

THE AFRICAN UNION, MIGRATION AND INTEGRATION: LEGAL FOUNDATION, THE MIGRATION POLICY FRAMEWORK AND CHALLENGES AND POTENTIAL SHORTCOMINGS

ATSEDE GETA BELETE

Studying Governance and Regional Integration at Pan African University Institute of Governance,
Humanities and Social Science, University of Yaoundé II, Cameroon

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ABSTRACT

The African Union is a regional organisation established and mandated to accelerate African regional integration. However, migration remains one of the challenges for African regional integration. African states have been experiencing a high number of migrations, making it worth looking for a solution.

The African Union has a migration policy framework, but the problem persists. This paper reviews the AU's migration policy framework and its challenges and provides insights into ways to enhance its implementation. To this end, the author reviewed different conventions adopted by the AU and secondary data.

Keywords: African Union, Regional Integration, Migration, Migration policy framework

Acronyms

ACPM: African Common Position on Migration and Development

AEC: African Economic Community

AU: African Union

AUC: African Union Commission

CSOs: Civil Society Organizations

DRC: Democratic Republic of Congo

ECOWAS: Economic Community of West African States

MPFA: Migration Policy Framework for Africa

OAU: Organization of African Unity

RECs: Regional Economic communities

SADC: Southern African Development Community

UNHCR: United Nations High Commissioner for Refugee

1.0 INTRODUCTION

Migration, both within and outside of Africa, is a critical demographic phenomenon. It is inextricably linked to social, economic, and political processes. According to United Nations High Commissioner for Refugees figures, Africa has around 30 million displaced persons, refugees, and asylum seekers by 2021 (UNHCR, 2022). People have migrated due to violence,

insecurity, human rights violations, and persecution, which are still on the rise in Ethiopia, South Sudan, the Democratic Republic of the Congo, Central Africa, and Nigeria. On a bigger scale, migration occurs in pursuit of ways out of poverty and for other reasons.

Migration has a significant international relations component. For these reasons, it should be well addressed at the regional or continental level. However, the results and impact will be determined by the level of national engagement, execution, and enforcement. While the African Union continues to develop frameworks and create criteria to encourage its member states to participate, implementing these frameworks ultimately depends on member states' capacity and attention to migratory concerns.

Regional integration concerning migration in Africa, i.e., fostering free movement and labour migration while combating forced migration, has the potential to significantly enhance the lives of Africa's regular and irregular migrants. Migration will increase as economic and institutional integration develops.

Crossing a border, whether by choice or necessity, entails challenges and opportunities. Since adopting the Abuja Treaty in 1991, the African Union has developed several policy frameworks for regional integration in migration. This article discusses the legal basis, African Union policy frameworks for migration, and potential problems and shortcomings.

2.0 LEGAL FOUNDATIONS

There are legal grounds for managing migration. The legal basis of migration can be divided into international and regional standards.

2.1 International Legal Instruments

The 1951 Convention on the Status of Refugees and its Protocol serve as an international standard. First, the 1951 Convention did not extend to Africa due to its time and geographic limits. The 1967 Protocol, which abolished those restrictions, changed this. Following that, the African Convention was no longer required to be a stand-alone convention dealing with all aspects of refugee issues; instead, it became a supplementary treaty to the 1951 Convention. This Convention was signed by 141 states.

The International Convention on all migrant workers and members of their families, which was adopted in 1990, is the other international instrument. There are 39 members. These instruments are legally binding among member states.

3.0 AFRICAN REGIONAL LEGAL INSTRUMENTS

In Africa, there are two AU-binding treaties that govern migration. They are:

3.1 The OAU Convention Governing Specific Aspects of African Refugee Problems

Following enormous migration due to the anti-colonial movement, the OAU enacted the OAU Refugee Convention in 1969, which governs the specific features of refugee problems in Africa. At that time, Africa was on the verge of decolonisation. During the adoption, forty-one independent states were parties and many more acceded after gaining independence.

3.2 The AU Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention)

The African Union enacted the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, known as the Kampala Convention 2009. It was the world's first legally binding document on internal displacement. Many OAU and AU decisions on refugees and Internally Displaced Persons preceded the Convention. However, the subject of internal displacement caused by armed conflict, natural disasters, and large-scale development projects is expressly addressed in this Convention. This Convention has been ratified by 30 African countries.

Effective local, national, regional, and international responses can be crucial in ensuring human rights protection and the advantages of migration accrue to migrants, hosts, and sending communities. However, these responses are insufficient to handle all migration-related issues.

4.0 AFRICAN UNION POLICY FRAMEWORKS ON MIGRATION

The African Union has enacted legal and policy measures to govern voluntary and forced migration on the continent. The vision guides the frameworks for African economic integration described in the Treaty of Abuja (Klavert, 2011).

The African Union promotes the formation of regional economic communities (RECs) through the treaty establishing the African Economic Community (AEC), which was adopted in 1991 and entered into force in 1994. At least 48 AU member states have ratified it. Furthermore, the AU has established two migration-related policies: the Migration Policy Framework for Africa (MPFA) and the African Common Position on Migration and Development (ACPMD).

Both policy frameworks and the demand for RECs imply efficient administration and harnessing of migration's potential, as well as the abolition of irregular and criminal forms of migration, such as human trafficking, for inclusive development and, among other things, economic growth. Based on a thorough assessment of literature and policy papers on the topics of African continental and regional integration, as well as human trafficking, The Abuja Treaty requires member states to adopt 'the necessary measures, to achieve free movement of individuals gradually and to assure the enjoyment of the right of residence and the right of establishment within the African Economic Community.

The AU's broad migration policy is outlined in two policy documents:

1. The African Common Position on Migration and Development (African Common Position)
2. The Migration Policy Framework for Africa, adopted by the Executive Council of the AU in 2006.

These two documents consist of the most precise and comprehensive guidance from the continental body on how African states should regulate migration.

4.1 The African Common Position on Migration and Development

The African Union Commission was mandated at the Khartoum summit in 2006 to hold an expert meeting in Algeria. The discussion then took place, and at the end of the meeting, the delegates adopted the document, which was endorsed and adopted by the council of ministers in Banjul, Gambia, in 2006. (Doc. Ex.Cl/277 (IX), 2006)

The Common Position (African Union, 2006c) addressed 11 priority areas: migration and development, human resource and brain drain, labour migration, remittances, African diaspora, migration and peace, security and stability, migration and gender, children, youth, and the elderly, regional issues, and other cross-cutting issues such as health, environment, trade, and access to social services. It also makes recommendations for national, continental, and international action. On a continental scale, the Position suggests:

- creating legal frameworks for combating illegal migration;
- concluding cooperation agreements to manage migration;
- striking a balance between security for legal migrants, freedom of movement, and the humanitarian obligation to protect;
- setting up mechanisms to bring together national focal points on migration;
- promoting adequate border controls;
- encouraging the involvement of the diaspora.

This document aims to create a comprehensive and balanced strategy for migration in light of increased migratory flows. The African Common Position and Migration Policy Framework emphasise the importance of stricter rule of law and conflict prevention and resolution as fundamental characteristics of national, subregional, and regional migration and integration.

On a global scale, the AU urged the EU to follow the Cairo Plan of Action and accept academic and professional credentials gained in Africa. It called for visa facilitation to allow people to move and reduce the role of traffickers, urged all actors to ratify the UN Convention on the Rights of All Migrant Workers, and urged wealthy countries to cut the costs of money transfers.

4.2 The Migration Policy Frame Work for Africa

In July 2001, the OAU member states representatives agreed in Lusaka, Zambia, to establish a strategic framework for African migration strategy. Furthermore, the policy framework was adopted in 2006 (African Union, 2006a). It is a more complete and comprehensive paper and it addresses nine major thematic migration issues:

- labor migration
- border management
- irregular migration
- forced displacement
- internal migration
- migration data
- migration and development
- inter-state and inter-regional cooperation and
- other social issues deserving attention like poverty, conflict, health, environment, trade, gender, children, adolescents, youth, and elderly

The objectives of the policy framework are

- contribute to addressing the challenges posed by migration and ensure the integration of migration and related issues into national and regional agendas for security, stability, development, and cooperation;
- work towards the free movement of people and strengthen intra-regional and inter-regional cooperation in matters concerning migration, based on the established processes of migration at regional and sub-regional levels;
- create an environment conducive to facilitating the participation of migrants, in particular in the diaspora, in the development of their own countries

It also makes policy recommendations to AU member countries and regional economic communities on specific concerns and sub-themes.

According to the Migration Policy Framework, the main priorities that should drive AU member states in managing migration are integrating migrants into host communities and upholding the humanitarian principles of migration.

The Migration Policy Framework encourages member states to develop policies that protect and promote the human rights of migrants. It also advises that AU member states follow the World Conference against Racism and Xenophobia's Programme of Action (2001). It urges states to develop anti-racist human rights training for public personnel, including law enforcement officers, such as civic education and awareness-raising activities. Anti-xenophobia actions must be coordinated by international migration and human rights organisations.

It also calls on member states to align national legislation with international conventions to protect migrants' rights, including ensuring access to courts and promoting the integration of migrants in host societies to foster mutual cultural acceptance and ensure their rights.

The AU migration policy frameworks address strategies that guide how member states govern migrant access to their territories and how immigrants are treated within their borders (Achiume & Landau 2015). Both instruments locate humanitarian migration principles in international human rights law.

These frameworks are ambitious enough. They set the standard for a connected continent where migration and integration are positively associated with development.

At the same time, the frameworks are flexible; migration policies must differ between countries and sub-regions. As a result, both the African Common Position and the Migration Policy Framework allocate substantial roles to RECs and AU member states in developing policies that help the AU accomplish its objective. (Anichie & Moyo, 2019)

5.0 CHALLENGES AND POTENTIAL SHORTCOMINGS

The frameworks contain many flaws, including institutional, conceptual, and political aspects. Neither the African Common Position nor the Migration Policy Framework has a defined institutional structure for directing or monitoring AU member states' adherence to its content.

Neither policy statement is binding on AU member states, but both emphasise AU member states' responsibility to comply with legally binding regional and international migration-specific law. As a result, member states cannot be held accountable within these frameworks, and even those governments committed to implementing the frameworks must do so without much-needed advice and support from the AU.

There is no framework for resource mobilisation for member states, RECs, or the AU, although international organisations are welcome to give technical help and resources. Consequently, the AU must build an institutional system to provide the guidance and accountability measures required to achieve the goals of these policies.

Although the African Common Position and the Migration Policy Framework emphasise a human rights approach as pivotal to ensuring social integration and the well-being of migrants and their hosts, they do little to provide evidence-based recommendations for concrete policy solutions that would successfully assist member states in using human rights in this way (I Moyo, CC Nshimbi, JP Laine - 2020). Civic and human rights education, for example, can strengthen social cohesion, but it is insufficient for addressing the fundamental socioeconomic and political causes that frequently cause xenophobic discrimination. Even international human rights instruments and policymakers fail to draw the critical link between human rights norms and tangible policy procedures for implementing them.

The AU, on the other hand, has the potential to clarify this area by devoting research and resources to providing clearer, evidence-based policy guidance on how to best use human rights to navigate the obstacles migration might pose to social cohesion.

6.0 RECOMMENDATIONS

The following points should be considered to manage the issue of migration in Africa effectively and to realise regional Integration in Africa better.

- Monitoring and evaluating irregular migration. The AU has a definite role in ensuring that all regions adopt similar standards. The AU should emphasise this component and strengthen its monitoring and evaluation capabilities, which RECs and member states are unlikely to do.

Setting standards and working with conviction. The AU should continue to lobby regions and nations on the (evidence-based) importance of a balanced strategy for regular and irregular migration. It could focus on popularising the Abuja Treaty and other migration policies and disseminating information on the advantages of the regular labour movement for receiving and sending nations in voluntary migration.

- Academics and civil society organisations (CSOs) can help address the issue of the African Union's particular mission. Few African scholars have studied intra-African migration, and even fewer have researched pan-African migration. Some African academic experts on pan-African migration frameworks have written about the Kampala Convention, mostly from a legal perspective. There is still much need for investigation in other areas of continental and regional migration policy, and it would be preferable if it came from within the continent.

7.0 CONCLUSION

The OAU subsequently AU, established a comprehensive migration policy framework with numerous constructive ideas, approaches, and implementation recommendations. However, the OAU is lenient in implementation: the monitoring responsibilities are weak, and the frameworks do not require follow-up recommendations that are legally binding on member states. It is nothing more than a standard setting.

This paper contends that, notwithstanding progress toward regional integration as defined by various stages of RECs in Africa, problems with migration, human smuggling, and trafficking persist throughout the continent.

As a result, this paper suggests that Africa requires the practical implementation of migration policy frameworks to improve regional integration through effective monitoring and evaluation, information dissemination, lobbying RECs and states to comply with their respective duties, and allocating resources for research and evidence-based study of migration problems and challenges to find a solution.

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