimes are common in Europe, where the EU free movement of people legal framework and EU citizenship are well known, but also in South America, the post-Soviet space and the Caribbean. There are also several bilateral free movement regimes in other regions, such as the ones between India and Nepal or Australia and New Zealand.

Considerations for the AU FMP ratification and implementation process:

110. Thirty-five AU Member States are already part of a legally binding bilateral or multilateral free movement regime.¹³² This does not mean that such regimes are implemented in practice or that legal actors – including the administration, judges and lawyers – and migrants are always aware of the rights offered by the treaties constituting such regimes. However, it does mean that free movement is not a new phenomenon in Africa. It has been part of international law in Africa since the 1960s when the first bilateral free movement regimes were adopted.
111. Indeed, besides the four multilateral free movement regimes that are already binding on the continent¹³³ which have been described above, and the various bilateral treaties negotiated, adopted, and ratified on the subject,¹³⁴ four other multilateral free movement regimes in the region are not yet in force, including the AU FMP.¹³⁵ In addition, and as mentioned above, CEN-SAD and the AMU also cite the free movement of people as one of the objectives in their respective founding treaties.¹³⁶ This testifies to the rich history of debate and legislative activity on this matter.
112. In this regard, the ratification by any AU Member State of the AU FMP should not be seen as a landmark moment or a radical rupture with the past. Free movement regimes have become the “new normal” at the global level and have been common in Africa for decades, at least since 1963 when the first bilateral free movement regime was adopted between Algeria and Morocco.¹³⁷

131 Data retrieved from Acosta, D. and van der Baaren, L. (2024), Freemove Project, Free Movement Regimes Dataset. Indicators on entry, residence, rights, and security of residence, www.freemovehub.com [Accessed: 12 December 2024].

132 See Acosta, D. and van der Baaren, L. (2024), Freemove Project, Free Movement Regimes Dataset. Indicators on entry, residence, rights, and security of residence. [online]. Available at: <https://www.freemovehub.com/regions/africa/> [Accessed: 12 December 2024].

133 ECCAS, EAC, ECOWAS, UEMOA.

134 See the various bilateral free movement regimes in Africa mentioned at Acosta, D. and van der Baaren, L. (2024). Freemove Project, Free Movement Regimes Dataset. Indicators on entry, residence, rights, and security of residence. [online]. Available at: <https://www.freemovehub.com/regions/africa/> [Accessed: 12 December 2024].

135 SADC, COMESA, IGAD.

136 See note above citing the Treaties.

137 Establishment Convention between Morocco and Algeria (Convention d'Établissement), Alger, 15 March 1963

113. Key takeaways

- 113.1 114 out of 193 UN Member States are already part of a legally binding free movement regime, either bilateral or multilateral.
- 113.2 In Africa, 35 countries out of the 55 AU Member States, are also part of a free movement regime.
- 113.3 The AU FMP is a continuation of more than six decades of discourse on and development of free movement regimes in Africa.

Finding 4. Free Movement regimes are not equivalent to open borders

114. Free movement regimes do not entail open borders.¹³⁸ Rather, they are legal tools to facilitate the mobility of nationals of participating states, mainly workers. They are not a bonfire of immigration rules but incorporate numerous standards and processes for filtering and managing migration fluxes.
115. Essentially, these regimes are built on the paradoxical idea that it is best to manage immigration control by discontinuing certain administrative requirements for nationals of specific states in the same region. It is important to note that, under all free movement regimes, states can still deny entry to or expel nationals of other participating states who do not meet certain conditions.

Considerations for the AU FMP ratification and implementation process:

116. As mentioned, free movement regimes do not deprive states of their capacity to expel non-nationals from other participating states in certain circumstances. Article 21 of the AU FMP clearly provides states with the legal capacity to expel, deport, repatriate or deny entry to nationals of other participating states, provided such a decision is taken following the law in force. This prerogative is very similar to Article 13 of the International Covenant on Civil and Political Rights (ICCPR), which all but one African state has ratified,¹³⁹ and Article 12(4) of the African Charter on Human and Peoples' Rights, which all but one African state has ratified.¹⁴⁰
117. Moreover, Article 7 of the AU FMP establishes that entry must take place through a designated port or official point of entry with a recognized and valid travel document, and that Member States can prohibit the entry of specific individuals for reasons related to the protection of national security, public order or public health. Moreover, any State Party can temporarily suspend the application of the provisions of the AU FMP 'in case of grave threats to national security, public order and public health' (Article 37(1)).

138 Carens has defined open borders as the idea "that people should normally be free to leave their country of origin and settle in another, subject only to the sorts of constraints that bind current citizens in their new country". Carens, J.H. (1987), 'Aliens and Citizens: The Case for Open Borders', *The Review of Politics*, 49 (2), pp. 251-273.

139 UN Treaty Body Database (2024), *Ratification Status for CCPR - International Covenant on Civil and Political Rights*. [online]. Available at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CCPR&Lang=en [Accessed: 12 December 2024].

140 African Union (2017), List of Countries which have signed, ratified/acceded to the African Charter on Human and Peoples' Rights. [online]. Available at: https://au.int/sites/default/files/treaties/36390-sl-african_charter_on_human_and_peoples_rights_2.pdf [Accessed: 12 December 2024].

118. In other words, the AU FMP does not offer non-nationals more protection against expulsion than the legal frameworks most African countries have agreed to and does not undermine the control of AU Member States to expel non-nationals.

119. Key takeaways

119.1 Free movement regimes are not open borders – free movement regimes facilitate the mobility of nationals of participating states. However, states retain the prerogative to deny entry or expel non-nationals who threaten the state’s security. The AU FMP incorporates these state powers under Article 21.

Finding 5. Empirical evidence shows that free movement regimes facilitating mobility across borders do not necessarily lead to more migration

120. The causes of migration have been extensively studied over the last few decades, and there is consensus that countries are likely to receive more migrants during periods of economic growth and fewer or no migrants during times of economic stagnation. As Hein de Haas has argued, the best guarantee for a country to reduce migration is to wreck the economy.¹⁴¹

121. The empirical evidence shows that free movement regimes do not necessarily lead to more migration. Indeed, the opposite is true. There are many examples that show how free movement regimes do not lead to more migration. In 2020, the global estimate for international migrants was approximately 281 million, accounting for 3.6% of the global population.¹⁴² However, in the case of the EU, the percentage of EU citizens residing in another Member State is only 3% below the global average. This is despite the existence of a well-functioning free movement regime and considerable differences in terms of unemployment rates, social protection or average salaries between EU countries.¹⁴³

122. Most EU Member States have not seen an increase in the immigration of nationals from other states. For example, Poland joined the EU in 2004, and since that date, all EU nationals have the right to enter, reside, and work in Poland under equal conditions with Polish nationals. However, as of 1 January 2022, the number of EU citizens in Poland was 33,400, representing 0.1% of the country’s total population.¹⁴⁴ Thus, out of the more than 400 million EU citizens who could move

141 De Haas, H. (2023), *How Migration Really Works*. London: Penguin/Viking, at p. 125.

142 McAuliffe, M. and Oucho, L.A. (eds.) (2024), *World Migration Report 2024*. International Organization for Migration (IOM), Geneva.

143 European Commission (2020), *EU citizens living in another Member State - statistical overview*. [online]. Available at: <https://ec.europa.eu/eurostat/statistics-explained/index> [Accessed 12 December 2024].

144 European Commission (2024), *Governance of migrant integration in Poland*. [online]. Available at: https://migrant-integration.ec.europa.eu/country-governance/governance-migrant-integration-poland_en [Accessed 12 December 2024].

to Poland, the fifth largest country in the EU by population,¹⁴⁵ only slightly more than 30,000 have decided to do so.

123. The number of EU citizens residing in another EU Member State varies significantly depending on the country. The overall message, however, is that only 17.9 million EU citizens out of the 449.3 million people living in the EU as of 1 January 2024, which is just 4%, have moved from another EU country.¹⁴⁶ Therefore, this figure is slightly above the global average of 3.6% of migrants among the total global population.¹⁴⁷
124. There are similar examples in other regions. Argentina is the only country in South America, and possibly the world, with the most advanced migration law regarding the rights it grants to migrants, as recognised by the UN on several occasions.¹⁴⁸ This 2004 law provides that all South American nationals have the right to reside and work in Argentina. Indeed, Argentina did this unilaterally before the MERCOSUR Residence Agreement, one of the free movement regimes in South America, entered into force in 2009. The MERCOSUR Residence Agreement now includes all countries in South America apart from Guyana, Suriname and Venezuela. It offers nationals of state parties the right to reside, work, family reunion and other rights in the territory of the other participating states.
125. Argentina is the country with the most generous application of a free movement regime in South America, both in the letter of the law and in practice. However, the percentage of migrants as a total of the population in the country has remained the same for over 20 years, that is, 4.2% in 2002¹⁴⁹ and 4.2% in 2022.¹⁵⁰
126. The same trend has been observed in the Caribbean. The Caribbean Community (CARICOM) has 15 fifteen Member States.¹⁵¹ CARICOM commenced with the free movement of five categories of workers in 2001 and currently allows for the free movement of 12 categories of workers. Accord-

145 The EU has a combined population of 450 million inhabitants. Eurostat (2024) *Population and population change statistics*. [online]. Available at: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Population_and_population_change_statistics (Accessed 12 December 2024).

146 Eurostat (2025) *EU population diversity by citizenship and country of birth*. [online]. Available at: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=EU_population_diversity_by_citizenship_and_country_of_birth The percentage by country can be explored in this link (Accessed 12 December 2024).

147 IOM (2024), *World Migration Report 2024*. [online]. Available at: <https://worldmigrationreport.iom.int/msite/wmr-2024-interactive/> [Accessed 12 December 2024].

148 See for example: Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Concluding observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Argentina. UN CMW/C/ARG/CO/1, 23 September 2011, paragraph 5. [online]. Available at: <https://acnudh.org/wp-content/uploads/2011/09/Report-of-the-CMW-committee-Argentina-2011-unedited-version.pdf> [Accessed 12 December 2024].

149 IOM (2012), *El impacto de las migraciones en Argentina*. Buenos Aires: International Organization for Migration, at p. 19. [online]. Available at: https://www.migraciones.gov.ar/pdf_varios/campana_grafica/OIM-Cuadernos-Migratorios-Nro2-El-impacto-de-las-Migraciones-en-Argentina.pdf [Accessed 12 December 2024].

150 República Argentina. Censo 2022. Migraciones (2024), *Paraguay, Bolivia y Venezuela son los países con mayor representación inmigrante en la Argentina*. [online]. Available at: <https://censo.gob.ar/index.php/paraguay-bolivia-y-venezuela-son-los-paises-con-mayor-representacion-inmigrante-en-la-argentina/> [Accessed 12 December 2024].

151 CARICOM is composed of the following Member States: Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Jamaica, Grenada, Guyana, Haiti, Monserrat, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Saint Lucia, Suriname, Trinidad and Tobago.

ing to IOM, only 1,165 Skills Certificates were issued to CARICOM nationals in 2017.¹⁵² CARICOM nationals must obtain such certificates before moving to another Member State for work. This contrasts with the circa 2 million CARICOM nationals that resided in the US in 2019, with which none of the CARICOM Member States have a free movement regime.¹⁵³

Considerations for the AU FMP ratification and implementation process:

127. Countries ratifying the AU FMP will not necessarily experience more migration. Migration results from a complex array of factors, including the possibility of obtaining a residence permit in the destination country. Generally, migrants move to countries that perform better economically and generate labour demand. Migration to these countries takes place regardless of whether a free movement regime is in place or not.

128. Key takeaways

- 128.1 Empirical evidence shows that free movement regimes do not necessarily lead to an increase in immigrants.
- 128.2 Ratification of the AU FMP by itself is not expected to lead to an increase in migrants in the AU Member States.

Finding 6. Free movement regimes make migration regular

129. Free movement regimes make migration regular because individuals are entitled to obtain a residence permit if they fulfil certain conditions, the most important of which is holding the nationality of another country which is participating in the free movement regime. Within the EU, Romania is a good example. For many years prior to Romania's accession to the EU in 2007, Romanians in other European countries found themselves in irregular migration situations. It is plausible to argue that Romanians were the largest group of irregular migrants in the EU by nationality. The two most important destinations for Romanians in the EU had been Italy and Spain.¹⁵⁴ For example, in Spain there were 126,463 Romanians who, being previously in an irregular situation, obtained a regular status after benefiting from a regularisation procedure between 2000 and 2005.¹⁵⁵ In the case of Italy, a regularisation in 2002 led to 134,909 Romanians obtaining residence permits,¹⁵⁶ out of more than 600,000 non-nationals who were regularised.

152 Aragón, E. and Mawby, B. (2019), *Free movement of persons in the Caribbean. Economic and Security Dimensions*. San Jose: International Organization for Migration. [online]. Available at: https://kmhub.iom.int/sites/default/files/publicaciones/free_movement_in_the_caribbean.pdf [Accessed 12 December 2024], at p. 36.

153 Migration Policy Institute (2022), *Caribbean Immigrants in the United States*. [online]. Available at: <https://www.migration-policy.org/article/caribbean-immigrants-united-states> [Accessed 12 December 2024].

154 European Commission, Report from the Commission to the Council on the Functioning of the Transitional Arrangements on Free Movement of Workers from Bulgaria and Romania {SEC (2011) 1343 final}, Brussels, 11.11.2011 COM (2011) 729 final, p. 5.

155 Arango, J. and Finotelli, C. (2009), 'Spain', in M. Baldwin-Edwards and A. Kraler (eds.) *REGINE - Regularisations in Europe. Study on Practices in the Area of Regularisation of Illegally Staying Third-Country Nationals in the Member States of the EU*, Appendix A, Ref. JLS/B4/2007/05. Vienna: ICMPD, at p. 87.

156 Ruspini, P. (2009), 'Italy', in M. Baldwin-Edwards and A. Kraler (eds.) *REGINE - Regularisations in Europe. Study on Practices in the Area of Regularisation of Illegally Staying Third-Country Nationals in the Member States of the EU*, Appendix A, Ref. JLS/B4/2007/05. Vienna: ICMPD, at p. 82.

130. When Romania joined the EU on 1 January 2007, its nationals transformed from potential undocumented migrants into EU citizens with a right of residence. Thus, moving forward, Romanians obtained a right of residence and work in the rest of the EU Member States. Romanian nationals who were filling labour market gaps in EU Member States, mainly Italy and Spain, were simply legalised.¹⁵⁷
131. Argentina offers another example. As explained previously, migration to Argentina has not increased in the twenty years since it adopted a new migration law and unilaterally implemented the MERCOSUR Residence Agreements in 2004, before it entered into force in 2009. However, migrants in Argentina have been regularised. According to official estimates, the number of migrants in an irregular situation in the country in early 2004 was between 750,000 and 800,000.¹⁵⁸ As around 84% of migrants in Argentina come from South America,¹⁵⁹ migrants in an irregular situation have almost entirely ceased to be a policy concern in the country since it regularised migrants through the MERCOSUR Residence Agreements.
132. Making migration regular not only benefits migrants themselves but also immigration and other state authorities and society at large. As the former UN Rapporteur on the Rights of Migrants has argued: ‘Migrants in irregular situations live and work in critical circumstances and may be disproportionately subjected to discrimination, abuse, exploitation and marginalisation. Undocumented migrant women may be more exposed to abuse and exploitative conduct, gender-based violence and harassment and intersecting forms of discrimination. Irregular migration status associated with restrictive legislative and policy responses may drive migrants into situations of vulnerability, which also reduce the development benefits of migration for migrants, their families and the communities involved.’¹⁶⁰ By making migrants regular and reducing and streamlining immigration procedures for certain nationalities, the workload of immigration and state authorities is reduced and simplified.

Considerations for the AU FMP ratification and implementation process:

133. Making migrants regular aligns with the GCM objectives, which most African countries have endorsed. It also allows national administrations to better control who resides in their national territory at any given moment, thus facilitating policies that foster inclusion and security. Therefore, any AU Member States ratifying the AU FMP will be taking a step towards achieving the most important outcome under the GCM, namely making migration regular.

157 Migration Policy Institute (2022), *Romanian Migration to Spain: Explaining an Unexpected Migrant Flow*. [online]. Available at: <https://www.migrationpolicy.org/article/romanian-migrants-spain> [Accessed 12 December 2024].

158 Ceriani Cernadas, P. and Morales, D. (2011) ‘Argentina: Avances y Asignaturas Pendientes en la Consolidación de una Política Migratoria Basada en Los Derechos Humanos’, in Bernard, A. (ed.) *Buenos Aires Centro de Estudios Legales y Sociales*. Paris: Federación Internacional de Derechos Humanos (FIDH, at p. 29.

159 Agosto, G. and Rubinstein, F. (2022), ‘Migration and the 2030 Agenda in Argentina’, *International Development Policy / Revue internationale de politique de développement*, Online since 25 April 2022. [online]. Available at: <https://journals.openedition.org/poldev/4939>; DOI: <https://doi.org/10.4000/poldev.4939> [Accessed 12 December 2024].

160 United Nations, How to expand and diversify regularization mechanisms and programmes to enhance the protection of the human rights of migrants Report of the Special Rapporteur on the human rights of migrants, Felipe González Morales, A/HRC/53/26, p. 3. [online]. Available at: <https://documents.un.org/doc/undoc/gen/g23/075/40/pdf/g2307540.pdf> [Accessed 12 December 2024].

134. Key takeaways

- 134.1 Empirical evidence shows that free movement regimes make migration regular since they allow nationals of participating states to obtain a residence permit.
- 134.2 Regular migration is one of the most important benefits of implementing a free movement regime as it enhances the dignity, self-reliance and resilience of migrants, as well as their socio-economic contribution to their host state.
- 134.3 Regular migration enhances the security of states, as the capacity of state authorities to know who is on their territory and manage their stay increases.

Finding 7. Free movement regimes contribute to circular migration

135. Numerous studies, particularly analysing the US-Mexico case, have shown that immigration restrictions lead migrants to settle permanently.¹⁶¹ With free movement regimes in place, the opposite may be the case. Free movement regimes facilitate circular migration¹⁶² defined as ‘the fluid movement of people between countries, including temporary or more permanent movement which (...) occurs voluntarily and is linked to the labour needs of countries of origin and destination.’¹⁶³
136. Several studies have shown how free movement regimes promote temporary and circular migration, for example, between Sweden and Finland,¹⁶⁴ and between Germany and other EU Member States.¹⁶⁵

137. Key takeaways

- 137.1 Free movement regimes contribute to making migration circular by allowing individuals to move back and forth between different participating countries, including their own.
- 137.2 Implementing the AU FMP could boost circular migration.

161 See among many others: Massey, Douglas S., and Kristin E. Espinosa (1997), ‘What’s Driving Mexico-U.S. Migration? A Theoretical, Empirical, and Policy Analysis’, *American Journal of Sociology*, 102 (4), pp. 939–99.

162 Skeldon, Ronald (2012), ‘Going Round in Circles: Circular Migration, Poverty Alleviation and Marginality’, *International Migration*, 50, pp. 43–60.

163 Global Forum on Migration and Development (2008), Workshop on Creating Development Benefits through Circular Migration. [online]. Available at: https://www.gfmd.org/files/documents/gfmd_manila08_contribution_to_rt2-1_workshop_mauritius_2008_en.pdf [Accessed 12 December 2024].

164 See further Weber, R. and Saarela, J. (2019), ‘Circular migration in a context of free mobility: Evidence from linked population register data from Finland and Sweden’, *Population and Space*, 25 (1), pp. e. 2230.

165 Constant, A. and Zimmermann, K. (2012), ‘The Dynamics of repeat migration: a Markov chain analysis’, *International Migration Review*, 46(2), pp. 362–388.

Finding 8. Once a country joins a free movement regime, it is highly unlikely that it will withdraw from it

138. Studies show that once countries join a free movement regime, it is rare that they subsequently denounce or withdraw from the relevant treaty. When free movement regimes are indeed terminated, as in the case of Argentina-Bolivia,¹⁶⁶ it is because an alternative multilateral free movement regime offering the same opportunities was in place (e.g. MERCOSUR). A hypothesis deriving from this is that once a country is part of a functioning free movement regime, the advantages outweigh any possible disadvantages, so there is no incentive to denounce the treaty.
139. When a country leaves a regional organisation, such as the case of the UK withdrawing from the EU (known as “Brexit”), the free movement of people also ends between that country and the remaining states that are party to that organisation. It is, however, worth noting that after Brexit, net immigration¹⁶⁷ into the UK has been at its highest level in the last three decades mainly driven by non-EU migrants.¹⁶⁸ This further strengthens the argument that free movement regimes by themselves will not cause a country to receive more migrants if its economy and labour sector do not need such a labour force. This, of course, excludes forced displacement.

Considerations for the AU FMP ratification and implementation process:

140. While some free movement regimes in Africa are not currently implemented, it is also true that it is very rare for states in Africa to denounce an existing international treaty which created a free movement regime. There are only two exceptions. The first one refers to a bilateral free movement regime, namely the one between Cameroon-Mali, where the parties decided to end their free movement regime outright.¹⁶⁹ The second exception refers to Burkina Faso, Mali and Niger, which announced their withdrawal from ECOWAS in January 2024, although this still needs to be formalised. On 14 December 2024, these three countries announced in a Declaration¹⁷⁰ that nationals of ECOWAS Member States continue to have the right to enter, move, reside, establish themselves and exit from the territory of the Member States of the Confederation of Sahel States.¹⁷¹

166 Migration Covenant between the Republic of Argentina and the Republic of Bolivia, Buenos Aires, Feb. 16, 1998. [online]. Available at: https://tratados.cancilleria.gob.ar/tratado_ficha.php [Accessed 12 December 2024].

167 Net migration is the result of considering both people entering and leaving a country.

168 The Migration Observatory at the University of Oxford (2024), *Net Migration to the UK*. [online]. Available at: <https://migrationobservatory.ox.ac.uk/resources/briefings/long-term-international-migration-flows-to-and-from-the-uk/> [Accessed 12 December 2024].

169 Convention Générale d’Établissement et de Circulation des Personnes, Bamako, May 6, 1964, derogated by *Accord sur la circulation des personnes et des biens, Yaoundé, Sept. 08, 2015*.

170 Déclaration du Collège de Chefs d’État de la Confédération des États du Sahel (AES) sur la Libre Circulation, le Droit de Résidence et d’Établissement des Ressortissants de la CEDEAO dans l’Espace de la Confédération des États du Sahel, Bamako, 14 December 2024.

171 The Confederation of Sahel States includes Burkina Faso, Mali and Niger and was created on 6 July 2024 through the signature of the Treaty establishing the Confederation of the Alliance of Sahel States.

141. Key takeaway

141.1 Once an international treaty creating a free movement regime is ratified, it is extremely rare for the parties to denounce it. From this, it might be inferred that parties consider that participating in a free movement regime offers more advantages than disadvantages.

Finding 9. Variable geometry is standard worldwide

142. Countries have various experiences adapting multilateral free movement regimes to the bilateral or individual levels. There are several examples, such as the case of the EU and Switzerland. Even though Switzerland applied for EU membership in 1992, it never joined the EU. However, more than 20 years ago, the EU and Switzerland adopted a bilateral agreement that places Swiss nationals on a very similar footing with EU citizens when it comes to entry, work, establishment, residence for those who are not working, family reunion, or protection from expulsion. At the same time, EU citizens also enjoy the same rights in Switzerland.¹⁷²
143. Other examples of bilateral free movement regimes where a country does not join a regional organisation, include the regimes between Andorra and France, and Portugal and Spain, respectively, or Venezuela and Ecuador.
144. Bilateral free movement regimes can be used for granting greater privileges between two states than is the case at the regional level, such as the one that exists between Russia and Belarus.¹⁷³ Whilst both countries are now part of the Eurasian Economic Union,¹⁷⁴ which incorporates free movement of workers,¹⁷⁵ the agreement continues to grant citizens of both states a much more comprehensive legal status than under the regional framework.¹⁷⁶
145. The Common Travel Area (CTA), initially an understanding embraced when the Irish Free State seceded from the United Kingdom in 1922, is another case in point. Considering Brexit, a 2019 Memorandum of Understanding reaffirms the status that British and Irish citizens enjoy in each other's territory. This includes the ability to move freely, reside, work and vote in local and national elections, as well as equal treatment in education, social protection, housing and healthcare.¹⁷⁷

172 Peers, S. (2000), 'The EC-Switzerland Agreement on Free Movement of Persons: Overview and Analysis', *European Journal of Migration and Law*, 2, pp. 127-142. Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, [2002] OJ L 114.

173 Treaty on the formation of an association between the Russian Federation and the Republic of Belarus, Moscow, 2 April 1996. This was later replaced by the Treaty on the establishment of the Union State between the Russian Federation and the Republic of Belarus, Moscow, 8 December 1999.

174 Treaty on the Eurasian Economic Union (EAEU), Astana, 29 May 2014. The Treaty came into force on 1 January 2015. The three original Member States were Russia, Kazakhstan and Belorussia. Armenia joined on 2 January 2015 whilst Kyrgyzstan obtained full membership on 12 August 2015. The Eurasian Economic Union has absorbed the previous Eurasian Economic Community (EURASEC), Eurasian Customs Union and the Eurasian Economic Space (Art. 99 EAEU Treaty).

175 Section XXVI of the Eurasian Economic Union, on Labour Migration (Articles 96-98).

176 Lyutov, N. and Golovina, S. (2018), 'Development of Labor Law in the EU and EAEU: How Comparable?', *Russian Law Journal*, 6 (2), pp. 93-117, at 95.

177 Memorandum of Understanding between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland concerning the Common Travel Area and associated reciprocal rights and privileges, May 8, 2019.

146. They can also be used when a regional agreement has not yet been enacted. Argentina adopted bilateral treaties with several countries, for example Brazil, which applied the provisions of the MERCOSUR Residence Agreement before it entered into force in 2009.¹⁷⁸
147. Domestic measures unilaterally easing the entry and settlement of regional migrants are also important. Whilst the principle of reciprocity has been presented as a *sine qua non*-requirement for free movement,¹⁷⁹ there are many instances where this principle has not been applied or, at least, where one of the parties obtains a more privileged treatment.¹⁸⁰ For example, New Zealand has since 2001 accepted less privileged treatment for their citizens in Australia compared to Australian citizens in New Zealand.¹⁸¹
148. Domestic measures in Latin America fall into three categories. First, states may apply regional agreements to nationals of countries that have not ratified them. In South America, Argentina, Brazil, and Uruguay have extended privileges to Guyanese, Surinamese and Venezuelans despite these countries not being part of the MERCOSUR Residence Agreement.¹⁸²
149. Second, countries may offer rights beyond those established in a regional agreement. Since 2015, Uruguay has extended to all South Americans the right to acquire permanent residence in the country directly, despite such privilege not being included in the MERCOSUR Residence Agreement.¹⁸³
150. Finally, states may offer privileged treatment to regional migrants even if no regional or bilateral agreement exists. El Salvador allows Central Americans to freely enter, settle, work, and access permanent residence.¹⁸⁴

Considerations for the AU FMP ratification and implementation process:

151. This section shows that many free movement regimes have been implemented unilaterally or bilaterally without waiting for a particular free movement regime to enter into force. This is also legally possible under the AU FMP, which allows states to accelerate the implementation of any phase at the subregional or individual level (Article 5(3)(b)). Likewise, the 1991 Treaty establish-

178 See for example, Operative Agreement between the National Migration Directorate of the Republic of Argentina and the Foreigners Department of the Federative Republic of Brazil for the Application of the Agreement on Residence for Nationals of the MERCOSUR Member States, Buenos Aires, 29 November 2005.

179 Pécoud, A. and de Guchteneire, PFA. (2007) 'Introduction: The Migration without Borders Scenario', in A. Pécoud and PFA de Guchteneire (eds.), *Migration without borders: Essays on the Free Movement of People*. New York: Berghahn books, pp. 1-30.

180 Reciprocity is sometimes applied. For example, Colombia excluded Chilean nationals from the MERCOSUR Residence Permit since Chile did not reciprocate. Carla Plata (2019), *Ciudadanos Chilenos ya no Podrán Solicitar Visa MERCOSUR*. [online]. Available at: <https://www.asuntoslegales.com.co/consultorio/ciudadanos-chilenos-ya-no-podran-solicitar-visa-mercosur-2854639> [Accessed 12 December 2024].

181 Lockhart, S. and Money, J. (2011), 'Migration Cooperation in Asia: the Trans-Tasman Travel Arrangement', in R. Hansen, J. Koehler and J. Money (eds.) *Migration, Nation States, and International Cooperation*. Milton Park: Routledge, pp. 44-72, at 54-55.

182 Argentina, Migration Law 25871, 21 Jan 2004, Art. 23; Brazil, Portaria Interministerial MJSP/MRE 19, 23 Mar 2021; Uruguay, Migration Law 18250, 17 Jan 2008, Art. 34.

183 Uruguay, Decree 312, 4 December 2015.

184 El Salvador, Decree 286, Special Law on Migration and Alienage, 25 April 2019, Arts. 109, 111, 122, and 152.

ing the African Economic Community permits states to adopt individual, bilateral or regional measures to progressively achieve the free movement of persons (Article 43).

152. Any AU Member State can implement the provisions of the AU FMP either unilaterally, by adopting domestic legislation, or bilaterally with another Member State by negotiating and ratifying a bilateral international treaty. There are numerous examples of bilateral agreements on free movement of people already adopted and ratified between countries in Africa.¹⁸⁵

153. Key takeaways

- 153.1 Variable geometry within free movement regimes is the norm. Many states worldwide have decided to implement free movement regimes unilaterally or bilaterally.
- 153.2 The AU FMP can be implemented unilaterally or bilaterally. Any AU Member State willing to implement the AU FMP does not need to wait until 15 countries have ratified it and it enters into force. Member States can implement the AU FMP unilaterally through domestic law or bilaterally with another willing AU Member State.
- 153.3 Variable geometry gives a country flexibility and policy space to implement a free movement regime at its own pace to address challenges it may be currently facing.

Finding 10. Free movement regimes are often implemented in phases

154. Many free movement regimes have advanced and developed in phases. For example, in the EU, only workers initially had a right of residence in other EU Member States. This was later expanded to include the self-employed and, even later, non-economically active EU nationals such as students or pensioners.

155. The same can be said, for instance, about the Andean Community in South America. The first 2003 legal instrument establishing the free movement of people only included certain categories of workers. Later, in 2021, all nationals from Andean Community Member States were offered the right to reside in another Andean Community Member State.

156. In the case of CARICOM, residence is only possible for those performing certain recognised skills. Presently, there are 12 categories of workers recognised: university graduates, media workers, sportspersons, artists, musicians, teachers, nurses, domestic workers with Caribbean vocational qualification certificates (CVOs), artisans with CVOs, persons with associate degrees or Caribbean Advanced Proficiency Examination (CAPE) or 'A' levels, agricultural workers, and

¹⁸⁵ See among many others: Establishment Convention between Morocco and Algeria (Convention d'Établissement), Alger, 15 March 1963; Establishment Convention between Algeria and Tunisia, Alger, 26 July 1963 [Convention d'Établissement entre la Tunisie et l'Algérie]; Establishment and Circulation of Persons Convention between Mali and Guinea [Convention d'établissement et de circulation des personnes entre le Mali e le Guinée], Bamako 20 May 1964; Establishment Convention between Tunisia and Morocco, 9 December 1964 [Convention d'Établissement entre la République Tunisienne et le Royaume du Maroc]; Establishment and Circulation of Persons Convention between Mali and Niger [Convention d'Établissement et de Circulation des Personnes entre le Mali et le Niger], Niamey, 22 April 1964, entry into force 20 February 1965.

security personnel guards.²⁰ The legal procedure to certify belonging to one of these categories is cumbersome and has led to a limited number of nationals of the participating states obtaining residence in other state parties. In 2023, the Conference of Heads of Government agreed to ‘work towards the free movement of all CARICOM nationals within the Community by 31 March 2024’ and that certain basic guarantees ‘should be afforded to all CARICOM nationals exercising their right to freely move and remain indefinitely in another Member State of the Community’.²¹ This would expand free movement rights for all nationals of Member States and not only for certain categories of workers as is the case now.

Considerations for the AU FMP ratification and implementation process:

157. As highlighted previously, many free movement regimes worldwide have advanced in phases. The AU FMP is no exception and distinguishes three concepts: free movement of persons, right of residence, and right of establishment (Article 1). These three concepts are also captured in Article 4(2)(i) of the 1991 Treaty establishing the African Economic Community, which includes, as one of the measures to promote the attainment of the Community objectives, the assurance of ‘the gradual removal, among Member States, of obstacles to the free movement of persons... the right of residence and establishment.’
158. The AU FMP also includes a reference to the gradual removal of obstacles. According to Article 5, the objectives will be achieved progressively in three different phases which relate to each of the three concepts. Article 5 does not include any deadlines. At the same time, Article 5(3)(a) allows for more favourable provisions and 5(3)(b) permits accelerated implementation of any phase.
159. According to Article 5.1.a, during phase one, ratifying countries have to implement the right of entry and abolition of visa requirements. In brief, such right includes entry, stay, free movement and exit without a visa and for 90 days (Articles 6(1) and 6(4)). Nationals of state parties willing to remain longer must apply for a permit under national law (Article 6(5)). Entry can be prohibited due to national security, public order or public health under the national laws of the state concerned (Article 7(1)(c)). Finally, Article 7.2 allows Member States to impose other conditions to refuse entry which are not inconsistent with the AU FMP.
160. Having a precise right of entry without a visa requirement is the first and most crucial element for a free movement regime to function correctly. This includes not being subject to any other formalities that, while not being visas, require the individual concerned to fill in an application or other type of form, even if such a form is online, for example, travel authorisations. The reference to the national laws of the state concerned in Article 7(1) of the AU FMP should be read as requiring clear and precise rules in the domestic norms implementing it. Any additional conditions under Article 7(2) should be strictly limited and clearly specified in the implementing domestic law.

161. Key takeaways

- 161.1 Many free movement regimes have advanced implementation in phases with countries progressively granting free movement rights to more categories.

161.2 The AU FMP must be implemented in phases. Phase one only obliges countries ratifying it to offer nationals of participating states the right to enter without any visa requirement. Such right of entry is limited to 90 days and states retain prerogatives to deny such entry in cases related to national security, public order or public health.

Finding 11. Not all free movement regimes work similarly regarding residence and access to the labour market

162. Free movement regimes derive from international treaties negotiated between states in a particular region. To be implemented successfully, free movement regimes must consider the region's specific characteristics.
163. Different regimes offer different models and possibilities.¹⁸⁶ For instance, residence is intrinsically related to employment under the Eurasian Economic Union's framework.¹⁸⁷ Once a labour contract ends, the person may engage in another job or leave within 90 days.¹⁸⁸ CARICOM's rules only offer residence to specific categories of skilled workers, including university graduates, artists or media workers.¹⁸⁹ Under EU law, residence depends on being economically active or having sufficient resources and medical insurance.¹⁹⁰ In South America, regional migrants can obtain a two-year permit with the only condition being a clean criminal record but need to prove sufficient resources after two years.¹⁹¹ Finally, many bilateral agreements offer equal treatment with nationals regarding residence without further requirements.¹⁹²

Considerations for the AU FMP ratification and implementation process:

164. One plausible interpretation of the AU FMP is to argue that access to the labour market only needs to be implemented under phase two. Indeed, according to Article 5.1.b, States must implement the right of residence during phase two. In turn, Article 1 defines the right of residence as meaning 'the right of a national of one Member State to reside and seek employment in another Member State other than their Member State of origin; **in accordance with the national law of the host Member State**' (emphasis in the original). In turn, Article 14 of the AU FMP offers nationals of Member States the right to seek and accept employment in another Member State without discrimination 'in accordance with the policies and laws of the host Member State'. The individual may be accompanied by a spouse and dependents. In line with Article 1 in the AU

186 See Chapter 1 which provides an overview of free movement regimes in Africa.

187 This regional organization includes Russia, Belarus, Kazakhstan, Kyrgyzstan and Armenia.

188 Treaty on the Eurasian Economic Union, Astana, 29 May 2014, Art. 97.

189 Revised Treaty of Chaguaramas Establishing the Caribbean Community Including the CARICOM Single Market and Economy, Arts. 45-46, Jul. 5, 2001, 2259 UNTS 293.

190 Directive 2004/38/EC of the European Parliament and of the Council, Art. 7, 2004 O.J. (L 158) 77, Art. 7.

191 Agreement Regarding the Residence of Nationals of the State Parties to MERCOSUR, Dec. 6, 2002, Art. 4; Decision 878, Andean Migratory Statute, May 12, 2021, Official Gazette Andean Community number 4239, p. 1, Art. 21.

192 See for example: Treaty on the establishment of the Union State between the Russian Federation and the Republic of Belarus, Moscow, 8 December 1999; Memorandum of Understanding between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland concerning the Common Travel Area and associated reciprocal rights and privileges, May 8, 2019.

FMP, a dependent means ‘a child or other person who, a national of a Member State is required to support and maintain as defined by the laws of the host Member State’.

165. The right to access the labour market is prevalent in comparative perspective in other free movement regimes. The best way to implement this provision would be to amend the respective domestic migration laws to specify that nationals of member states that have ratified the AU FMP have the right to access the labour market under the same conditions as nationals of that respective member state. It might be argued, however, that, in accordance with Article 16.3. of the AU FMP, state parties can gradually implement favourable policies and laws on residence for nationals of other Member States, including access to the labour market. This could be interpreted as offering countries that ratify the Protocol with a certain leeway to limit specific labour sectors, for example, providing public sector employment to nationals only. These limitations should not be too extensive in order to remain compatible with the objectives and purpose of the Protocol.

166. Key takeaways

166.1 Some free movement regimes globally have slowly increased the categories of workers who could benefit from access to the labour market. This is, for example, the case in CARICOM and the EAC.

166.2 The AU FMP provides ratifying countries with a certain margin of manoeuvre to implement the right to seek employment in phase two. This should make it easier for states to ratify the AU FMP and later implement phase two.

Finding 12. Travel documents are crucial so that mobility is not hindered when the free movement regime is implemented

167. It is essential to ensure that nationals of state parties and border authorities know which documents can be used to exercise the right of entry into another participating state. This can be achieved either through harmonisation of the security features and biometrics standards in passports and travel documents (the EU model), or through mutual recognition of certain national travel documents as valid (the Andean Community (CAN) model), as seen below. In both cases, there needs to be a certain degree of collaboration between the relevant authorities of the state parties. For instance, CAN has an Andean Committee of Migration authorities meeting regularly to propose legislation and exchange information.

European Union (EU):

168. For EU citizens travelling in the EU, a passport or a national ID serves as valid travel documents (Article 5 Dir. 2004/38). If the EU national who is trying to cross an EU border does not have the necessary travel documents, authorities can refuse entry. Still, first they must give the traveller every reasonable opportunity to obtain the required documents or let them prove by other means that they are an EU citizen within a reasonable period of time.

169. EU Member States have harmonised some elements of their passport booklets through a series of resolutions since 1981 to create a uniform passport and establish minimum security standards that need to be complied with.¹⁹³ They incorporate the words *European Union* on the cover, and the standards for security features and biometrics in passports and travel documents issued by Member States are harmonised through two Regulations.¹⁹⁴

Andean Community (CAN):

170. CAN takes a different approach and has adopted a series of legally binding Decisions and Resolutions which recognise a series of travel documents issued by Member States. This means that any national of a Member State holding any such accepted document can use it to exercise their right to enter another Member State (Article 16 Decision 878). The travel documents recognized as valid in the relevant community laws change from country to country but, in all cases, include at least passports and national IDs.¹⁹⁵ CAN also created a travel document known as the Andean passport and based on a uniform model with certain essential characteristics established in Andean Law.¹⁹⁶

Considerations for the AU FMP ratification and implementation process:

171. The AU FMP includes some obligations regarding travel documents. They are enshrined in Article 9, which imposes three obligations on States: (1) to issue their nationals with valid travel documents; (2) to mutually recognise and exchange specimens of the valid travel documents issued by another Member State; and (3) to cooperate in the process of identification and issuance of travel documents.

172. In this case, the mutual recognition approach already adopted by the Andean Community in South America is the most suitable for implementing the AU FMP. This would entail countries ratifying the AU FMP to recognise a series of travel documents issued by participating states as valid for crossing their borders. Moreover, according to Article 10 AU FMP, State parties shall adopt a travel document called “African Passport”. Although not specified in the AU FMP, it would seem such a Passport would serve as a legally accepted travel document.

173. Key takeaways

173.1 It is essential that travel documents do not hinder mobility under a free movement regime.

173.2 In the case of the AU FMP, mutual recognition would seem to be a good solution. This could follow the already successful example of the Andean Community in South America.

¹⁹³ Resolution of the Representatives of the Governments of the Member States of the European Communities, meeting within the Council of 23 June 1981, *OJ C 241*, 19.9.1981, p. 1–7.

¹⁹⁴ Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States; Regulation (EC) No 444/2009 of the European Parliament and of the Council of 28 May 2009 amending Council Regulation (EC) No 2252/2004 on standards for security features and biometrics in passports and travel documents issued by Member States.

¹⁹⁵ Decision 503 on Recognition of National Identification Documents, Valencia, Venezuela, 22 June 2001; Resolution 1559, actualization of the travel documents recognized by Decision 503, Lima, 26 March 2013.

¹⁹⁶ Decision 504 on an Andean Passport, Valencia, Venezuela, 22 June 2001.

Finding 13. Laws implementing a free movement regime need to be publicly available and widely disseminated for the free movement regime to function properly at the domestic level

174. Free movement regimes are not immune to the difficulties faced by other international treaties and legal regimes, such as compliance, to name but one. It is well known that some participating countries plainly ignore some of the current, legally binding regimes.¹⁹⁷ As studied by some scholars, deficient application in practice is caused by numerous factors, such as poor knowledge of the legal norms among key actors, including lawyers, the administration, and judges.¹⁹⁸
175. Whether a country follows a monist or dualist approach to international law, the rights enshrined in free movement regimes achieve better domestic recognition when incorporated into national migration laws. A few states have done this. For example, Article 29 of Argentina's migration law establishes that nationals from South America have the right to obtain a residence permit.
176. Section 14 of Antigua and Barbuda's 2014 Immigration and Passport Act clearly incorporates the right of entry and residence for nationals of Member States of CARICOM seeking to enjoy rights conferred under the Revised Treaty of Chaguaramas or the Caribbean Community (Movement of Factors) Act, 2006, as well as for citizens of Member States of the Organisation of Eastern Caribbean States seeking to enjoy rights conferred under the Revised Treaty of Basseterre. These are the two free movement regimes in which Antigua and Barbuda participates.
177. Several European states such as Spain have created an alternative approach and adopted a domestic law that is different from the general migration law to enshrine the rights of EU citizens in the country, including the right to work.¹⁹⁹
178. Incorporating such provisions into domestic migration law has the advantage that all relevant stakeholders have easier access to the information about the rights that are offered to nationals of participating states. When this is not the case, legal actors and migrants must locate and interpret the international treaty constituting the free movement regime. In many cases, this leads to legal uncertainty, lack of access to rights, and a negative impact on the rule of law.

197 See, for example, the Economic Community of Central African States (ECCAS) regime and how it is not implemented as reported by numerous studies: Erasmus, E. (ed.) (2013), *MME on the Move: A Stocktaking of Migration, Mobility, Employment and Higher Education in Six African Regional Economic Communities*. Vienna: International Center for Migration Policy Development. [online]. Available at: icmpd.org/file/download/48315/file/MME.pdf [Accessed 12 December 2024]; Wood, T. (2018) *The role of free movement of persons agreements in addressing disaster displacement*. Geneva: Platform on Disaster Displacement. [online]. Available at: disasterdisplacement.org/resource/free-movement-of-persons-africa/ [Accessed 12 December 2024].

198 Simmons, B. (2009), *Mobilizing for Human Rights International Law in Domestic Politics*. Cambridge: Cambridge University Press.

199 Spain, Real Decreto 240/2007, de 16 de febrero, sobre entrada, libre circulación y residencia en España de ciudadanos de los Estados miembros de la Unión Europea y de otros Estados parte en el Acuerdo sobre el Espacio Económico Europeo.

Considerations for the AU FMP ratification and implementation process:

179. Under Article 27.2 of the AU FMP, State Parties have the obligation to ‘adopt necessary legislative and administrative measures to implement and give effect to this Protocol’. The examples mentioned above offer states good practices to draw on to implement the AU FMP at domestic level and to make sure that all relevant stakeholders, both migrants and legal actors playing a role in migration processes, are aware of the rights offered by the AU FMP. In that regard, an amendment of the domestic immigration law, or the adoption of a new domestic law, exclusively addressed to nationals of State Parties, are the two best options as identified in the comparative analysis above.
180. A free movement regime which is clearly implemented in domestic law provides legal certainty for all actors involved. This simplifies the administration related to regulating mobility and potentially enhances the protection of migrants as the rules regulating mobility are well known.

181. Key takeaways

- 181.1** Free movement regimes are best implemented when the provisions of the relevant treaty are clearly identifiable in domestic law, either the relevant general migration law or a new law regulating the rights of nationals of the participating states in the regime.
- 181.2** The good practice of incorporating a free movement regime into national law will aid implementation of the AU FMP - state officials will be better equipped to implement the AU FMP and migrants should have more clarity regarding their rights under the AU FMP.
- 181.3** Governments implementing the AU FMP should also disseminate information on how the AU FMP functions and make it publicly available, including on government websites, social media and radio.

Finding 14. Supranational courts with competence on the interpretation and application of free movement regimes are common

182. Many regional organisations with free movement regimes have supranational regional courts that have produced important rulings on free movement and, in that way, have helped to ensure that the rights of migrants under these regimes are better protected. This includes not only the European Union and its Court of Justice, but also CARICOM, the Andean Community, and the Eurasian Economic Union. For example, the Caribbean Court of Justice established that Barbados could not simply deny entry to a Jamaican national without offering legitimate reasons because, ‘[i]n contradiction to foreigners in general’, a Jamaican national has ‘a right to enter the territory of Barbados and that of other Member States unless they qualify for refusal under the two exceptions enshrined in the CARICOM Community law.’²⁰⁰

²⁰⁰ Caribbean Court of Justice, *Shanique Myrie v Barbados*, 2013 C.C.J. 3 (OJ), 4 October 2013, para 50.

Considerations for the AU FMP ratification and implementation process:

183. Africa also has supranational courts. For example, the East African Court of Justice ruled that Uganda had freely accepted limiting ‘her sovereignty to deny entry to persons, who are citizens of the Partner States’ of the EAC.²⁰¹ Thus, when impeding entry of a Kenyan national, it is not domestic Ugandan migration law that is at stake, but rather EAC law governing free movement.²⁰²
184. Article 30(2) of the AU FMP offers nationals of a Member State who have been denied rights under the Protocol, and once they have exhausted all domestic remedies, to refer the matter to the African Commission on Human and Peoples’ Rights.

185. Key takeaways

- 185.1 Supranational courts overseeing the correct application and implementation of free movement regimes are available in various regional organisations.
- 185.2 The possibility enshrined in Article 30(2) of the AU FMP, which offers nationals of a Member State who have been denied rights under the Protocol the opportunity to refer the matter to the African Commission on Human and Peoples’ Rights once they have exhausted all legal remedies in the host Member State, does not seem problematic or too demanding for any country ratifying the Protocol.

Finding 15. Ratification of a free movement regime is more straightforward when key legal domestic actors are well-informed and can position ratification on the political agenda

186. Paraguay is an example where a strategy was needed to convince the relevant actors of the importance of ratifying the free movement regime in South America. The country initially opposed the ratification of the 2002 MERCOSUR Residence Agreement. While all the other countries had ratified the agreement by 2005, Paraguay only did so in 2009. The process that led to Paraguay’s ratification of the Treaty offers us some lessons.
187. First, it is essential to identify the key domestic actors that can make it possible to put the ratification of the treaty on the political agenda of the Parliament and/or the Executive, depending on who oversees the national ratification of international treaties. This will differ from country to country and may include government officials, diplomats, Members of Parliament (MPs), business organisations, labour unions, civil society, migrant groups, religious groups and others. Secondly, it is important to arrange meetings with such key actors, present relevant research to contribute to dispelling myths around migration and free movement and raise awareness and

201 See East African Court of Justice, Samuel Mukira Mohochi and The Attorney General of the Republic of Uganda, Reference No. 5 of 2011, 17 May 2013.

202 *ibid.*

highlight the advantages and opportunities that free movement can bring. Thirdly, once the proposal to ratify the relevant agreement has been sent to parliament – in those countries where the parliament has a role in ratifying international treaties – it is then important to engage with MPs across various parties to present the benefits of ratifying the agreement. Such benefits might include not only the protection of migrants in such a country, but also better access to rights for emigrants in other countries. For example, in the case of Paraguay, it was relevant to argue that the ratification was in line with regional integration but also that Paraguayans living in other South American countries would benefit from the agreement.²⁰³

Considerations for the AU FMP ratification and implementation process:

188. Actors interested in mobilising ratification of the AU FMP in countries with parliamentary processes can take several steps considering the above-mentioned finding. First, it might be helpful to identify which countries are more advanced regarding participation in other free movement regimes in Africa. Second, assess the country's record of ratification of other AU protocols. Third, key domestic actors should be identified with an open agenda on migration issues and regional integration. Fourth, organise training in collaboration with these domestic actors. Such training could take place online or in person, target key top-level bureaucrats, diplomats, and MPs, and aim to present relevant research and dispel some of the myths around migration and free movement regimes. Taking these steps could help to ensure that the AU FMP is submitted to parliament for potential ratification.

189. Key takeaways

189.1 It is common for free movement regimes to be opposed by some domestic actors.

189.2 It is essential to bring together all relevant actors to highlight good practices from other countries and regions and to raise awareness and highlight the advantages and opportunities that free movement can bring.

189.3 It is essential to build a coalition with domestic actors who favour ratification. Such actors will differ from country to country. Most importantly, the ratification of the AU FMP should be placed on the political agenda and the AU FMP should be sent to parliament for potential ratification.

203 Del Real, D. (2019), *Documenting the Undocumented: the Construction of Legal Residency as a Substantive Right under the Mercosur Residency Agreement*, PhD Dissertation, UCLA, p. 57.



5. Summary of Key Strategies to Boost Ratification of the AU FMP

1. Clarifying the content of the AU FMP

190. Stakeholders interviewed for this study and participants at the Study Consultation pointed out the lack of certainty regarding the legal interpretation of the text of the AU FMP and its legal implications, as a major obstacle to the AU FMP's ratification. The 2023 UNECA and AU study Free Movement of Persons for Trade: Towards an Accelerated Ratification of the AU Free Movement of Persons Protocol in support of the implementation of the AfCFTA also makes this point. It explains that some states are under the impression that ratification of the AU FMP requires the immediate implementation of phase one of the AU FMP, which covers 'the right of entry and abolition of visa requirements' for all countries that have ratified the AU FMP. This phase will, however, only be implemented once the AU FMP enters into force.
191. It is important to clarify the content of the AU FMP for AU Member States and the following activity is proposed:
- Convene a workshop with the AU Legal Counsel and legal officials/ lawyers in Ministries of Foreign Affairs of Member States to discuss and clearly explain the legal interpretation of the clauses and definitions of the AU FMP, with a view to clarifying the content of the AU FMP for Member States and deliver an outcome document that confirms the legal content of the AU FMP and encourages Member States to ratify.

2. Awareness raising on the concept of the free movement of persons and the content of the AU FMP

192. Participants at the Study Consultation, as well as various stakeholders interviewed for this study, highlighted that a lack of understanding and misconceptions about the free movement of persons hamper progress in advancing the free movement of persons agenda and ratification of the AU FMP. The term is often misunderstood by the public and government officials to mean open borders and the movement of people across borders without any rules or restrictions. The AU FMP will facilitate movement, but all movement across borders will be subject to the rules, regulations and laws of the participating AU Member States. Free movement regimes grant privileged treatment to nationals of participating states, but these individuals still have the same obligation to obey the laws of the hosting state.

193. To raise awareness of the concept of free movement of persons and provisions of the AU FMP the following activities are proposed:
- Develop a communication document that educates stakeholders about the AU FMP and the free movement of persons.
 - Develop an informative video about the AU FMP and the free movement of persons.
 - Produce a short online course on the AU FMP to explain what free movement of persons does and does not mean, which could be offered to AU FMP focal points and other relevant officials and stakeholders.
 - Collaborate with private sector communication experts to raise awareness about the AU FMP and the benefits of free movement and engage private sector networks e.g. FEWACCI, FEBWE, COMESA CBC, EABC, to raise awareness about this Protocol.
 - Since the free movement of goods and persons are closely interlinked, set up an AU FMP and AfCFTA forum focused on the linkages and benefits of free movement and bring together the relevant institutions and stakeholders from selected Member States.
 - Engage with NCMs and NMCs in Member States and regional migration dialogues (such as MIDCOM, the IGAD RCP, and the ECOWAS Migration Dialogue for West Africa) to raise awareness about the AU FMP.
 - Engage the Pan-African Parliament in advocating for the AU FMP.
 - Make the AU FMP a thematic focus of the year.
 - Appoint a special envoy to advocate for the AU FMP, as well as regional champions to mobilise support for the Protocol.

3. Activities directly geared at increasing the number of ratifications of the AU FMP

194. Several activities discussed at the Study Consultation could be implemented to boost the number of ratifications of the AU FMP. The first set of activities below target Member States that are likely to ratify the AU FMP and outline actions that could bring them closer to ratifying it. The second set of activities are not aimed at specific Member States but are also expected to garner support for ratification of the AU FMP.
195. Identify Member States that are more likely to ratify the AU FMP and implement the following activities:
- Identify the key domestic actors who can put ratification of the Protocol on the political agenda of parliament and/or the executive (depending on who is responsible for ratifying international treaties).
 - Develop a stakeholder map that lists the stakeholders likely to be involved in the AU FMP ratification process who need to be engaged with.
 - Draft national legal assessments of the laws that need to be developed and those that need to be amended for these states to ratify and implement the AU FMP.
 - Hold meetings with selected Member States to discuss the provisions of the Protocol and resolve any concerns they may have. Engage with all the relevant stakeholders involved in the ratification and implementation process and formulate a joint national roadmap for

ratification (at the respective Member State level), which includes the necessary technical assistance and capacity development to ensure ratification.

196. Activities aimed at all Member States to bolster support for ratification of the AU FMP:

- Establish AU FMP Focal Points in Ministries of Foreign Affairs or other strategic ministries in Member States and develop a strategy to encourage ratification of the Protocol, prioritising those Member States that are more likely to ratify it.
- Study the AFCFTA model/ approach to ratification, as well as the ratification approach of other instruments that have achieved a high number of ratifications, such as the Kampala Convention, to determine which elements can be replicated.
- Consider revising the name of the AU FMP from Free Movement of Persons to Facilitation of the Movement of People.
- Undertake a study and develop a strategy to achieve free movement of persons between the EAC and ECOWAS which would lead to the entry into force of the AU FMP.

4. Capacity development to spur ratification and implementation of the AU FMP

197. Member States need to strengthen capacities in several areas, including immigration, border management and civil registry, to effectively implement the AU FMP and reap its potential benefits. Below are a number of activities that could be implemented to develop the capacities of Member States, such as the establishment of a facility that could provide Member States with capacity building assistance tailored to their specific needs. Moreover, it is important to develop a fundraising strategy for these capacity building activities and other support measures which will facilitate the implementation of the AU FMP.

- Develop a funds mobilisation strategy to facilitate implementation of the AU FMP.
- Conduct peer-to-peer learning between identified Member States on facilitating entry, residence and establishment and addressing the challenges and harnessing the opportunities associated with the free movement of persons (for example between an EAC Partner State and another AU Member State in East Africa).
- Support Member States in the development of national migration/labour policies with a view to integrating the importance of mobility for development and the AU FMP.
- Investigate how the Demand Driven Facility of the GCM can assist AU Member States in implementing Objective 5 of the GCM, which is geared towards adopting international and bilateral cooperation arrangements to enhance safe and orderly migration, including visa liberalisation, labour mobility cooperation frameworks, and free movement regimes.
- Establish a targeted demand-driven facility which provides bespoke technical assistance and capacity development to Member States to ratify and implement the AU FMP.



6. Conclusion

198. The AU FMP is central to the AU's regional integration agenda and the Agenda 2063 vision of a united Africa, which allows for the free movement of people, capital, goods and services. Since the AU FMP's adoption in 2018, only four Member States have ratified it and another 11 Member States need to ratify it for it to enter into force.
199. The AU commissioned this study to identify strategies to increase ratification of the AU FMP. To advance this objective, this study analysed challenges associated with the AU FMP and strategies to address these challenges, as well as opportunities that can move forward the AU FMP agenda. Thematically, the study focused on socio-economic and trade, and border management and security aspects. A two-day consultation was convened with AU Member States that have signed the AU FMP, RECs, AU bodies, civil society organisations and private sector actors to identify strategies to address these challenges and deliver the opportunities that the AU FMP holds.
200. The challenges associated with the AU FMP and free movement regimes are central to some of Africa's key difficulties, such as unemployment, insufficient road and border infrastructure and lack of security. The AU FMP will not solve Africa's economic, security, infrastructure or border management challenges, but this study showcased various bilateral, multilateral and REC-driven initiatives that are tackling these challenges while bolstering mobility.
201. As with many other free movement regimes, the AU FMP proposes a phased approach to gradually provide for the right to enter, work, reside and set up businesses in the Member States that are implementing the AU FMP. The AU FMP allows for variable geometry, whereby Member States can implement its provisions at different speeds and times. AU Member States may therefore progressively implement the AU FMP's provisions over time, while bolstering the systems and mechanisms that buttress the free movement of persons. The good practices and initiatives highlighted in this study, from Africa and other parts of the world, can inform strategies to enhance the systems that drive a free movement regime.
202. Moreover, the study details specific actions that can advance ratification of the AU FMP, such as: identifying national stakeholders involved in the ratification process; providing bespoke demand driven support to Member States to move forward ratification; and facilitating peer-to-peer learning between Member States on managing migration flows. The AU, RECs, Member States, International Organisations and other partners can all contribute to the successful implementation of these actions and boost the number of ratifications of the AU FMP. Ultimately implementation of the AU FMP should foster trade, socio-economic development and security for the countries that participate in this free movement regime.



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