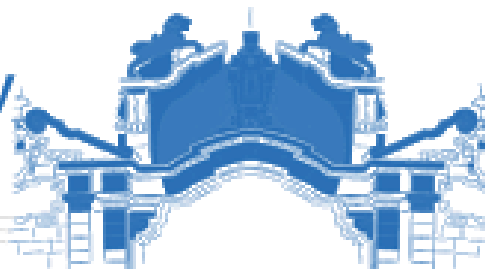




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# Combating Labour-Trafficking and Protecting Migrants' Property Right: The Case of IGAD'

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*By Ebaba Melaku Shugut (LLB)*

*Advisor: Mohammed Habib (Ass. Professor)*

## **Addis Ababa University**

### **College of Law and Governance Studies**

#### **School of Law**

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Thesis submitted in partial fulfillment of the requirements of the  
Degree of Masters in  
Public International Law

**May 30, 2021**

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Migrants' Property Rights: The Case of IGAD'**

*By Ebaba Melaku Shugut (ID: GSE/7297/11)*  
*Email: Ebabamelaku@gmail.com*

*Advisor Mohammed Habib (Ass. Professor)*

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May 30, 2021  
Addis Ababa, Ethiopia

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## Approval Sheet by the Board of Examiners

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Research Title:

*Combating Labor-Trafficking and Protecting Migrants' Property Rights: The Case of IGAD'*

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Approved By:

Signature

Advisor: - Mohammed Habib (Ass. Professor)

Examiners:-

1. Dr. Mehari Reda'e

2. Mr. Aschalew A.

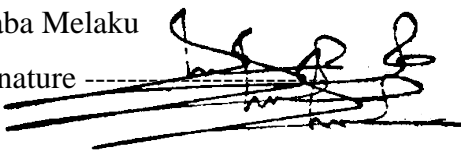
## STATEMENT OF DECLARATION

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I, Mr. Ebaba Melaku, do hereby declare that the thesis, '*Combating Labor-Trafficking and Protecting Migrants' Property Rights: The Case of IGAD*' is my original work and that it has not been submitted for any degree or examination in any other institution. Whenever other sources are used or quoted, they have been duly acknowledged, with proper citation rule.

Ebaba Melaku

Signature -----



This thesis has been submitted for examination with my approval as university advisor:

Advisor: - Mohammed Habib (Ass. Professor)

Signature -----

# Acknowledgement

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# Combating Labor-Trafficking and Protecting Migrants' Property Rights: The Case of IGAD'

*Ebaba Melaku Shugut (LLB, LLM)\*<sup>1</sup>*

## **Abstract**

*In the governance of international migration in general and African RECs' free movement of people governance in particular, there are three interconnected driving interests that should be taken into consideration: State National interest, Protection of Migrants' Human Right; and Regional Integration and Development Agenda. From the human right aspect, migration governance should take into context the prevention of trans-national crime, especially human trafficking and protection of migrant's human right both in their route and at their destination. With this background this paper provides the study conducted by the IGAD regional migration governance system emanating from regional migration policy with regards to protection of migrants human rights. From the vast human right concern, the study focuses specifically on realizing regional legal strategy to prevent illegal labour traffickers which is common challenges of the region; and protection of migrants proprietary right to realize secure immigrants property ownership safe from any potential xenophobic attack especially against self-employed immigrants. This is because of the fact that recently adopted IGAD regional free movement of peoples core contents are free movement of labour with the right to equal access to labour market; and the right to have economic establishment both having residence right. The Objective of the study is to review other international, African continental and REC's legal framework and best effective practices to realize migrants' human right protection and recommend IGAD effective legal migration governance to realize free, secured and regular migration. The data used for the study are secondary sources and collected through a purposive sampling method. The study utilized desktop review method with comparative qualitative analysis method to analyze the data from the regional governance aspect. The finding shows that the draft protocol did not adopt an effective mechanism for safe migration by failing to recognize a practically tested effective strategy utilized in most of the international and African migration governance to realize free, secured and regular migration. The common standard of international strategy and principle of free migration governance which are duly incorporated in other African REC's are specifically recommended to be incorporated in IGAD regional legal governance to realize protection of immigrants' human right by preventing irregular labour migration and discrimination against non-nationals, under the guise of national interest of member states, which are common and/or potential challenges of the region.*

**Key Words:** IGAD, AU, Migration, Free Movement of People, Migration Management, Cooperative Migration/Border Management, AU Free Movement of People Protocol, IGAD Free Movement of People Protocol, African Union's Border Management Strategy, IAMM

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<sup>1</sup> \* Federal Public Prosecutor, Ethiopian Attorney General, Email: [Ebabamelaku@gmail.com](mailto:Ebabamelaku@gmail.com)

## ABBREVIATIONS

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ACHPR	African Charter on Human and Peoples' Rights (1981)
AfDB	African Development Bank
API	Advance Passenger Information
AU-BGS	Border Governance Strategy
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
BMIS	Border management information system
CARICOM	Caribbean Community
CEN-SAD	Community of Sahel–Saharan States
CFTA	Continental Free Trade Area (of the African Union)
COMESA	Common Market for Eastern and Southern Africa
EAC	East African Community
ECDPM	European Centre for Development Policy Management
ECOWAS	Economic Community of West African States
EEA	European Economic Area
GCM	Global Compact for Migration
IAMM	International Agenda for Migration Management
IBM	Integrated Border Management
ICAO	International Civil Aviation Organization
ID	Identification/Identification Card
IGAD	Intergovernmental Authority on Development
IGAD-MAP	IGAD Migration Action Plan
IGAD-RMPF	IGAD Regional Migration Policy Framework
ILO	International Labor Organization
IMF	International Monetary Fund
IOM	International Organization for Migration
MIDAS	Migration Information and Data Analysis System (IOM's BMIS software)
MROTD	Machine readable official travel document (in the size of an ID card)
NBIC	National Biometric Identification Card
NEPAD	New Partnership for Africa's Development
OECD	Organization for Economic Co-operation and Development
REC	Regional Economic Community
SACU	Southern African Customs Union
SADC	Southern African Development Community
UNTOC	Palermo Convention/ United Nations Convention against Transnational Organized Crime

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# CHAPTER ONE

## INTRODUCTION

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### 1.1. BACKGROUND OF THE STUDY

The IGAD region stretches over an area of 5.2 million km<sup>2</sup> that comprises the countries of Djibouti, Eritrea, Ethiopia, Kenya, Somalia, South Sudan, Sudan and Uganda. The region has about 6960 Km of coastline with the Indian Ocean, Gulf of Aden, Gulf of Toudjoura and the Red Sea.<sup>2</sup> The total population of the region was 230 million in 2018, close to half of whom live in Ethiopia. Though drought sparked its establishment, international pressure and expected developmental aid were also key motives.<sup>3</sup> Regional instability has led to a high rate of migration and forced displacement in the region. While Ethiopia is fifth and Kenya seventh, among refugee hosting nations worldwide, Sudan is fifth among countries of origin of refugees.<sup>4</sup> There is a wide variety of forms of migration from nomadic pastoralists through voluntary migrants and forced displacement, within and beyond the region. Emigration from the region follows four routes: The eastern route to Yemen and beyond, the southern route towards South Africa, the northern route through Egypt and Israel/Palestine and the western route through Sudan and Libya towards Europe. The first two routes are the busiest.<sup>5</sup>

While the 1996 agreement establishing IGAD included the ambition for the management of migration within the region, there was little progress until 2012 when IGAD heads of state adopted

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<sup>2</sup> IGAD Website, Available on <https://igad.int/about-us/the-igadregion#:~:text=The%20IGAD%20region%20stretches%20over,Toudjoura%20and%20the%20Red%20Sea.> ( Accessed on 20 September, 2020)

<sup>3</sup> Bruce Byier, (2016). *The political economy of regional integration in Africa: The Intergovernmental Authority on Development (IGAD)*, (Maastricht: European Centre for Development Policy Management, Maastricht) 6-7.

<sup>4</sup> Dick, Eva and Benjamin Schraven,(2018). *Regional migration governance in Africa and beyond: a framework of analysis*, Discussion Paper 9/2018 Bonn: German Development Institute / Deutsches Institut für Entwicklungspolitik (DIE)

<sup>5</sup> Ibid, p. 12.

the Minimum Integration Plan<sup>6</sup> and a Regional Migration Policy Framework (IGAD-RMPF) which promoted capacity development for migration management and migration policy development in the member states.<sup>7</sup> The policy provides strategic recommendations on various aspects of migration management while building the capacity of IGAD member states to develop national migration policies that address specific migration-related challenges in a more comprehensive and holistic manner. This was followed by the IGAD Migration Action Plan (2015-2020) adopted in 2015. In the process of applying the policy and the action plan, in February 2020, ministers in charge of internal affairs and those in charge of labor of member states of IGAD convened in Khartoum and endorsed the Protocol on Free Movement of Persons in the IGAD Region. The announcement of a Protocol was followed by an expert meeting to consider the draft roadmap for the implementation of the Protocol.<sup>8</sup>

Beside the norm diffusion strategy with regard to free movement of people, IGAD-MAP recognized 11 other migration related concerns which specially focus on labor migration, protection of migrant's human right and combating transnational crime, including human trafficking. The plan does not treat free migration concern as an island which intends to concern itself without regard to other necessary migration related concerns of the region and as such the plan is an integrated strategy which inspires a comprehensive outlook with regard to migration in the region.

The legal status of migrants is perhaps the most principal determinant of the probability of human rights violations of migrants. The norm is that if violation of immigration laws has occurred *Ab Initio* at countries of origin, transit or destination, it will be invariably accompanied by violation of the human rights of labor migrants. This takes on the form of physical abuse, forced labor;

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<sup>6</sup> IGAD's Minimum Integration Plan was part of the broader AU-led Minimum Integration Programme, which established a consensual framework between Member States, RECs and AUC and was intended to serve as a common denominator for African continental integration players. The Minimum Integration Programme consists of different activities that each REC will undertake to speed up the process of regional and continental integration.

<sup>7</sup> Clare Castillejo, (2019). *The influence of EU migration policy on regional free movement in the IGAD and ECOWAS regions* (Discussion Paper, DIE/German Development Institute, Bonn. P. 10

<sup>8</sup> IGAD, Protocol on Free Movement of Persons Endorsed at Ministerial Meeting, February 26, 2020 <https://igad.int/divisions/health-and-social-development/2016-05-24-03-16-37/2373-Protocol-on-freemovement-of-persons-endorse-at-ministerial-meeting-with-attached-communique>, accessed 16/07/20.

exploitative working conditions, extortion and false detention vide confiscation of passports and other travel documents that confer legal status on the Migrant. IGAD Member States therefore recognize that the ‘original sin’ is a product of excessive restrictions or lacunas in policy, legislative and administrative provisions designed to regulate the movement of migrants and subsequently protect their human rights.<sup>9</sup>

In this regard the IGAD-MAP which provides the free movement of people under strategic priority 8 provides related concerns which needs integrated or comprehensive outlook rather than isolated issues of free movement which includes and not limited to: a) Labor migration and protection of human right of migrants within and outside of the IGAD region (Strategic priority 3); b) Effective migration governance for peaceful, Prosperous and integrated IGAD region(Strategic priority 4), c) Effective migration governance to counter transnational threats and international crimes (Strategic priority 5), d) Building the capacity for national migration data system(Strategic priority 7), e) Enhancing the developmental contributions of Migration by studying high skill demand and brain drain ( strategic priority 11), and f) Strengthening existing migration governance architecture (strategic priority 12).<sup>10</sup> Accordingly, free movement of people which is recognized under the action plan, is a single part in a larger some of regional migration governance and as such, it needs to be implemented in such an effective way that, it does not defeat other concerns of the plan; including protection of migrants’ human right and effective counter trans-national crime including human trafficking.

The free movement of people, if properly applied with adequate complementation with reforms in labor and migration policy to harmonize it across the border, has positive effect on regional integration, peace and development through interconnected infrastructure and transportation. As economic benefits of greater trade, labor mobility and business competitiveness flow, countries will improve cross border infrastructure, links and connectivity.<sup>11</sup> In the EAC and ECOWAS regions, infrastructure improvements such as roads, networks and corridors have developed faster following

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<sup>9</sup> Ibid PP 11

<sup>10</sup> See, IGAD-RMPF , page 31

<sup>11</sup>AU,(2009). *Minimum Integration Program*,

free movement.<sup>12</sup> However, alongside these benefits of free movement of persons the real and perceived challenges of its negative effect on State sovereignty, national security, organized crime, public order, health and socioeconomic inequality are noted by AU and African countries.<sup>13</sup> In general, in relation to human mobility, a problem of organized crime, including trafficking in person, labor dumping, national security and xenophobia are among the negative output scenarios that require integrated legislative reforms, policing and effective law enforcement to punish criminal networks.<sup>14</sup> Labor dumping, even if the term lacks a legal definition,<sup>15</sup> it refers to the abuse of free movement by businesses to undercut or evade existing labor standards, mostly due to the influx of cheap labor associated with free movement.<sup>16</sup> In this regard, IOM has observed that, irregular migration brings challenges to states not just because they infringes state sovereignty, but most of person that are involved onto irregular migration are subject to hardship, human right violation and discrimination.<sup>17</sup>

This negative effect requires adequate response in free migration governance in the IGAD region as irregular migration is becoming increasingly common in IGAD member states, within IGAD member states of neighboring REC's as well as across the Red sea to Arab countries, Middle East and Europe.<sup>18</sup> As such, the IGAD-MAP recognized the need for special attention for labor migration, protection of migrant's property rights and transnational human-trafficking under strategy 3 and 5 respectively, for an effective migration regime. Moreover, the concern of

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<sup>12</sup> George Mukundi Wachira,(2018), *Study On The Benefits And Challenges Of Free Movement Of Persons In Africa*, (IOM and AU) p. 22

<sup>13</sup> See, Outcome Statement of AU Member States Experts Meeting on the Draft Protocol on Free Movement of Persons, Right of Residence and Right of Establishment, (2017) Accra, Ghana:, paragraph 8.

<sup>14</sup> See, Wijers, Marjan and Lin Lap-Chew (1997). *Trafficking in Women: Forced Labor and Slavery-like Practices in Marriage, Domestic Labor and Prostitution*, *Foundation Against Trafficking in Women and Global Alliance Against Traffic in Women*, The Netherlands and Thailand

<sup>15</sup> The EU Parliament, (2016). *Report on Social Dumping in the European Union*, A8-0255/2016 (2016) 8.

<sup>16</sup> K. Touzenis, (2012). *Free Movement of Persons in the European Union and Economic Community of West African States: A comparison of law and practice*, UNESCO, Paris. 76.

<sup>17</sup> See, IOM, (2009). *Irregular migration and mixed flows: IOM's approach*, Ninety- eighth Session, MC/INF/297, Available at: [http://www.iom.int/jahia/webdav/shared/shared/mainsite/about\\_iom/en/council/98/MC\\_INF\\_297.pdf](http://www.iom.int/jahia/webdav/shared/shared/mainsite/about_iom/en/council/98/MC_INF_297.pdf)

<sup>18</sup> Ibid At Note 9

xenophobia, discrimination and other social pathology which may result from miss-managed migration is made a focal concern of the IGAD migration plan and strategy.<sup>19</sup> Similarly, IOM's Migration Governance Framework under objective 3 recognized the necessity of maintenance of integrity of migrating people through detecting irregular migration and prohibiting illegal cross-border activities.<sup>20</sup>

According to migration experts, the solution to challenges related to national security and organized crime including trafficking in persons is not to prevent free movement of persons but rather to ensure that AU Member States improve their civil registration, especially the integrity of identity documents, border management and law enforcement capabilities.<sup>21</sup> This involves collecting, analysis, sharing and use of information intelligence by migration and border agencies, national and international justice and security agencies.<sup>22</sup> Rwanda, for instance, began by strengthening its national security, border management and law enforcement capacities, and embraced innovation and information technology to ensure the integrity and credibility of its borders, immigration protocols, policies and mechanisms, before allowing visas on arrival for all Africans.<sup>23</sup> This will also realize the required healthy trans-national socio-economic interaction and in addition to realizing respect for human rights through protection of labor and other migrants during their migration and in their destination country.<sup>24</sup> This eventually realizes the benefits of free movement of people that outweighs its cost or challenges.<sup>25</sup>

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<sup>19</sup> Ibid, p. 26

<sup>20</sup> IOM, *Migrating Governance Framework* Available at: [https://www.iom.int/sites/default/files/about-iom/migof\\_brochure\\_a4\\_en.pdf](https://www.iom.int/sites/default/files/about-iom/migof_brochure_a4_en.pdf)

<sup>21</sup> See, M. Lionel Isaacs, (2016). *Free Movement in Africa is desirable but how to realize it?*

<sup>22</sup> See, Ibid at Note 11

<sup>23</sup> AfDB Group,(2016). *Africa Visa Openness Report* :21

<sup>24</sup> See, Ibid Note 20, p. 23

<sup>25</sup> AU Peace and Security Council 661st Meeting on 23 February 2017, Resolution PSC/PR/COMM.1 (DCLXII)

## **1.2. STATEMENT OF PROBLEM**

IGAD has been late in developing a Protocol on Free Movement of persons unlike most of the RECs in Africa. IGAD's Regional Migration Policy Framework (IGAD-RMPF)<sup>26</sup> and its action plan, the IGAD-MAP,<sup>27</sup> urges IGAD Member States to adopt and implement appropriate protocols with adequate strategy to progressively achieve the free movement of persons, the right of residence and the right of establishment including access to legal employment, structured in a manner that would take into accounts the various concerns and peculiarities of the economies of the IGAD Member States.<sup>28</sup> Accordingly, to move from the norm setting in policy level towards norm diffusion that will be domesticated and implemented at national and supervised at regional level, IGAD secretariat carried out a study and drafted a protocol and facilitated a negotiation among members in September 22-23, 2013, and since then negotiation has been developed.<sup>29</sup> Accordingly, on February 24, 2020 Ministers in charge of Internal Affairs and those in charge of Labor of Member States of IGAD convened in Khartoum and endorsed the Protocol on Free Movement of Persons in the IGAD Region.<sup>30</sup>

With regard to the free mobility of peoples in IGAD region, the draft protocol on free movement of peoples have incorporated free movement of people in the region without requirement of visa and it also incorporated the resident right for workers and migrants with an establishment subject to limitations imposed by the host Member State on grounds of public policy, public security or public health.<sup>31</sup>

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<sup>26</sup> See, Ibid At Note 9, p. 31

<sup>27</sup> Ibid, Especially Strategic Priority 8

<sup>28</sup> Ibid, P. 60

<sup>29</sup> Report of the Consultative Workshop on the Development of the IGAD Protocol on Free Movement of Persons, 22 ND -23 rd. September 2013, Hilton Hotel, Addis Ababa.

<sup>30</sup> Endorsement decision Communication by IGAD member countries Ministers Available at <https://igad.int/attachments/article/2373/Communique%20on%20Endorsement%20of%20the%20Protocol%20of%20Free%20Movement%20of%20Persons.pdf>

<sup>31</sup> IGAD Draft Protocol on Free Movement of People, Article 1

However, unlike AU continental and RECs' free movement protocol, IGAD free movement protocol did not adopted effective strategies and principles required to realize free labor migration; and prevent Tran-national organized crime and human right violation of migrants which are included in the IGAD regional action plan. This is necessary because of the fact that, even if states were to agree on a universal right to move freely, it would probably cause chaos if all borders were instantly opened. The practice of free and unregulated migration of people which does not endorsed the specific issue for implementation of trade and migration recognizing collaborated and institutionally supervised migration management under the regulation of free movement agreement is just an absurd ambitious and impracticable decision especially in context of African less developed democracy, economic liberalization and border porosity.<sup>32</sup> The free movement of people needs to be equipped with well-managed coordinated and organized cooperation between states including advances in identity, travel and work permit documents together with a common data exchange system. This is to strengthen confidence that the cross-border movement is well managed and non-threatening especially by avoiding labor trafficking and human right violation through regulating regular flow of labor and other migrants.

The draft protocol is made disregarding the increasing irregular migration in IGAD region<sup>33</sup> which could result in organized human trafficking on one hand, and human right violation and discrimination against migrants at their destination on the other hand.<sup>34</sup> This is made against IGAD-MAP which recognized the need for special attention for labor migration, protection of migrants' human rights and counter transnational crime.<sup>35</sup> The plan raised the necessity of maintenance of integrity of migration and mitigating risks associated with movement of people through detecting irregular migrating and prohibiting illegal cross-border activities which involves collecting, analysis, sharing and use of information intelligence by migration and border agencies, national and international justice and security agencies.<sup>36</sup> Moreover, the concern of xenophobia, discrimination

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<sup>32</sup> See also, OECD, (2014) Migration Policy Debates: *Is Migration Good for the Economy?*, Paris

<sup>33</sup> Ibid At Note 9

<sup>34</sup> See, Ibid At Note 16

<sup>35</sup> Ibid at Note 27, Strategic priority 3 and 5

<sup>36</sup> Ibid, Note 10

and other social pathology which may result from miss-managed migration is made a focal concern of the IGAD migration plan and strategy.<sup>37</sup>

The draft protocol did not adopted this approach and incorporated international and African RECs standard of effective legal norms and best practice of migration governance which experts call it human right based governance of migration, as it endorses strategies for prevention of human trafficking and violation of migrants human right, including their property from any xenophobic attack or discriminatory decision in the host state.

Unless effective principle, regulation, practice and comprehensive and collaborative governance system of free movement of people are applied at IGAD regional system or member states national coordinated system, labor-trafficking and exploitation of migrant's workers within and outside the region will not be averted against aspired IGAD policy and action plan to prevent human trafficking and protect human right.

### **1.3. BASIC RESEARCH QUESTION**

The basic research questions of the study are the following:

- ❖ What are the potential effects of free movement of people governance in IGAD on regional challenges of labor trafficking and migrants' human rights violations?
- ❖ What strategies are adopted under IGAD free migration policy and action plan to realize human right based migration governance?
- ❖ How effective protection of migrants' property rights and counter labor trafficking and strategies are incorporated in the IGAD free movement of people draft protocol?
- ❖ What are the best strategies and practices available under international and African RECs' free movement of people governance with regard to preventing labor trafficking and protecting migrant's rights?

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<sup>37</sup> Ibid, at Note 26, PP 26

- ❖ What are strategies and effective state practices that the IGAD draft protocol required to incorporate to combat labor trafficking and xenophobic violent attack on migrants' property in the hosting member state?

#### **1.4. OBJECTIVE OF THE STUDY**

The general objective of the study is to analyze the draft free movement of people draft protocol efficiency on strategy to combat regional labor trafficking and protection of migrant human rights including their property at their destination country within the regional context.

The Specific objective of the study includes:

- Discussing the effect of free movement of people on the human right violation of migrants and transnational crime,
- Discussing interconnection between free movement of people governance and cooperative border control,
- Discussing the effect of cooperative free movement of people between member states of IGAD on the effective border control and effective free migration governance,
- Analyzing the IGAD draft protocol on free movement of people strategy for counter labor trafficking and protection of migrants property right, and
- Comparatively studying the IGAD draft protocol for free movement of people together with IGAD-RMPF and other international and African REC with regard to effective free movement governance.

#### **1.5. RESEARCH METHODOLOGY**

##### **1.5.1. Data Gathering Method and the Selected Study Area**

The study was executed through secondary research that relied predominantly on Internet based sources and references. Other complementary secondary sources were a select set of relevant publications. Accordingly, the study applies a desktop review methodology for the data gathering, consolidation and analysis. The secondary data available for the analysis will be sorted out through purposive sampling which is made based on the special topic of emphasis the study adheres to

make, and the level of action the data concerns. Based on the scope area of the study, African REC regional legal framework and other data regarding free movement of people and related protocols that have best available governance and practice in combating human trafficking and protection of migrant's human right will be reviewed and analyzed comparatively with IGAD strategy under draft protocol on free movement of peoples. In relation to level of action, African REC action at their regional level of governance, cooperation and practice of free movement of people is selected purposively as the study focuses only on IGAD regional level of free movement of people's strategic approach on counter human trafficking and human right protection, rather than national or bilateral governance and practice.

Additionally, the researcher has benefited from the right to access, as an employee, data available in Ethiopian Attorney General Trans-national Crime Directorate.

### **1.5.2. Data Analysis Method**

The study applies Qualitative Comparative Analysis, to analyze and to interpret literature review sources and the secondary data collected using data gathering methodology applied. The qualitative data is the ground base of the study to understand how free movement of peoples and migration system in different regions and institution helps to realize IGAD regional effective governance of free movement of people with efficient strategy to control labor trafficking and violation of migrants human right, rather than quantitatively describing how practically this mechanism reduces human trafficking or violation of human right which is the result of various type and kind of contributing factor affecting implementation including economic, social, political, security, health or others. It is also difficult to clearly show the level of contribution of free movement of people's legal regime to such a result.

However, the data is to be collected based on the theory tested and applied by most literature review revealing that, adopting effective legal framework and governance through interstate cooperation and coordination for comprehensive migration management realizes human right protection of migrants by combating cooperatively against human trafficking and xenophobic or discriminatory attack on migrants and their property. Accordingly, realizing or having effective and comprehensive legal framework or regional agreement on free movement of migrant peoples by itself is the first

big step among other contributing factors for the human right based governance and studying its level of practical impact of each strategies or action is beyond the scope of this study. As such FsQCA is applied whose purpose is not intended to measure the unique contribution of each variable to the overall observed data; instead, its objective is to identify complex solutions and combinations of independent variables.

This methodology is applied because of the fact that, Qualitative comparative analysis, representing a qualitative data analysis approach, is particularly useful for the literature review context because it can complement any of the other 33 qualitative data analysis approaches identified by Onwuegbuzie and Denham (2014), any of the qualitative data analysis methods (e.g., Miles & Huberman, 1994), or any of the qualitative data analysis techniques. In the context of the literature review, qualitative comparative analysis involves examining potential cause-and-effect relationships that emerge from the literature. Moreover, unlike cluster analysis which answers questions such as which cases are more similar to each other, fsQCA helps to identify the different configurations that constitute sufficient and/or necessary conditions for the outcome of interest.

## **1.6. SIGNIFICANCE OF THE STUDY**

Understanding the nexus between comprehensive free movement of people that embedded the free and secured migration; and prevention of human trafficking and protection of migrants human right at their destination, is the basic accepted theory in the study. This is based on the analysis that, in relation to free movement of people in African and REC's, to avoid human rights from being overridden by other interests, it is important that those three regulatory regimes concerning human mobility; the right of free movement of people, national interest and protection of immigrants right from being abused by irregular mobility and human trafficking, are treated as three dimensions of an interconnected whole.

Accordingly, the study tries to make available best approach and mechanism for effective free human right based governance of free movement of migrants in IGAD region for members states under going negotiation on free movement of people protocol, and help them adopt integrated protocol which endorses effective counter labor trafficking and prevention of violent attack on migrants property at their destination.

Looking at comparable Protocols from among African REC's and their practices success and challenges they have in combating labor trafficking and aliens human right protection at their destination, this study illustrates how far IGAD approached free movement of peoples protocol negotiation yet and recommend what socially embedded strategy and integrated system they have to incorporate in the final protocol of free movement of people.

### **1.7. SCOPE AND FOCUS OF THE STUDY**

This study presents a review of the benefits and challenges of free movement of persons in the IGAD regional system with regard to combating labor trafficking and protection of migrant's property rights, mainly based on the comparative study of the experiences of other African REC's. As the study relates to secure and free movement of people, the study only covers free economic migration, whether regular or irregular, specifically labor migration and migration of self-employed persons. Accordingly, the study does not cover issues relating to forced displacement, asylum and refugee issues of member states and across the IGAD region. In addition, from the vast issue under economic migration human right based governance of migration is crucial point which the study emphasizes and specifically effective counter labor trafficking and protection of property right of migrants, both property of self-employed and labor migrant residing at the hosting IGAD member state is the core covered scope area of the study.

Moreover, the study focuses on the multilateral or IGAD regional level context of free movement of people's action, and does not cover the issue of member states national level action or approach whether or not adopted unilaterally or bilaterally by IGAD member states unless endorsed at IGAD level.

### **1.8. LIMITATION OF THE STUDY**

The study is limited in terms of its research methodology, which significantly relies on desktop review applying only secondary data available throughout the literature. This imposes inevitable constraints in terms of the depth of its sources of data and information. This choice of methodology

limits the ability to access exhaustive and up to date information on the status of progress of many of the RECs, since most of the Internet based sources were neither exhaustive nor up to date.

Lack of comprehensive and determinant amount of data of trends of labor migration, practical challenges of trans-national labor trafficking and the practices of bilateral agreement of free movement of people in IGAD and other African REC's member countries limits comparative qualitative analysis (QCA) method applied for data analysis in the study. As with almost all complex methodologies, the weaknesses of QCA are often more to do with the way in which it is applied. However, QCA does have some inherent limitations which include: It requires a minimum number of cases before it can be used; It cannot cope with missing data; The scoring process for factors can require quite complex judgments, and there is a risk that scoring can become too subjective; Its time-dependent exercise, and this has important consequences for how effective it is as an monitoring and evaluation (M&E) tool.

## **1.9. STRUCTURE OF THE STUDY**

The study is classified into three chapters other than this introduction chapter. Accordingly, Chapter two, Review of the related literature, discusses the literature related with the scope of the study and more emphasis is made on legal and institutional charter related with migration governance globally and Specifically to African continental and REC's. Chapter three provides and discusses secondary data which relates with free movement of people governance in African continent and REC's and finally analyzes together with IGAD regional migration policy and draft protocol to attain research objectives through employed research questions. The final chapter, chapter four provides the conclusion of the research and recommendation of the researcher.

# CHAPTER TWO

## REVIEW OF RELATED LITERATURE

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### 2.1. GOVERNANCE OF MIGRATION AND HUMAN TRAFFICKING

#### Migration and Labor trafficking Defined

Migration is generally understood as economic oriented free migration of peoples across the border and its one part of mixed migration. Although it's not defined anywhere, mixed flows have been defined as accepted as complex population movements including; refugees, asylum seekers, economic migrants and other migrants. Unaccompanied minors, environmental migrants, smuggled persons, victims of trafficking and stranded migrants, among others, may also form part of a mixed flow.<sup>38</sup> The migration in our case here only covers economic migration, specifically labor migration both regular and irregular. Accordingly, migration in general and labor migration in particular is a part of free movement of people which does not include Asylum and forced displacement, as the movement is based on the free economic decision of the migrant in concern. Migration is irregular when the migrants use unauthorized routes to get into another state or continent. A Labor migration or migrant worker is defined by ICRMW as "A person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national."<sup>39</sup> So, labor migration can be regular or irregular.

Human trafficking can be understood as one element of irregular migration, although in some cases they use regular route and transportation in case of poor border control. The United Nations Convention on Human Trafficking defines human trafficking (or trafficking in persons) as:

*...the recruitment, transportation, transfer, harboring, or receipt of persons either by threat or use of abduction, force, fraud, deception or coercion, or by the giving or receiving of unlawful payments or benefits to achieve the consent of a person having the control over another person for the purpose of exploitation. (UNODC, 2004) Similarly,*

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<sup>38</sup> IOM's Ninety-Sixth Session, Discussion Note: International Dialogue on Migration

<sup>39</sup> ICRMW, Art. 2(1)

*the US Department of State (United States, 2013) defines human trafficking as “the act of recruiting, harboring, transporting, providing, or obtaining a person for compelled labor or commercial sex acts through the use of force, fraud, or coercion”.*

A close look at human trafficking and mixed migration clearly shows that both are complex, multi-layered and diverse social phenomena, especially if we realize that the movement of both migrants and human trafficking victims can be forced. In addition, there can be a continuum between mixed migration and human trafficking as migrants – for example, economic migrants and refugees – can become trafficking victims, and vice-versa. Different forms of migration may intersect at some point in the migration process, for example, in relation to the motivation to move, use of the same agents or brokers, and interactions with mixed communities. Thus, mixed migration can also involve human trafficking.

## **2.2. International Governance of Free Movement of People**

Contemporary immigration controls are characterized by several trends, in which governments are relying increasingly on bilateral and international free movement of people’s agreements and new technologies to control their borders and are developing innovative measures to identify undocumented migrants, while receiving states are attempting to encourage sending and transit countries to cooperate in their fight against irregular migration. Security concerns play an important role in these developments, whose human and financial costs raise the issue of whether it is possible to truly control people flows.<sup>40</sup>

The adoption of the 2030 Agenda for Sustainable Development enshrined a clear focus on integrating international migration within global development policy, to facilitate orderly, safe, regular and responsible migration, with the protection of human rights. Regarding Human mobility, international frameworks that can be used to supplement migration policy and free movement of peoples agreement at international level include; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW); WTO’s General

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<sup>40</sup>Antoine Pécoud and Paul de Guchteneire, (2007) *Migration without Borders: Essays On the Free Movement of People*, p. 3

Agreement on Trade in Services(GATS) Mode 4- frameworks governing the free movement of natural person; and The United Nations Convention against Transnational Organized Crime (Palermo Convention) and its two Protocols, which target specific areas and manifestations of organized crime of trafficking and smuggling in person: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; and the Protocol against the Smuggling of Migrants by Land, Sea and Air.

Under ICMW, irrespective of the form of migration, whether ‘regular’ or ‘irregular; permanent or temporary; self-employed or employed workers, migrants are entitled to a minimum set of rights which includes humane living and working conditions, education and health services, legal equality, the freedom from sexual abuse, servitude and slavery and generally recognition of their rights as human beings including their property right without discrimination in any matter.<sup>41</sup>

Regarding migrant workers property right and freedom from any kind of exploitation the convention protected migrants from any kind of slavery or servitude; and arbitrary deprive of their property, whether owned individually or in association with others, and the right to fair and adequate compensation in case of expropriation.<sup>42</sup> Regarding living and working conditions of migrant workers and their families with the standards of fitness, safety, health and principles of human dignity; the convention applied the principle of national treatment as states are obliged to apply all measures that may be applicable to nationals.<sup>43</sup> Regarding expels of migrant workers, states expel only in case of reason defined in states national legislation provided that it’s not mass expulsion, and it’s decided and reviewed by competent authority.<sup>44</sup>

Regarding the necessity of harmonized and coordinated Migration Management and prevention of labor trafficking, the convention provides an obligation of member states, in relation to

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<sup>41</sup> Ibid At Note 34, Part II and III

<sup>42</sup> Ibid, Article 11 and 15

<sup>43</sup> Ibid, Article 69: ‘*States Parties shall take measures not less favorable than those applied to nationals to ensure that working and living conditions of migrant workers and members of their families in a regular situation are in keeping with the standards of fitness, safety, health and principles of human dignity*’.

<sup>44</sup> Ibid, Article 56

international migration of workers and preventing and eliminating illegal or clandestine movements and employment of migrant workers in an irregular situation, to cooperate on:<sup>45</sup> exchange of information; migration policy; the provision of appropriate information, particularly to employers, workers and their organizations on policies, laws and regulations relating to migration and employment; and Adequate and effective measures to eliminate employment in their territory of migrant workers in an irregular situation, including, whenever appropriate, sanctions on employers of such workers. In particular, it seeks to put an end to the illegal or clandestine recruitment and trafficking of migrant workers and to discourage their employment in an irregular or undocumented situation.<sup>46</sup>

Regarding human trafficking, The Palermo Convention's<sup>47</sup> Protocol to Prevent, Suppress, and Punish Trafficking in Persons, has contributed to provide an internationally recognized definition of human trafficking and consolidated the diverse ways of understanding it.<sup>48</sup> Regarding the necessity of coordinated measure, information exchange and necessary ID and travel document to prevent human trafficking in general and labor trafficking in particular, Article 11 provides about border management that, without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.

### **2.3. African Continental Free Movement of People**

Over the last decades, a comprehensive set of migration policy commitments and recommendations have been elaborated under the auspices of the African Union. Many of these largely complementary documents have been adopted at heads of State levels. Together, they add up to a

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<sup>45</sup> Ibid, Article 65 and 68

<sup>46</sup> Mr. Bertrand Ramcharan, The then Acting High Commissioner for Human Rights, speech on the entry into force of the convention (Available at (<http://www.migrantsrights.org>))

<sup>47</sup> UNTOC, Adopted by General Assembly resolution 55/25 of 15 November 2000,. The Convention is further supplemented by three Protocols, which target specific areas and manifestations of organized 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.

<sup>48</sup> UNTOC Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Article 3

comprehensive guidance framework for national and regional migration and labour mobility policy across the continent. They include: The 2004 AU Plan of Action on Employment Promotion and Poverty Alleviation; The 2006 AU Migration Policy Framework; The AU Social Policy Framework of 2008; The AU Plan of Action on Boosting Intra African Trade of 2012; The AUC Strategic Plan 2014-2017 pursuing the strategy to “Promote labour migration to support cross border investment and to fill the skills gap; The 24<sup>th</sup> AU Assembly adoption of the Joint Labour Migration for Development and Regional Integration (JLMP); The 25<sup>th</sup> 2015 AU Assembly Declaration on Migration, The 2006 Joint Africa-EU Declaration on Migration and Development; and The Joint Africa-EU Strategy (JAES) *Action Plan Partnership on Migration, Mobility and Employment* (MME)

Furthermore, a number of African Union treaties and instruments spell out relevant norms, principles, and objectives for improving labour migration governance, including in particular:

1. The African (Banjul) Charter of Human and People’s Rights (1981)
2. The Abuja Treaty Establishing the African Economic Community (AEC) (June 1991)
3. The African Youth Charter (July 2006)
4. The AU (Niamey) Convention on Cross-Border Cooperation (July 2014)

However, the formal history of the free movement of persons (FMP) initiative in Africa goes back to 1991 in the Abuja Treaty. The treaty is the commitment of African countries to the establishment of an African Economic Community which included specific reference to the free movement of persons, the right of residence and the right of establishment. The African Economic Community Treaty, commonly known as the Abuja Treaty, officially came into force in 1994. The free movement of persons, rights of residence and rights of establishment by Africans across the borders of AU member states are included in article 4(2)(i).

The Constitutive Act of the African Union in 2001 carried over the mandate, and in 2006 in Bangui, a Migration Policy Framework for Africa was endorsed by AU members—this framework also included the right to gainful employment across African borders.<sup>49</sup> In 2017 the Peace and Security Council of the AU acknowledged that the benefits of free movement of Africans across African borders outweighed the real and imagined economic and security

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<sup>49</sup> AU, MPF

challenges that such a reform might pose.<sup>50</sup> Finally, in January 2018, the Free Movement of Persons Protocol to the AEC treaty was signed by a majority of AU heads of state at the AU summit<sup>51</sup>, alongside the ACFTA Protocol and a further Protocol designed to promote intra-African air travel.

The FMP Protocol has a very ambitious implementation Roadmap attached as an addendum.<sup>52</sup> In addition, a revised version of the Migration Policy Framework for Africa was issued by the AU Commission in May 2018. It too had an implementation plan calibrated against a timeframe. The implementation of the FMP Protocol is divided into three phases. Phase one entails the implementation of the right of entry of citizens of other member states of the AU for up to 90 days and requires countries to abolish visa requirements for such people. Phase one would seem to include the right for people to move across African borders to obtain employment, depending on the domestic laws of the host country.<sup>53</sup> Phase one could be implemented in phases, according to the Roadmap, but it is expected to follow immediately on the coming into force of the Protocol. Phase one does place obligations on member countries to improve their migration management systems, for example improving the quality and integrity of their civil registration systems, but the sequencing of events is not entirely clear in the Roadmap.

So, it is not obvious, reading the Roadmap, that a country would be entitled to restrict visa free entry in regard to countries with poor civil registry systems, for example. Phase two entails the extension of the right of residence to Africans from other African countries. This would include rights for the AU member state national's spouse and children. The Roadmap suggests that this would come into force in 2023, though Article 5 of the Protocol allows the more rapid implementation of the Protocol. The Roadmap allows for the progressive implementation of the rights of residence<sup>60</sup> and appears to allow for differential policies in relation to other member states.<sup>54</sup> Phase three allows for the right of establishment. This includes the right of citizens of other member states to set up a business, trade or profession, or to engage in economic activity as a self-

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<sup>50</sup> AU, (2017), *Communique of 661st PSC meeting on Free Movement of People and Goods and its Implications on Peace and Security in Africa*,

<sup>51</sup> AU, Protocol on Free Movement of People

<sup>52</sup> AU, Implementation Roadmap 6.

<sup>53</sup> *Ibid*, Note 6.

<sup>54</sup> *Ibid*, 14

employed person. According to the Roadmap, phase three will be implemented after a review by the AU Commission of the implementation of phases one and two, subject to the decision of the AU Council.<sup>55</sup>

Elements of cross-border governance for economic integration in Africa include the use of the regional economic communities (RECs) and Member-States of the AU to champion, i.e. varieties of cross-border cooperation and migration management regimes expressed in the form of regional protocols on refugee and migrant workers' rights as well as on free movement of persons across national borders. These latter strategies aim at introducing shared norms that could guide national level cross-border governance including migration management. However, policies and protocols are ineffective when they're not coherently and consistently implemented, and this requires commitment and political will from all African countries for comprehensive migration management and governance.

#### **2.4. African Regional Governance of Free Movement of People**

Free movement of persons is a key pillar of economic integration and development in Africa. Free movement ensures availability of skills and labor where needed to spur investment and economic development. It is also the practical means for expanding free trade, as well as commerce of locally produced goods and services.

ECCAS (Economic Community of Central African States), ECOWAS and EAC have each adopted legal regimes for labor circulation among member countries. COMESA and IGAD recently developed agreements on mobility that await adoption and implementation by participating countries. Though the SADC Protocol on Facilitation of Movement of Persons has faced challenges to ratification, a new policy framework on labor Migration was adopted in 2014 with the aim to support harmonization of labor migration policies across SADC member states.

These Regional Economic Community (REC) legal frameworks are generally consistent with international standards and more than half of all AU member states have ratified at least one of the three core international migrant worker Conventions. RECs have made significant strides in

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<sup>55</sup> Ibid, 16

facilitating free movement in Africa and ECOWAS is the most advanced among them. As early as 1979, ECOWAS Member States, for instance, had already embarked on efforts to facilitate free movement of persons in the region.<sup>56</sup> The ECOWAS Treaty makes provision for “90 days of visa-free stay, an ECOWAS passport, and the elimination of rigid border formalities and stimulates residence permit requirements.”<sup>57</sup>

In March 2000, ECOWAS Heads of State and Government convened to discuss fast-tracking the objectives of the Treaty. Key in the meeting was the resolve to create a “borderless sub region”.<sup>58</sup> This was to be achieved through, among others, the removal of all checkpoints on the international highways within ECOWAS – seen to be an antithesis to free movement of persons – and the reduction of border procedures.<sup>59</sup> Also worth noting is the agreement in the same meeting to issue and utilize the ECOWAS travel certificate and rationalize the features of each of the Community’s national passports to reflect a common ECOWAS document standard and design. Through this actin and others, including the advent of the ECOWAS Brown Card Motor Vehicle Insurance Scheme, developed in 1982 to “provide a common minimum insurance coverage for vehicles travelling between participating states”,<sup>60</sup> free movement of persons as a goal of the Treaty and the Protocol is steadily being realized. The most recent development towards this agenda is the December 2014 agreement of ECOWAS members to replace the antiquated ECOWAS Travel Certificate, approved in 1985 for intra-ECOWAS travel in lieu of a passport, with an upgraded biometric travel card called the National Biometric Identity Card (NBIC), effective 2015. While essentially a travel document upgrading the old one, the NBIC is important as it substantially upgrades the level of identity verification needed to travel throughout the region, bringing

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<sup>56</sup> ECOWAS, Protocol on Free Movement of Persons and the Right of Residence and Establishment (1979).

<sup>57</sup> See, H. Klavert, (2011). *AU Frameworks for Migration: Current Issues and Questions for the Future*, ECDPM Discussion Paper No. 108.

<sup>58</sup> See, A. Adepoju, (2013). *Operationalizing the ECOWAS Protocol on Free Movement of Persons: Prospects for Sub-Regional Trade and Development*, London, UK: Palgrave.

<sup>59</sup> Ibid, P.4

<sup>60</sup> OECD and Sahel and West Africa Club, (2009) *West African Studies Regional Challenges of West African Migration African and European Perspectives: African and European Perspectives*

ECOWAS more into line with international standards – including those set by ICAO, as the NBIC is ICAO-compliant.<sup>61</sup>

The NBIC is envisioned as having a dual role in some States – a national identity card and a facilitator of free movement. It is to be noted that not all West African States have a strong tradition of national ID cards and the ECOWAS directive does not mandate that its members adopt or strengthen national IDs if it is not their priority. This biometric card is to be issued to citizens of the Member States of ECOWAS in a bid to convert the “ECOWAS of States” to the “ECOWAS of People”.<sup>62</sup> Its chief objective is the easy identification of ECOWAS citizens and consequently facilitating the movement of persons.<sup>63</sup> It is intended to eventually replace the national ID cards (where they are used), the 1985 ECOWAS Travel Certificate and the residence permit. Alongside national passports, already issued in each State to a common ECOWAS standard, the NBIC is a logical step by ECOWAS to facilitate more secure movements in the region while advancing free movement in the Community.

EAC has equally made remarkable progress in facilitating free movement of persons and has attained the status of a customs union.<sup>64</sup> The Treaty Establishing the EAC provides that “Partner States agree to adopt measures to achieve the free movement of persons, labor and services and to ensure the enjoyment of the right of establishment and residence of their citizens within the community”.<sup>65</sup> In addition, the EAC Common Market Protocol provides for cooperation by the partner States to achieve free movement of goods, persons, labor, services and capital, and to ensure the enjoyment of the rights of establishment and residence of the national within the Community.<sup>66</sup>

While the right of entry in EAC has thus far been observed by all its Member States, some of the elements envisaged by the EAC Protocol on free movement have only recently begun gradual

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<sup>61</sup> Ibid, At Note 10, P. 30

<sup>62</sup> ECOWAS CEDEAO (2010). *ECOWAS Vision 2020; Towards a Democratic and Prosperous Community*, 2010:3.

<sup>63</sup> Zetes White Paper, *The Many Facets of the ECOWAS ID card: Recommendations for Successful Integration*: 14.

<sup>64</sup> See, Note 2

<sup>65</sup> EAC Treaty, Article 104.

<sup>66</sup> EAC, (2009). *Common Market Protocol*, Article 5.

implementation by some EAC members.<sup>67</sup> Some of the EAC members – Kenya, Uganda and Rwanda – have adopted the principle of variable geometry towards facilitating free movement of labor.<sup>68</sup> COMESA adopted the Protocol on the Gradual Relaxation and Eventual Elimination of Visas as early as 1984 and the Protocol on the Free Movement of Persons, Labor, Services, Right of Establishment and Residence in 1998 to facilitate free movement of persons. The COMESA Business Council has negotiated implementation and ease of movement of business people in the region.<sup>69</sup>

The Southern African Development Community (SADC) introduced a draft Protocol on the Free Movement of Persons in 1996, but it was later revised and adopted in 2005, with the overall objective to “develop policies aimed at the progressive elimination of obstacles to the movement of persons in the Region”.<sup>70</sup> Since the Protocol is not yet in force and has only been ratified by four Member States,<sup>71</sup> most SADC Member States have entered into bilateral agreements that allow their respective citizens visa-free entry.<sup>72</sup> The SADC Protocol provides for “entry, for a lawful purpose and without a visa, into the territory of another State Party for a maximum period of ninety (90) days per year for bona fide visits and in accordance with the laws of the State Party concerned; permanent and temporary residence in the territory of another State Party; and establishment of oneself and working in the territory of another State Party”. SADC has also adopted a Protocol on Employment and Labor, as well as a Labor Migration Policy Framework and Labor Market Information System. In addition, the SADC Protocol on Education seeks to ease mobility of students within the region. A Regional Qualification’s Framework was developed by SADC to enable mobility of qualifications within the SADC region.

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<sup>67</sup> See also, J.B. Kanyangoga, (2010). *Integrating Migration with Development in EAC: Policy Challenges and Recommendations*, Research Paper, Cuts International, Geneva Resource Centre

<sup>68</sup> Ibid

<sup>69</sup> Ibid

<sup>70</sup> SADC,(2005). *Protocol on the Free Movement of Persons*, Article 2

<sup>71</sup> Botswana, Mozambique, South Africa and Swaziland.

<sup>72</sup> Presentation by the SADC Representative to the AU Member States Meeting of Experts on the Draft Protocol on Free Movement of Persons in Africa, in Accra, Ghana 20–24 March 2017.

In IGAD, Article 7 (b) of the Treaty Establishing the Intergovernmental Authority on Development in Eastern Africa (IGAD) also envisions the free movement of persons but is yet to adopt a protocol to implement it.<sup>73</sup> In its place are bilateral agreements, for example between Kenya and Uganda, Ethiopia and Djibouti and Kenya and Ethiopia.<sup>74</sup> Since there is no bilateral agreement with Sudan, all IGAD nationals require visas to enter Sudan.<sup>75</sup> The strides that African RECs have made have evidently been dependent on the political will of the Member States and their concerted effort to take integration to the people.

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<sup>73</sup> IGAD has begun a process of negotiating the possibility of adopting a Protocol on Free Movement of Persons in the Region.

<sup>74</sup> See, United Nations Economic Commission for Africa, *IGAD – Free Movement of Persons*.

<sup>75</sup> IOM, *Free Movement of Persons in Regional Integration Processes*, 2007:19

## **CHAPTER THREE**

### **3. HUMAN RIGHT BASED COORDINATED MIGRATION MANAGEMENT**

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#### **3.1. INTRODUCTION**

In terms of border management, especially in Africa, there is often a lack of coherent and coordinated institutional and legal frameworks and procedures that exhibit low levels of accountability and oversight. Moreover, it is also characterized by insufficient resources, including infrastructure and manpower, poor working conditions and lack of experience. Because passengers and cargo have to go through multiple controls and following numerous rules may lead to inefficiencies and unnecessary bottlenecks at the border, and it prevents border authorities from preventing and detecting illegal activities by effectively engaging in their activities or control. Eventually this will lead to frustration of dealers and passengers, loss of profits and revenues, restricted freedom of movement, and ultimately slowing of mainland integration. On the other hand, if left unchecked, cross-border movement can facilitate the activities of terrorists and criminal organizations; and exacerbate security issues and human rights violations.

This is because borders not only interfere with normal mobility, but also create opportunities for legal and illegal activities (such as human trafficking, smuggling, corruption, and extortion). Traffickers and corrupted government officials can benefit from poor governance and low transparency.

Moreover, there are human rights issues which legislation and policies of migration must of necessity address. Migrants have the same human rights as people in countries of destination and they ought to enjoy rights as individuals and groups. Deprivation of human rights subjects migrants to discriminatory and xenophobic tendencies often expressed by the general public, national policies and legislation and in the "us" versus "them" rhetoric which undermines regional integration objectives enshrined in the IGAD Treaty and protocols. The desire for 'freedom of movements, right of residence and right of establishment' is an outgrowth of the Universal

Declaration on Human Rights which allows a national to leave (voluntarily or when persecuted) and return to his/her country at will.

Free migration, it is argued, would increase the number of migrants and the tensions between them and the native population, notably concerning the labor market. This will mobilize against immigration or xenophobia and encourage the formation of populist and right-wing extremist political organizations.<sup>76</sup> If states do not control migration, people will reject foreigners by themselves through potentially violent methods.<sup>77</sup> The perception that “foreigners do too much work locally”<sup>78</sup> has had a profound impact on xenophobic attacks against immigrants and their property, mass deportations and expropriation of their property. This is what happened in South Africa which some have called “*Afrophobia*”, because the hostility is mostly against African foreigners rather than white foreigners.<sup>79</sup> Over time, there has been a significant increase in riots and protests. The 2009 peak corresponds to a presidential changeover as well as high levels of xenophobic violence. It is migrant people on the move and these situations of movement that are the focus of the migration and human right principles and guidelines established by UNHRC.<sup>80</sup>

Beside this, the legal framework regulating free movement of people, including most of African free movement agreements do not adequately guarantee protection of migrants and does not have regional adjudication in this regard. For instance, there is the absence of mechanisms for the settlement of complaints for the harassment and abuse of human rights of ECOWAS citizens by the Member States. There is lack of awareness institutions and procedures for individuals to claim damages to life and property; and human rights abuses (including denial of rights enshrined in the protocol) suffered in ECOWAS countries. In view of this, some officials at the frontiers such as

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<sup>76</sup> Castles, *The Factors that Make and Unmake Migration Policies*. *International Migration Review*, (2004) 38(3) & 873

<sup>77</sup> Walzer, Michael, *Spheres of Justice: In Defense of Pluralism and Equality* (New York: Basic Books, 1983)

<sup>78</sup> Cristiano D'Orsi, ‘The barriers to a pan-African passport may be insurmountable’ *Quartz Africa* (20 July 2016) <<https://qz.com/africa/737003/the-barriers-to-a-pan-african-passport-may-be-insurmountable/>> Accessed 28 September 2021

<sup>79</sup> S. Tshabalala, *Why black South Africans are attacking foreign Africans but not foreign whites* (2015)

<sup>80</sup> UNHRC, *Promotion and protection of the human rights of migrants in the context of large movements - Report of the United Nations High Commissioner for Human Rights* (HRC A/HRC/33/67, 2016)

Customs, Immigration, Police, etc. harass and extort money from travellers despite the fact that technically there is free movement within West Africa. This is also true for IGAD.

### **3.2. Principle of Coordinated Border and Migration Governance**

Recognizing that all displaced persons are rights holders, they are entitled to the same rights protection in accordance with international human rights law and related standards. It is important to maintain the existing protections of certain groups defined by international law. According to international refugee law, refugees and asylum seekers are entitled to special protection.<sup>81</sup> Certain international instruments also recognize the human rights and special needs of other groups of people, such as victims of human trafficking, migrant workers, stateless persons and persons with disabilities.<sup>82</sup> Therefore, the formulation of principles and guidelines does not compromise the specific rights of certain groups that are part of such movements.

The International Bill of Human Rights; The Universal Declaration of Human Rights(UDHR), the International Covenant on Civil and Political Rights(ICCPR)<sup>83</sup> and the International Covenant on Economic, Social and Cultural Rights has recognized principle of non-discrimination, the right to security against attack, the right to own property personally or in association, the right to legally live and reside, the right to access to justice and against any attack or illegal or illegal expel which apply to non-nationals who is legally entered.

In 1985, the United Nations promulgated the Declaration of Human Rights for non-citizens of the country of residence.<sup>84</sup> The declaration aims to ensure that the basic human rights contained in international human rights conventions are also protected. The Convention is a legally binding

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<sup>81</sup> OHCHR, Convention relating to the Status of Refugees and its Protocol (1967)

<sup>82</sup> OHCHR, The ICRMW (1990); The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing in the UNCTOC(2003); See also, ILO Migration for Employment Convention (Revised) (2003)

<sup>83</sup> OHCHR, ICCPR, Article 2/1- *'Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'*

<sup>84</sup> UN, Declarations on the Human Rights of Individuals Who are not Nationals of the Country in which They Live, (G.A. res. 40/144, annex, 40 U.N. GAOR Supp. (No. 53) at 252, U.N. Doc. A/40/53, 1985)

document that requires each ratifying country to protect certain human rights of all people on its territory and under its jurisdiction. The declaration provides guidance for countries to formulate and implement laws to protect human rights. It classified those rights by categorizing two different levels of right depending on the level of protection; which is always protected and which may legally be interfered, and depending on the status of the migrant; temporary and permanent resident. Moreover, International migration guidance principle, which endorsed human right of migrants, is provided under International Agenda for Migration Management (IAMM)<sup>85</sup> which is a product of the Berne Initiative Process. It provides comprehensive international recognized common understandings and effective practices for a planned, balanced, and comprehensive approach to the management of migration.

Evidence shows that as the level of collaboration increases, improvements can greatly reduce delays and costs, and increase the detection rate of illegal activities. Therefore, strengthening collaboration to improve the efficiency and effectiveness of border functions has become a common point around border management reform. Many institutions, countries, and regions have developed advanced concepts and terminology with varying degrees of nuance, but they all follow this principle and aim to improve the services provided to governments, private institutions, and individuals.

Coordinated Border Management consists of two intrinsically linked areas, namely, the flow of information and the physical movement of goods and people. Each dimension is governed through a series of general principles. These principles shape the specific measures that are applicable for the clearance of goods, and the clearance of people at the border.<sup>86</sup>

With regard to the first, information and data exchange system between countries is also crucial both to develop data based policy and legal framework, and also to effectively implement it by controlling the border system and identities of migrants to control trans-national crime including human trafficking. The good news is that BMIS can reduce the immense pressures on borders from

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<sup>85</sup> IOM Berne Initiative Process, *International Agenda for Migration Management (IAMM)* (IOM-Berne Initiative ProcBerne, 16-17 December 2004) < <https://publications.iom.int/system/files/pdf/iamm.pdf>> Accessed 13 October 2021

<sup>86</sup> World Custom Organization, *Coordinated Border Management; An inclusive Approach for connecting stakeholders*,

the growing number of people crossing them on a daily basis. BMIS aims to record passenger movements more accurately, contribute significantly to the collecting and processing of reliable, timely statistical migration data and assist in the formulation of strategic and tactical intelligence to inform proactive migration policies, among others.<sup>87</sup>

Streamlining of border management in Africa, particularly for land and sea border control posts, is dependent upon standard travel documents being used widely, but once these are in use, BMISs are needed to read, record and check the data on the cards. Without the BMIS, there will be no progress in travel facilitation or security – regardless of the quality of the new travel document. Since 2016, IOM has been equipping Nigeria’s land and sea borders with the Migration Information and Data Analysis System (MIDAS). By 2017, MIDAS is implemented in 17 African States,<sup>88</sup> though not fully deployed in any of them.

International travel documents are supported by a highly reliable parenting document and citizenship reporting system, which is the key to ensuring the free movement of people in a controlled and secure process. Such free movement requires the harmonization, adopting and operationalization of certain travel documents and standards, such as those set by ICAO. In addition, the African passport provided by the African Union requires a biometric registration system. The big challenge is the availability of resources and means to actualize these arrangements. Biometric systems, for instance, are only available in 13 of the 54 African Union Member States.<sup>89</sup> Studies in Southern Africa have shown that even when there is the will to implement free movement of persons, a lack of resources can hamper any meaningful advancement.<sup>90</sup>

In the second principle which needs consideration for effective free movement of people, it is beneficial to the facilitating and recording of movements, assurance of identifies and efficiency of

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<sup>87</sup> IOM, *Border Management Information System* (2011)

<sup>88</sup> Through mid-2017, MIDAS was deployed in: Burkina Faso, Burundi, Chad, Congo, the Democratic Republic of the Congo, Djibouti Guinea, Liberia, Malawi, Mali, Mauritania, Niger, Nigeria, Somalia, South Sudan, Uganda and the United Republic of Tanzania.

<sup>89</sup> C. D’Orsi, *The barriers to a pan-African passport may be insurmountable* (2016)

<sup>90</sup> L. Fioramonti, *Is it time to take free movement of people in Southern Africa seriously* (2013)

equipping borders for inspection of travel documents, if these documents, whether passport or ID card-sized, are ICAO-compliant. One advantage of using ICAO standards is the guarantee that any standard travel document-reading device, and standard border management information system (BMIS) software, will be able to read the document. Departing from ICAO standards jeopardizes all previous investments in border data systems, and lends no clear guidance to future procurements across the many African countries involved. ICAO is responsible for creating and disseminating standards for both ID card size and passport book size travel documents. There are separate clear standards for documents containing biometrics and other electronic data, and documents that do not. ICAO does not require travel documents to contain electronics (chips) or biometrics, though they must have a visible machine readable zone on the card. However, if travel documents are produced with electronic storage of the travel data, and provide biometric operability, then ICAO standards must be followed. ECOWAS requires ICAO compliance and biometric capabilities in the new definition of its intra regional travel document, the National Biometric Identity Card (NBIC), as specified in a December 2014 Decision.<sup>91</sup>

The term *Cooperative Border Management* is implemented here for various reasons. It is a general term for various concepts that are already in use, and it is also the basis for the strategy; according to the terminology of the African Union Convention on Cross-border Cooperation and this makes possible different degrees and forms of cooperation.

Cooperative Border Management (CBM) refers to the intergovernmental cooperation to respond to border management challenges to achieve a common goal: to ensure the free flow of people and goods on both sides of the border, and to combat illegal transportation and insecurity.

Four levels of cooperation are needed: (i) Service cooperation refers to vertical and horizontal relationships within ministries, agencies, or agencies. (ii) Inter-agency cooperation refers to cooperation between national ministries or departments in border areas and other ministries, departments and authorities, as well as cooperation between departments of different departments working at border posts or border posts and trade officials. (III) *Bilateral cooperation* refers to cooperation of a country, *with one or more neighboring states* sharing common physical (or virtual; airport) borders.

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<sup>91</sup> ECOWAS, Forty-Sixth Ordinary session of the Authority of Heads of State and Government (Report, 2014)

Although reforms aimed at strengthening cooperation between different authorities are needed at the national level, countries must also seek and agree on solutions through (IV) international cooperation within the framework of international institutions and supranational organizations.

Cooperation between relevant parties requires the establishment of consistency, synergy and networks in different fields. At the normative level it aims at the harmonization and coherence of policy, legislation, regulations and the provision of a legal standing for CBM; at the institutional level it aims at providing the organizational set up for CBM; at the procedural level it aims at the harmonization, modernization and efficiency of shared processes; at the level of communication and information sharing and exchange it aims at standardized and efficient flows and exchanges of information and to keep all stakeholders and the public aware; at the infrastructure and equipment level, the goal is to provide the tools and technologies needed to enable CBM.

No suitable CBM solution fits all existing realities, especially because border management must constantly adapt to the current state of economic and political integration, and quick solutions will go hand-in-hand with long-term structural reforms. It is therefore evident that various modes of cooperation beyond mere co-existence (communication, cooperation, coordination, collaboration, and integration), ranging from the more informal to the more formal, can play a role in reform processes.

Experts suggested that the solution to challenges related to national security and public order with regard to migration is not to prevent free movement of persons in African, but rather to ensure Member States improve their civil registration, especially the integrity of identity documents, border management and law enforcement capabilities.<sup>92</sup>

A South African Department of Home Affairs memorandum, which was found on the internet, sets out the South African position very frankly and indicates that the common SADC position is that the AU FMP Protocol can only be implemented when certain conditions are met. This conditions among others includes: (a) existence of Peace, security and stability in the continent; b) phased approach to free movement of persons; (c) effective civil registration systems; (d) reliable movement control systems; (f) machine readable passports compliant to international standards; (g)

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<sup>92</sup> IGAD-RMPF (n 1) 31

bilateral return agreements; (h) African Union legal instruments on extradition; (i) African Union legal instrument on legal mutual assistance; (j) African Union framework on African Passport and its relationship with free movement of persons; (k) interface of Movement Control systems with INTERPOL and individual Member States prohibition/undesirable person's lists and the UN warning lists; and (l) compatibility of ICT systems at Ports of Entries to facilitate exchange of information.

Especially in the case of labor migration, although informal social networks play an important role in promoting mobility, it is becoming increasingly important for formal recruitment agencies to find employment opportunities in Africa and other regions. Formal, well-regulated migrant recruitment agencies provide pre-departure training and medical screening for domestic migrants seeking work in their destinations, to prepare them for work. Well-regulated agencies can reduce the uncertainties of migration and improve outcomes for migrants, yet unregulated migrant recruitment agencies; in particular, it may become a source of exploitation of potential immigrants due to debt-financed immigration and/or deception of the nature of the destination job.

Recent developments, especially the recent bilateral labor agreements between African and Middle Eastern governments, including between Kenya and the United Arab Emirates (2015) and Ethiopia and Saudi Arabia (2017), aim to promote the recruitment of domestic workers.<sup>93</sup>

Recruitment agencies play an important role in facilitating migration. Besides brokering the recruitment and placement in employment of prospective migrants, such entities also provide information and, in some cases, employment-related training and pre-departure training and medical screening for international migrants, with the aim of preparing them for work in destination countries. Labor brokerage is a key feature of migration, including in Africa, yet its precise nature and scope on the continent are unknown.

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<sup>93</sup> See, Andall (2000); Andall (forthcoming); Awumbila et al (2017); Crush et al (2010); ILO (2015); ILO (2017b); IOM and African, Caribbean and Pacific Group of States Observatory on Migration (2012); Kiwanuka et al (2015); Lefko-Everett (2007).

Regulation of recruitment agencies is not only important to ensure the ethical and fair recruitment of immigrants, but also to improve their well-being in the host country. Stipulating employment conditions and earnings in formal contracts can be critical in safeguarding migrant welfare and as part of achieving a decent work agenda.

Therefore, an essential element of immigration management is to establish a system to ensure that the flow of people is more orderly, predictable and productive, and thus more controllable. Accordingly, in the Millennium Declaration,<sup>94</sup> States resolved to take measures to ensure respect for the protection of the rights of migrants and to intensify their efforts to fight trafficking. The principles and guidelines on human rights and human trafficking<sup>95</sup> recommended by the United Nations are designed to provide practical, rights-based policy advice on the prevention of human trafficking and the protection of victims of human trafficking. Its purpose is to promote and promote the integration of human rights into national, regional and international laws, strategies and measures to combat human trafficking.

Moreover, International migration guidance is developed under International Agenda for Migration Management (IAMM). It's designed to assist government migration practitioners in developing effective measures for the management of migration. It provides an optional but comprehensive recommendation system for dialogue, cooperation and capacity building at national, regional and global levels. It represents views of states throughout the world.

IAMM has been developed by migration practitioners for migration practitioners. Emphasis has been put on creating a useful and actionable working tool that could be used as a blueprint for developing national migration systems, as inspiration for national, regional and global migration debate, and as a training instrument for capacity building projects. The IAMM offers a comprehensive overview of migration issues that need to be considered when developing a migration policy, but it is not exhaustive; opportunities exist to further adapt and consolidate its

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<sup>94</sup> UN Millennium Declaration (UNGA, Resolution 55/2, 2000)

<sup>95</sup> OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (UN, Resolution E/2002/68/Add.1, 2002)

content. IOM believes that the IAMM is a seminal contribution to the field of migration management.

It's indicated in guidance that, the principle and guidance are effective practices emanate largely from existing Declarations, Plans of Action, and instruments on migration at the regional and international level adopted by States around the world, in particular from the various regional consultative processes on migration, as well as from State practice. They reflect the diverse needs and concerns of States on migration and the breadth of elements to be considered in a comprehensive approach to migration management. They are offered as a flexible tool for the development of comprehensive national and international migration policies and practices, and can assist States by making use of the identified practices in accordance with their needs, priorities and capabilities. These effective practices are particularly designed to facilitate inter-state cooperation in the international management of migration.<sup>96</sup>

The major core guidance developed in IAMM are: Cooperation between states, Protection of Human right, Information and data exchange, comprehensive labor migration management, management of irregular migration and border control, Prevention of human trafficking among others. Some of the guidance under those categories is provided as follows.

***A. Effective Practices and Guidance With Regard To Visa, Entry and Stay:<sup>97</sup>***

- harmonization of entry policies
- Implementation of fair, transparent, expedient and user friendly visa procedures, including comprehensive and easily accessible information on visa procedures and requirements,
- Facilitation of delivery of multi-entry visas based on available technology and information,
- Implementation of visa procedures that specify pre-approval requirements for temporary entrants as well as the requirements for permanent residence.

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<sup>96</sup> IAMM (n 19) 27

<sup>97</sup> Ibid, PP 32

***B. Effective Practices With Regard To Border Control:<sup>98</sup>***

- Implementation of procedures that ensure fair and non-discriminatory entry and exit procedures,
- Pre-screening of arriving persons, pre-reporting by carriers of passengers who will be arriving,
- Use of modern technology such as biometrics and international standards related to the issuance, information contained in, and security control of ID and travel documents, incorporating safeguards against forgery.
- Exchange of information and cooperation among neighboring States to increase the efficiency of border control procedures and consideration of the harmonization of border controls to avoid burden shifting,

***C. Effective Practices With Regard To Provision of Residence to Migrants:<sup>99</sup>***

- Clearly distinguish between permanent and temporary residence status and requirements, and provide clear criteria for extension, change or withdrawal of residency status,
- Provision of information to migrants about residence requirements and procedures,

***D. Effective Practices With Regard To Labor Migration<sup>100</sup>:***

- Consideration of labor migration schemes and provide labor market supply and demand integration,
- Transparency of legislation and procedures defining categories of labor migrants, selection criteria as well as length and conditions of stay,
- Consideration of measures to prepare potential migrant workers for entry into foreign labor markets, and arrange for pre-departure assistance
- Consideration of providing information on employment vacancies to potential migrants,

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<sup>98</sup> Ibid, Chapter III, PP 33

<sup>99</sup> Ibid, PP 34

<sup>100</sup> Ibid, Chapter 3, pp. 44

### ***E. Effective Practices With Regard To Trafficking In Persons and Smuggling of Migrants***

- Ratification and implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air, both supplementing the 2000 UN Convention against Transnational Organized Crime
- Implementation of measures to prevent trafficking in persons, for all purposes,
- Strengthen cooperation to prevent and combat criminal activities, particularly trafficking in persons, often related to irregular migration,

### ***F. Effective Practices With Regard To the Human Rights of Migrants:<sup>101</sup>***

- Adoption and implementation of measures to prevent violations of human rights of migrants through discrimination, exploitation and expulsion,
- Distribution of information regarding the human rights of migrants,
- to promote respect for their dignity and counteract anti-migrant attitudes,
- Implementation of international human rights standards and principles in national law and practice,
- Facilitation of bilateral and multilateral temporary worker agreements to meet labor market and employment needs, and to enhance the safety and predictability of travel, access and treatment abroad.
- Establishing effective enforcement and oversight mechanisms,
- Effective access to judicial institutions and remedies for violations of their human rights, including consideration of possible compensation for victims and punishment for the perpetrators,
- Implementation of measures to ensure issuance of all documents necessary for the enjoyment and exercise of legal rights,
- Measure to implement principle of non-discrimination and to prevent racist or xenophobic actions and policies and to eliminate discriminatory practices against migrants,

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<sup>101</sup> Ibid, PP 46

- Adoption and implementation of measures to grant to authorized long-term migrants the same rights, protection and freedoms under national and international law as other citizens, permanent residents or persons lawfully present in the country.

***G. Effective Practices With Regard To the Exchange of Information and Data:*<sup>102</sup>**

- Promotion of bilateral and multilateral exchange of information, data and experience at policy and operational levels,
- Strengthening the exchange of information and data on migration legislation and procedures for analysis and review including, in particular, regulations governing the admission and stay of migrants, migrant experiences as well as policy and operational responses,

***H. Effective Practices with Regard Regular Migration Programme:*<sup>103</sup>**

- Providing transparent and elaborated migration procedures for eligibility,
- Consideration of making available pre-departure programs to prepare migrants for transition to their new societies,
- Promotion of the use of certain forms of temporary migration, such as short-term and project-related migration,
- Definition of categories for temporary migrants according to specific intended objectives, for example employment, business, family visit or study,
- Facilitate temporary migration and multiple short stays, including through efficient registration systems and delivery of multi-entry visas based on available technology,
- Implementation of temporary migration programs which provide temporary migrants with a secure legal status, with rights and responsibilities that reflect their temporary status,
- Promotion and implementation of measures to ensure that temporary migration remains temporary, such as conditioning subsequent reentry on timely return,
- For those States utilizing temporary migration programs as a possible route to permanent migration, articulation of clear conditions under which those who qualify can gain permanent status,

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<sup>102</sup> Ibid, PP 69

<sup>103</sup> Ibid, PP 39.

### **3.3. African Coordinated Migration and Border Management**

Continental and regional integration and unity in the spirit of Pan-Africanism, Africa's revival and the implementation of the 2063 agenda are the continental priorities. Political, legislative and institutional arrangements and programmers in various sectors, notably the protocols for the free movement of persons, goods and services as well as customs unions are being adopted in the RECs and AU. Despite significant progress made lately, the current border regimes in Africa have not worked in its favor and national choices have outweighed the regional approaches.

As Africa is growing in population and mobility, the flows of migration are going to rise. Immigration issues from countries of origin, transit and destination countries are closely related to border management. Relocation of people, whether voluntary or mandatory, legal or undocumented, within or outside the country, is a complicated process and one of the most complicated relationships affecting the government. The AU has laid out these in the Common Position on Migration (2015), the Migration Policy Framework (2006), the Protocol on Free Movement of Persons in Africa (2016), the African Charter on Human and Peoples' Rights (1981) and the Abuja Treaty (1991) as well as through the recent launch of the African Passport (2016).

While the task for the RECs and governments is to put the necessary domestic laws and measures in place, border governance must facilitate the free movement of people in accordance with international obligations. Member States must provide citizens with machine readable travel documents of high integrity to enable cross-border movements. They must invest in technology enabling the detection of legitimate and illegitimate travellers, criminals, and trafficked persons. In addition, they should pay close attention to the issue of supervision and regulation of cross border transhumance and the management of cross-border labor movements. The latter leads to better labor allocation within larger labor markets whereas cross-border migration represents an important livelihood and advances regional integration and development of the economies of the continent. Humanitarian assistance is also the focus of border management. Member states should unite on the issue of refugees, displaced persons and returnees, with the support of REC and the AU, because their camps and residences are often located in border areas. These joint efforts must tackle issues of migrants that involve border agencies and local communities. Borders and integration: Although

integration, trade and mobility policies are implemented in international and national capitals, their successful implementation depends on the normal operation of borders.

The African Union Commission (AUC) demonstrated its strong commitment to transforming border management by creating the African Union Border Program (AUBP). As a platform for consultation and discussion, AUBP has formulated and mobilized the support of the African Union member states in the form of a large number of normative guidelines and guidance documents. However, the normative frameworks are not self-executing and thus African Union Border Governance Strategy (AUBGS)<sup>104</sup>, which is a supplement to existing texts and instruments and aims to clarify the conditions for implementing border management in order to improve peace and security initiatives and bilateral cooperation between border countries. The purpose is to deepen cross-border cooperation, and the implementation is based on the central government and the regional level, and based on the important participation of local communities. The strategy addresses emerging security challenges such as cyber-attacks, terrorism, violent extremism, human and drug trafficking, etc.<sup>105</sup> Therefore, the lack of development in border areas should be regarded as a security threat. Africa's response measures are still characterized by failure to seize opportunities and failure to fully resolve border issues at the national, regional and continental levels.

The purpose of the African Union's Border Management Strategy is to provide guidance to decision-makers in Africa to ensure that border management conforms to the values, principles and goals of the AU. It assists member states and regional economic communities (REC) to formulate national and regional border policies, while promoting consistency in border management procedures and practices. It is based on relevant border-related regulations adopted by the AU regulatory agency to ensure coordination and promote coordination and collaborative intervention in border management.

It is an instrument developed to use borders as vectors to promote peace, security and stability, and to Improve and accelerate integration through effective border management to promote the flow of

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<sup>104</sup> AU, *Draft African Union Border Governance Strategy (AUBGS)*, (AU, 2016)  
<<https://www.peaceau.org/uploads/2018-06-14-aubgs-e.pdf>> Accessed 20 November 2021

<sup>105</sup> Ibid 3

people, goods, services, and capital among the member states of the African Union. The strategy is based on the recognition that African countries still need to effectively manage their borders to obtain benefits, reduce threats and eliminate threats where possible, prevent crime, and promote cross-border cooperation.

The strategy is divided into five sections: The first section is a brief introduction. Section 2 clarifies the background by describing the state of the African border. Section Three introduces the principles of the regulatory framework and guiding strategy. Section 4 describes the main aspects of the strategy, including the boundary's vision, mission and functions, principles and pillars, and strategic priorities for improving boundary management. Section 5 examines the roles of different actors in implementation, monitoring, evaluation, communication, and resource mobilization.

The crucial principles included in the draft strategy have endorsed the following basic migration, human right and human trafficking related principle which worth mentioning and they include:

- ❖ Implement the AU Migration Policy Framework and its recommendations through the establishment of a national migration coordination mechanism,
- ❖ Optimizing new border governance infrastructures and technologies,
- ❖ Improving the security of travel documents, like biometric and machine readable quality documents, computerization, in conformity with international norms, upgrading inspection, data collection and communication systems) and providing technical training for those involved in border management, and migration policy,
- ❖ In line with the plans for the establishment of the African Passport, invest in international standard travel documents, well-structured entry-exit systems, to enhance capacities to distinguish between persons having legitimate versus persons with non-legitimate reasons for entry and stay,
- ❖ Upgrading inspection, data collection and communication systems,
- ❖ Establish effective external communication mechanisms in order to create functional interfaces between border agencies in different countries,
- ❖ Provide easily understandable up-to-date information on relevant issues for crossing the state border including standards, statistics on border crossings, relevant regulations and procedures as well as information about offences,

- ❖ Manage migration, in harnessing the high levels of human mobility in Africa, including through the circulation of skills and migrant labor to enhance growth and competitiveness,
- ❖ Strengthen the cooperation between law enforcement officials, immigration and customs services to ensure a more efficient and effective approach to managing the flow of people and goods across borders, sharing migration-related data and information, training and sustained dialogue,
- ❖ Provide adequate information about the requirements, challenges and opportunities of migration as for the population in general and particularly for potential labor migrants before they cross borders,
- ❖ Reinforce national policies and legal frameworks by incorporating key instruments from declarations extending fundamental human rights protection to migrants, including the African Charter on Human and Peoples' Rights.
- ❖ Progressively enhance legal mobility of people and reduce cost through the implementation of the African Passport and through other bilateral and regional arrangements.

### **3.4. IGAD Policy and Strategies for Coordinated Migration Management**

The IGAD-RMPF places emphasis on strategies for realizing systematized and harmonized migration management within IGAD in general but also conscious of peculiar national considerations. Under these priorities which together cover different issues connected with migration management including, Cooperation on border and migration management, human trafficking, labor migration, and human right. With regard to effective migration and border management which can effectively realize counter labor migration and which realizes human right Protection, the policy provided the following recommended strategies.

These include:

#### **Regarding Coordinated Migration Governance:**

- ❖ Strengthen national and inter-state efforts to prevent persons from moving across national boundaries for illegal purposes or without proper documentation within IGAD Member States as well as between these and third States in neighboring RECs,<sup>106</sup>

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<sup>106</sup> IGAD-RMPF (n 1) Recommended Strategy I(5.1), 29

- ❖ Urge IGAD Member States to adopt and implement appropriate protocols intended to progressively achieve the free movement of persons, the right of residence and the right of establishment including access to legal employment in the countries of destination without adversely affecting the employment of nationals.<sup>107</sup>
- ❖ Harmonize migration policies and legislation of IGAD Member States ultimately to promote a protocol on free movement of labor, goods and capital; the right to residence; and the right to establishment, taking due cognizance of the interest of national economies,<sup>108</sup>
- ❖ Institute routine data collection, analysis and exchange on labor flows, stock and needs in labor-supply vis-a-vis labor-demand countries in IGAD to eliminate skills mismatch and to maintain proper skills audit,<sup>109</sup>
- ❖ Develop common regional counter-measures that incorporate considerations to encourage more legal channels and orderly migration,
- ❖ Development of common regional counter-measures, based on a spirit of solidarity among IGAD Member States and with a focus on the human rights of trafficked victims, including harmonization of immigration laws; strengthened and modernized border management,<sup>110</sup>
- ❖ Establish mutually acceptable transparent and accountable labor recruitment and admissions systems based on clear legislative criteria intended to harmonize emigration- immigration policies in general and labor laws in particular,<sup>111</sup>
- ❖ Establishing a comprehensive migration database and networking system,<sup>112</sup>
- ❖ Develop a common strategy for implementing migration policy among IGAD Member States that reflects harmonization of laws, standards, procedures, information, dissemination and sharing; compilation of statistics; production of documents, and efficient use of resources.<sup>113</sup>

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<sup>107</sup> Ibid Recommended Strategy I (4.2), 28

<sup>108</sup> Ibid Recommendation Strategy V(4.2), 28

<sup>109</sup> Ibid, IV

<sup>110</sup> Ibid, 6.2, Recommended Strategy III, 33

<sup>111</sup> Ibid, 4.1, Recommended Strategy II, 26

<sup>112</sup> Ibid, 6.1, Recommended Strategy V, 32

<sup>113</sup> Ibid, 11.1, Recommended Strategy 2, 53

## **Regarding Protection of Human Right and Countering discrimination and xenophobia**

- ❖ Urge the host communities to appreciate their differences with migrant communities, allowing the latter to observe their cultural imperatives provided they do not interfere with those of the hosts,
- ❖ Ensure the security of migrants, locals and any other persons with whom they interact,<sup>114</sup>
- ❖ Create an enabling environment for observing and respecting migrants' rights and that allows migrants to defend their rights individually and associations,
- ❖ Disseminate information about migrants through public information, education and communication (IEC) campaigns and other means in order to promote respect for, tolerance and understanding of, migrants and to counter anti-immigrant and xenophobic attitudes,
- ❖ Promote the integration of migrants in host societies in order to foster mutual cultural acceptance and to ensure that the rights of migrants are respected and protected,

## **Development of IGAD Free Movement of People Protocol**

The IGAD-MPF was followed by the IGAD Migration Action Plan (2015-2020) adopted in 2015.<sup>115</sup> In the process of applying the policy and the action plan, in February 2020, ministers in charge of internal affairs and those in charge of labor of member states of IGAD convened in Khartoum and endorsed the Protocol on Free Movement of Persons in the IGAD Region. The announcement of a Protocol was followed by an expert meeting to consider the draft roadmap for the implementation of the Protocol.<sup>116</sup>

Beside the norm diffusion strategy with regard to free movement of people, IGAD-MAP recognized 11 other migration related concerns which specially focus on labor migration, protection of migrant's human right and combating transnational crime, including human trafficking. The plan does not treat free migration concern as an island which intends to concern itself without regard to other necessary migration related concerns of the region and as such the plan is an integrated strategy which inspires a comprehensive outlook with regard to migration in the region.

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<sup>114</sup> Ibid, 12.7, Recommended Strategy I, 60

<sup>115</sup> Clare Castillejo, *The influence of EU migration policy on regional free movement in the IGAD and ECOWAS regions* (Discussion Paper, DIE/German Development Institute, Bonn 2019) 10

<sup>116</sup> IGAD Ministerial Meeting ( n 6) 3

The legal status of migrants is perhaps the most principal determinant of the probability of human rights violations of migrants. The norm is that if violation of immigration laws has occurred *Ab Initio* at countries of origin, transit or destination, it will be invariably accompanied by violation of the human rights of labor migrants. This takes on the form of physical abuse, forced labor; exploitative working conditions, extortion and false detention vide confiscation of passports and other travel documents that confer legal status on the Migrant. IGAD Member States therefore recognize that the ‘original sin’ is a product of excessive restrictions or lacunas in policy, legislative and administrative provisions designed to regulate the movement of migrants and subsequently protect their human rights.<sup>117</sup>

In this regard the IGAD-MAP which provides the free movement of people under strategic priority 8, which primarily leads to the drafting of free movement of people in the region, it also provides related concerns which needs integrated or comprehensive outlook rather than isolated issues of free movement which includes and not limited to: a) labor migration and protection of human right of migrants within and outside of the IGAD region(Strategic priority 3); b) effective migration governance for peaceful, Prosperous and integrated IGAD region(Strategic priority 4), c) effective migration governance to counter transnational threats and international crimes (Strategic priority 5), d) building the capacity for national migration data system(Strategic priority 7) , e) enhance the developmental contributions of Migration by studying high skill demand and brain drain ( strategic priority 11), and f) strengthen existing migration governance architecture (strategic priority 12).<sup>118</sup> This strategies are a single part of larger some which is migration which needs to be regular migration which needs to be defeating other concerns of the plan including protection of human rights of migration by realizing labor and self-employed persons migration, residence and forming establishment in such a way that it does not entail human trafficking, labor dumping, insecure residence or establishment or property of migrants.

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<sup>117</sup> Ibid 11

<sup>118</sup> IGAD-MAP (n 3 )

Development of the protocol for the free movement regime is led by the migration team of the IGAD secretariat. The initial draft version of the Protocol on the Free Movement of Persons, developed as a basis for discussion, borrowed from models of the ECOWAS and the EAC free movement protocols. In view of the limited capacity of the region and the current low degree of regional integration, the draft protocol is very ambitious. It contains provisions on the coordination of immigration policies and laws, visa-free entry, settlement and residency of IGAD citizens, and effective Border management, which will support this movement. It also calls for the harmonization of labor laws and policies, including eventual mutual recognition of academic and professional qualifications. However, it is understood that the implementation of the protocol should be phased, starting with the gradual relaxation of visas for the citizens of the region and culminating in the right of residence.<sup>119</sup>

As IGAD ushers the FMP through the early stages of its development, they are working closely with their large and varied membership to build confidence that their protocol can eventually become as progressive as the EAC's. States have expressed a number of fears about the ramifications that open borders will have on state and community security, labor market crowding, and government capacity to manage increased regional commitments. IGAD has taken a hands-on role in addressing members' concerns early on, in advance of negotiations. To get a clear picture of the free movement of people among the IGAD members, it requires a comprehensive geo-contextual analysis of migration and related issues within the broad picture of eastern Africa having a common background of human movement and security. This has been made in the next section with comparative analysis with SADIC, EAC and COMESA as advanced REC and with best practices of the countries in the region.

Moreover, human trafficking is also common migration issue in IGAD and Horn African region.<sup>120</sup> IGAD has adopted several policies and measures to combat human trafficking including IGAD-RMPF and Ouagadougou Action Plan to combat human trafficking in human beings, especially

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<sup>119</sup> AU and IOM, *The Study on Benefits and Challenges of Free Movement of Person in Africa* (AUC and IOM, 2018)

<sup>120</sup> SAHAN & IGAD, *Human Trafficking and Smuggling on the Horn of Africa-Central Mediterranean Route* (2016)

Women and Children in 2006.<sup>121</sup> The action plan stressed out various root causes of trafficking in human beings. It has also engaged in regional cooperation efforts such as AU-Horn of Africa Initiative against human trafficking and Smuggling of migrants.<sup>122</sup>

Strengthening national policy, structures and laws in order to establish a coordinated and integrated regional system of migration and counter human trafficking which incorporated international instrument is also a critical point incorporated in IGAD regional policy framework to prevent human trafficking.<sup>123</sup>

Except for Somalia and South Sudan, all IGAD members States have ratified the Palermo Protocol and; Uganda,<sup>124</sup> Kenya,<sup>125</sup> Sudan<sup>126</sup>, Djibouti<sup>127</sup> and Ethiopia<sup>128</sup> also adopted national anti-human trafficking legislation. In the context of the intense regional and international focus on human trafficking Eritrea, Somalia and South Sudan have yet to adopt the legislation.

With regard to free migration governance within IGAD region, even though the regional migration frame work and the regional Action plan has adopted comprehensive human right based migration management at policy and action plan level, member states did not approached this strategic and comprehensive level in their negotiation and drafting of free movement of people protocol which have embedded protection of human right of migrant people in general protection of their property at their host country on one hand and human trafficking or specifically labor trafficking prevention approach on the other hand.

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<sup>121</sup> AU, *Ouagadougou Action Plan to combat human trafficking in human beings, especially Women and Children* (AU Tripoli, 22-23 November 2006) <[http://ec.europa.eu/antitrafficking/sites/antitrafficking/files/ouagadougou\\_action\\_plan\\_to\\_combat\\_trafficking\\_en\\_1.pdf](http://ec.europa.eu/antitrafficking/sites/antitrafficking/files/ouagadougou_action_plan_to_combat_trafficking_en_1.pdf)> Accessed 3 November 2021

<sup>122</sup> IGAD and IOM, *Human Trafficking and Smuggling of Migrants in the Context of Mixed Migration Flows: State of play in the IGAD Region*, (IGAD and IOM, Background Paper, 2015) 13 and 14.

<sup>123</sup> Ibid 23

<sup>124</sup> Ugandan Prevention of Trafficking in Persons Act (2009)

<sup>125</sup> Kenya Counter-Trafficking in Persons Act, (No. 8, 2010)

<sup>126</sup> Sudan Combating of Human Trafficking (2014)

<sup>127</sup> Djibouti Combating Trafficking in Persons and Illicit Smuggling of Migrants Act (No. 133/AN/16/7 2016)

<sup>128</sup> Ethiopian Proclamation Counter-Trafficking in Persons (No. 909, 2015)

This can be grasped from the following qualitative comparative analysis made, provided under the following table, which is based on a practically tested effective guideline and principle of cooperative border and migration management developed by most international; and African continental and REC protocols and initiatives I have discussed in the previous section.

PRINCIPLES, GUIDANCE AND BEST PRACTICES		APPLYING AUTHORITIES AND LEGAL DOCUMENTS									REMARK		
		International				African Continental and REC					Frequency In Percentage (x/10)100	IGAD-Free Movement of People Protocol (Draft)	
		IAMM	GCM	ICMW	PALERMIO	AU-BGS	AU-FMP	EAC	ECOWAS <sup>129</sup>	SADIC <sup>130</sup>			IGAD-RMPF
<b>1. Prevention of TIP</b>	<b>1.1. Harmonized Biometric ID and Documents of Travellers:</b> Biometric and machine readable quality documents.	Pp.ge 33,44 & 69)	Para. 20(Pp . 10-11)	Art.16 /3	Art. 12	Pp. 23, 29	Art. 9 & 10	Part. D (Art. 8,9/1 & Chapter 104/3/b	Art. 1/7/86 ) Chapter 3 Art. 5-9	Art. 9 and 12	5.1. ( Rec. Strategy I) Pp. 29 <sup>131</sup>	100 %	NA Only International Travel Passport as a common standard travel document( Art. 2)
	<b>1.2. Networked Migration &amp; Migrants Data and Information exchange system</b>	Pp. 33,44 & 69	Para. 20(Pp . 10-11)	Art. 65/b	Art. 10-13	Pp. 23,29, 33 & 35	Art. 9/3, 10, & 25	Art. 9/2 & 41	Art. 20/2-3, 22/2/a Art. 9 Phase I	Art. 9, 11/2/b	9.2 ( Rec. Strategy: V & VI) Pp. 47	100 %	NA

<sup>129</sup> ECOWAS Treaty Supplementary Protocol on the Second Phase <http://ecowasmigration.ug.edu.gh/wp-content/uploads/2015/03/ECOWAS-1986-Supplementary-Protocol-on-the-Second-Phase-Right-of-Residence-of-the-Protocol-on-Free-Movement-of-Persons.pdf>

<sup>130</sup> SADIC, Protocol on the Facilitation of Movement of People

<sup>131</sup> See also, IGAD-MAP, 6.2., Recommended Strategy X for human trafficking (6.2), Recommended adoption of Ouagadougou Action Plan to Combat Trafficking - African Union which introduced Take measures to improve the registration of births and the provision of identity documents as one of the mechanism for counter human trafficking under Principle I Para. 7. Page 33.

	<b>1.3. Harmonized Free Entrance &amp; movement, Temporary and Permanent Residence; by Providing Clear Requirement and Period Limit</b>	Pp. 32 & 46	Para 28/a (Pp. 19)	NA	NA	Pp. 29 (Para. 3 & 6).	Art. 6/4, 14, 16 & 28/3	Art. 3	Art. 1/7/86) Chapter 3 Art. 5-9, Art. 3 of Phase	Art. 3, 14 & 15	4.2. ( Rec. Strategy V) Pp. 28	<b>80%</b>	Generally expressed right of entrance and Stay, residence (Art.7) employment (Art.1/1, 2) and right of establishment (Art. 6/1, 2) are recognized. However, the right and privileges of residents and establishment are to be determined by laws of host state. (Art. 9)
	<b>1.4. Progressive liberalization/Implementation</b>	NA	NA	NA	NA	Pp. 30 (Para. 1)	Art. 5 & 16/3	Art. 164/3	Art. 2 of Phase I	Art. 5	4.2. ( RS. I) Pp. 28	<b>60%</b>	NA
<b>2. Prevention of LT</b>	<b>2.1. Common Requirements and Limitations of Workers Employment &amp; Residence Right/Permit</b>	Pp.34	NA			Pp. 30(Para . 3) &35.	Art. 6/4,5	Art. 13-15		Art. 8	4.2. ( Rec. Strategy V) Pp. 28	<b>60%</b>	NA
	<b>2.2. Supply and Demand Based Pre-Departure Procurement System For Labor Migration</b>	Pp. 32 &44		Art. 66 & 68/2		Pp. 28 (Para. 11), 29(Para . 1,6), 33 (Para.6)			Art. 18/2, 21	Art. 21	4.1(R. S.II, Pp. 26 & 4.2. (RS. IV) Pp. 28	<b>60%</b>	NA States Authority who is responsible for employment of citizens of other members is also required to provide access and domestic employment of other member's nationals. (Art. 3/7) Member states are free to limit the right based on National policy or interest as there is no demand supply based labor market access. (Art.3/10)
	<b>2.3. Entry Point Request Necessary Document For Labor Migrants</b>	Pp. 32 & 46			Art. 11/3	Pp. 29(Para . 10) & 32	Art.7/1 /b, 8 & 15	Part. D (Art. 9/1)	Art. Art. 5-9 & Art. 3/1 of Phase I	Art. 13/c, 14/2	3.3.1.( R.S.I, Pp. 18	<b>80%</b>	NA

<b>3. Protection of Migrants Property Right</b>	<b>3.1. Non-Discriminatory or National Treatment;</b> for Human right in general or recognition and protection of non-nationals property right	Pp. 30 & 47	Para 23 (Pp. 15), 33	Art.7	14	Pp. 29(Para 5)	Art. 4/1	Art.7/2 , 17)		Art. 5/1,7 & 19/c & e of PEL <sup>132</sup>	7.4. (SR. I, II & III) Pp. 40-41	100 %	NA Only Non-discrimination principle for Free entrance and stay Art. (Art. 1/2), work (Art. 3/2), and right of establishment are recognized except prior work or establishment resident right. (Art. 7/7 & 10)
	<b>3.2. Clearly Recognizing Immigrants Property Right and its Limitation</b>	Pp. 46	NA	Art. 15	NA	Pp. 29(Para . 1)	Art. 22/1,4	NA	NA	NA	NA	40%	NA N/A Except establishing coordinated safeguard measures for self-employed or right to establishment are recognized. ( Art. 6/11/d)
	<b>3.3. Access to Justice;</b> for any proprietary damage with adequate compensation arising from individual or government decision or action	Pp.46	Para 23 (Pp. 15)		Art. 15	Pp. 10 & 19	Art. 30/1	Part. D (Art. 53)	Art. 15/4, 16/2, 22/2/c & 26	Art. 5/1,7 & 19/c	3.3.3.( R.S.V) , Pp. 20	90%	NA Although Art. 14 provided for the obligation of providing national judiciary or other organ for review of decision of individual expulsion. (Art. 14.) No other provision regarding other right and privileges of migrants. National law shall guarantee procedural justice and right to appeal/recourse national adjudication or court in case of decision of individual expulsion. (Art. 14)
	<b>3.4. State Liability;</b> before or after expulsion, if any, for failure to realize protection of property right	NA	NA	NA	NA	Pp. 10, 19, 38	Art. 30/2 & 31	NA	Art. 26 & 28 Art. 7 of Phase I	Art. 30		40%	NA No regional dispute settlement is available under the protocol or IGAD charter even if the protocol endorsed application of the Charter

<sup>132</sup> SADIC, Protocol on Employment and Labor

of immigrants through Negotiation, Arbitration, or Regional Tribunal or Court System													(Art. 17)
<b>3.5. Adopting Effective and Progressive Integration Mechanism;</b> to reduce xenophobic attitude or attack or discriminatory law, government decision and practice	Pp. 51	Para. 32-33	NA	NA	Pp. 30	Art. 12/2	NA	NA	NA	4.1(R. S.II, Pp. 26 & 7.4. (SR. I, II & III) Pp. 40-41	<b>40%</b>	NA	
<b>Effective Migration Management (x/12)100</b> (The conclusion is made by calculating the necessary or frequent condition for effective migration governance fulfilled from by the total 12 condition) (50%≤)	83.4%	50%	41.7%	41.7%	100%	91.7%	66.7%	66.7%	83.4%	83.4%	50% =/ =	≈ 0% The minimum necessary condition (50%≤) for effective migration governance ( See 1.1-4, 2.1-3, 3.1 and 3.3) are not fulfilled beside effective IGAD-RMPF(83.4%) making the protocol ineffective and inefficient.	

**Abbreviation in the table:**

PP.- Page; Para.- Paragraph ;PALERMO- Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing UNCTOC; RS- Recommended Strategy; NA- Not Available; TiP-Trafficking in Person; LT-Labour Trafficking.

**GREEN:** Effective Migration Mechanism or Necessary Condition; **RED-** Ineffective Migration mechanism or non-mandatory Condition

**NB:** Principles and Guidelines having frequency percentage more than or equal to 50% are considered to be necessary condition whereas International and African continental and REC having efficiency of cooperative migration management more than or equal to 50% are effective.

## **CHAPTER FOUR**

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### **CONCLUSION AND RECOMMENDATION**

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#### **4.1 CONCLUSION**

The data presentation and analysis in the previous chapter shows that the IGAD free movement of people draft protocol which is in the ongoing negotiation by member states did not have efficiently incorporated the basic principle of effective cooperative migration and border management of people which ensures effective counter human trafficking and protection of migrants human right as most of the effective international and African continental and regional legal frameworks and practices do. As the data presented shows, the best international guidelines, declarations, protocols and best practices of international and African regional institutions having fulfilled minimum effective cooperative migration necessary conditions are not fulfilled making the draft protocol far from being effective to combat potential and existing intra-regional labor trafficking and human right violation of migrants.

This guideline and principle, even though their impact on the effective human right based management of migration are different, the analysis in the previous chapter tells that, the basic and necessary condition of effective cooperated and human right based free and secured free movement of people governance include the following basic principle and condition to be incorporated which the IGAD free movement of people fail to incorporate making it ineffective and inefficient unlike IGAD-RMPF(83.4%), and most of the African continental and REC's legal document and protocols including: AU-BGS (100%), AU-FMP (91.7%), EAC (66.7%), ECOWAS (66.7%)and SADIC (83.4%) which fulfilled forthan half (50%) of the necessary minimum condition for effective migration and border management principle and practices recognized international and at African regional migration governance as I have discussed in previous chapter.

**May 30, 2021**

Those necessary conditions of effective free migration governance which is necessary for effective counter human and labor trafficking and protection of human right of migrant people are:

1. **Principle of Non-discrimination:** Recognition of Principle of non-discrimination of non-national immigrants with regard to protection of human right generally and which is not limited to the implementation of right to enter and stay, access to non-governmental employment market, the residence right and right of establishment. Specially, beside personal liberty that should be protected ones immigrants legally enters based on principle of national treatment and not just by most favored nation treatment as human right is universal, right to personal property of immigrants shall be incorporated in the principle to secured economic interaction of immigrants, especially for self-employed or immigrants with establishment right against discriminatory state practice and xenophobic attack in the host state with equal or national treatment with regards to access to justice and adequate compensation for damage occurred before any expulsion decision if any.
2. **Principle of Progressive Liberalization:** This Principle endorses the free movement of people agreement between states which effectively approached the free movement liberalizing scheme through the migration program. This approach advocates planned migration starting from minimum free movement towards broader level of free movement or integration to avoid adverse effects of unregulated and unplanned liberalization at a time.
3. **Harmonized Biometric ID, Passport, Travel Document:** This approach of regular migration governance is crucial for border control system in a harmonized manner and control irregular flow of migrants with fraud document and identity, which ultimately helps to control or prevent human or labor trafficking which is based on illegitimate promise and fraud by human traffickers. NBIC National Biometric Identification Card and MOTD-machine readable official travel document (in the size of an ID card) is the usual mechanism for the application of this guidance or practice. Moreover, the pre-entry system of issuance of necessary visa or permit for work, establishment and/or residence for the potential immigrant in the host country is crucial for this regulated migration. This approach of the pre-entry

system shall only be made not applicable for temporary entry and stay schemes in which migrants are not intended to work or reside or establish an establishment. The maximum of 90 days are adopted in most of the African REC.

4. **Clear and Harmonized Residence and Employment Right and Privilege:** This guideline requires the pre-defined clear requirement of free entry and movement right which have a clear period of limit from other temporary entrance for the purpose of employment or establishment which depends on the permit to be issued with prescribed expire date and condition of renewal. This clear and harmonized system of free movement of people management helps to avoid uncontrolled irregular migration and human right abuse if all the requirements and limitations for those rights and privileges of immigrants all depend on the national law of the hosting country. Moreover, the condition and limitation for permanent residence or establishment right or ultimately provision of naturalization or citizenship shall be adopted for effective regular migration and regional integration, especially in African REC, though this is beyond the purpose of human right based governance of regional migration which this study wants to emphasize.
5. **Interconnected Data and Information Exchange System:** Regional data exchange system such as Common MIDAS Migration Information and Data Analysis System (IOM's BMIS software) and Advance Passenger Information (API) is crucial for the interconnected regular migration governance and border control system by applying Biometric ID, Passport identification and other permit to avoid fraud. It also helps for harmonized migration data record and efficient exchange for better understanding or study of migration trends.
6. **Adopting Harmonized Procurement System of Non-Nationals:** This system of accepting work force from other member states of the region is required for regular flow of labor migration. This Principle requires making a regionally available labor market which immigrants can freely apply and get a pre-departure work permit for it, if accepted, through controlled Tran-boundary requirement agencies. This system avoids illegitimate promise and fraud by labor traffickers and also manages to realize manageable regular migration of migrant workers.

7. **Effective Border Control Mechanism**, in which necessary travel document and work Permit check point through and pre-arrival processing system for labor migrants.

From the previous analysis made in the previous chapter, even though some of the principle are generally recognized at a IGAD regional migration policy level which have no binding effect, the free movement of people draft protocol did not specifically incorporated the guideline and principle stated above which is very crucial for the regular migration of labor and contributes to combat labor trafficking and human right violation of immigrants at their destination. The negotiation shall be reconsidered to incorporate this principle and guidance for better implementation and effectiveness of free movement of people governance which did not adversely affect regional policy for counter human trafficking and protection of human right.

## **4.2. RECOMMENDATION**

From the conclusion made from this study I have stated that, the current draft protocol of IGAD regional free movement of people within the region developed by negotiating IGAD member states does not endorsed comprehensive human right based free migration management of free migration. As a result, to embed the Regional policy and strategy of Preventing labor-trafficking on one hand realize human right protection of citizens of the region by establishing effective migration of people intended by the protocol, the negotiating members are recommended to make sure they have endorsed the following specific guideline or principle in their negotiation before the final adoption of the protocol. The specific principle and guideline to be incorporated in the future protocol include:

1. **Recognition of Principle of Non-Discrimination of Non-National Immigrants With Regard To Protection of Human Right:** Specifically protection of their property right which they have acquired legally and adequate reparation or compensation in case of damage to their property as a result of violence attack or absurd expropriation or expulsion.
2. **Recognizing National Treatment With Regard To Protection of Migrants Personal Property Right and Access To Justice-** with adequate reparation in case of criminal act,

expropriation or expulsion; and hosting state liability in case of failure to guarantee such right.

3. **Clear and Harmonized Free Movement Right and Privilege Scheme:** The protocol shall determine clear and harmonized limited period temporary entrance and movement applicable for all nationals of the member state; requirement and period of limit for temporary residence right for immigrant workers and/or self-employed person with condition of Relevance. Moreover, conditions and limitations for permanent residence shall also be clearly defined and equally recognized. This common approach by all member states are required to be made rather than being defined by national laws of member states.
  
4. **Principle of Progressive Liberalization:** The protocol shall endorse progressive level or scheme for the application of the protocol starting from minimum free entrance movement of people within territories of member states to permanent residence or regional citizenship if required, rather than adopting one time implementation. The principle shall also prohibit retro-actively applicable state action or national law which provides exceptional state action on the ground of national interest, which shall only be made by national laws of member states. In this regard, the researcher recommends the following scheme. The time period within which each Phase is to be implemented can be freely negotiated by member states considering their economic and other national interests together with their regional integration goal.
  - a. Phase I: Free entry for temporary stay for up to 90 days;
  - b. Phase II: Access to domestic employment with renewable period of 2-5 years,
  - c. Phase III: Application of Right of establishment for self-employed migrants with renewable of permit for a period of 5-10 years,
  - d. Phase IV: Permanent or unlimited time Residence with or without the right to own immovable property( land and Premises),
  - e. Regional Citizenship which establishes IGAD regional citizenship in which all member states acquire equal treatment in all economic, social and political aspects of the region.

5. **Adoption of Harmonized international standard of Biometric ID and Passport,**
6. **Adopting Interconnected Migration Data and Information Exchange System,** with electronic passport, visa, and employment and residence permit administration,
7. **Adopting Harmonized Regular Requirement System of Non-Nationals With Progressive Scheme Strategy Based on Demand and Supply for Labor** and,
8. **Effective Border Control Mechanism,** in which pre-arrival procurement processing system for labor migrants and necessary travel document and work Permit check point is applied.

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