

ADDIS ABABA UNIVERSITY
SCHOOL OF GRADUATE STUDIES
INSTITUTE FOR PEACE AND SECURITY
STUDIES

REGULATION OF IRREGULAR MIGRATION: THE LINK
BETWEEN AFRICAN UNION AND EUROPEAN UNION
FRAMEWORKS

BY: MAHLET DAWIT

ADDIS ABABA

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ADVISOR: DAWIT YOHANNES

ADDIS ABABA

Acronyms

ACP-----	African, Caribbean and Pacific (Group of States)
AfDB-----	African Development Bank
AU-----	African Union
AUC-----	African Union Commission
DRC-----	Democratic Republic of Congo
CDMG-----	
CENSAD-----	Community of Sahel-Saharan States
COMESA-----	Common Market for Eastern and Southern Africa
COMMIT -----	Commission Initiative against Trafficking
EAC-----	East African Community
EC-----	European Commission
ECOSOCC -----	Economic, Social and Cultural Council
ECOWAS-----	Economic Community of West African States
EU-----	European Union
ICMPD -----	International Centre for Migration Policy Development
IDP -----	Internally displaced person
IGAD-----	Intergovernmental Authority on Development
IOM-----	International Organization for Migration
JAES-----	Joint Africa-EU Strategy
MIEUX EC-ICMPD-----	Migration EU Expertise initiative
MME-----	Migration, Mobility and Employment
NEPAD -----	New Partnership for Africa's Development
NGO-----	Non-governmental organization
OAU-----	Organization of African Unity
PSC-----	Peace and Security Council
REC-----	Regional Economic Community
SADC -----	Southern African Development Community

SDGs-----Sustainable development goals

UNCTAD-----United Nations Conference on Trade and Development

UNODC-----United Nations Office on Drugs and Crime,

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Abstract

The southern border of Europe is a frequent gateway for irregular African migrants who cross through the west and central, east Mediterranean migration routes. These life threatening migration routes result in the loss of the lives of migrants. This study deals with the link and implementations of the African Union, European Union and the Joint EU- Africa policy frame works on the regulation of irregular migrations. The study employed qualitative research design. Using purposive sampling, in-depth interview were conducted with concerned experts and officials. The study also included data obtained from books, various legal documents (regional, continental and international laws), journals, conventions, Declarations, researches, conference data protocols, as well as other secondary data source. The data was analyzed using content and comparative analysis methods. The study revealed that even if the EU and Africa advance the promotion of joint frameworks in comprehensive manner, their policies have not achieved their goal on addressing the root causes of irregular migration and the crisis on the loss of lives due to the mismatch of priority, lack of shared commitment, coordination and other policy implementation gaps. Most migrants from Africa are barely skilled persons while Europe wishes to accept the skilled and the rich. Due to conflict of interest between the AU and EU migrants, the root causes for migration are overlooked. If EU assists Africa on the promotion of development and addressing the root causes of irregular migration, and African countries undertake the necessary policy adjustments, the problems associated with irregular migration will be better addressed in the future.

Key words: Irregular migration, AU, EU, policy framework

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CHAPTER ONE

INTRODUCTION

1.1 General Background

Migration and mobility are important survival and poverty reduction strategies for a large and growing number of people. The dynamic nature of the current global situation such as the growing demographic rate, the economic imbalance between the regions and the technology advancement are contributing for the escalated number of migration and mobility.

Environmentally fragile and conflict-prone region have generated a heavy flow of mixed migration in recent years. In ‘mixed migration’, different groups of migrants may travel with or alongside each other, using the same routes and means of transport but with different motivations and objectives. The term is relatively new and encompasses groups of refugees, asylum seekers, economic migrants, Internally Displaced People (IDP), stateless persons on the move and trafficked persons. (Frouws, 2013)

There is no clear and universally accepted definition of irregular migration. Because, from the perspective of destination countries, it is illegal entry, stay or work in a country, meaning that the migrant does not have the necessary authorization or documents required under immigration regulations to enter, reside or work in a given country. From the perspective of the sending country, the irregularity is for example seen in cases in which a person crosses an international boundary without a valid passport or travel document or does not fulfill the administrative requirements for leaving the country (Koser,2005).

The International Organization for Migration’s Glossary 2004, defines irregular migrant as someone who, owing to illegal entry or the expiry of his or her visa, lacks legal status in a transit or host country. The term applies to migrants who infringe a country’s admission rules and any other person not authorized to remain in the host country (also called clandestine/illegal/undocumented migrant or migrant in an irregular situation outside the regulatory norms of the sending, transit and receiving countries) (IOM, 2004). So that thousands of mixed migrants

are crossing borders and entering to transit countries and destination countries irregularly, using different migration routes and means of transportation.

As discussed above, thousands of mixed migrants are internally displaced. Others are refugees or migrants crossing international borders within or beyond Africa. Different root causes might be responsible for the migration flow through different migration routes.

Due to the geographical, political, cultural, social and economical factors the migrants choose different migration routes to exit Africa. The research identified six irregular migration routes: Eastern , Western, Central , Southern Africa and Gulf of Aden and Red sea migration routes. The following sub-sections discuss different routes that African migrants use.

1.2 African irregular migration routes

In the present situation, the rapid demographic growth rate of population creates unemployment for the working age generation, which result an increased amount of the rural urban migration flow. Due to continuous political oppression, ethnic conflicts, racial discrimination the outbreak of wars, forced further waves of migration. Some made their destination towards Europe and oil rich gulf countries or to economic boom zones in southern or western Africa (Amir, 2013).

There are number of irregular migration routes across Africa with the final destinations to the shores of southern Europe, Gulf countries and the South Africa (Katie K, 2015) The main African migration routes are the following;

- **Eastern Africa Migration route** originated from the horn of Africa region who depart from Eritrea, Ethiopia and Somalia and usually pass through Sudan, Egypt and Libya before reaching the shores of the Mediterranean (Katie K, 2015).
- **The western Africa routes** comprised the migrants from Mali, Côte d'Ivoire, Guinea, Ghana, Togo, Benin, Burkina Faso, Senegal, Niger, Liberia, Sierra Leone, and the Gambia (Altai Consulting/UNHCR, 2013; Global Initiative against Transnational Organized Crime, 2014).

- **The Central African Route** is followed by migrants from Niger, Nigeria, Cameroon, and Chad (Katie K, 2015).
- **The Red Sea Migration Route** takes the migrants across the Red sea and the Suez Canal to Italy and Malta or Israel through the Sinai desert (Mehari, 2015).
- **The Southern Africa Migration Route** goes through Kenya, crossing borders into Tanzania, Zambia and Malawi to South Africa;
- **The Gulf of Aden Route** from Djibouti, Somalia to Yemen across the Red Sea (Mehari, 2015).

The six African migration routes are discussed above. But, the main concern of thesis is the three migration routes which are the Eastern, Western and Central African migration routes via the Mediterranean Sea. Because, the objective part of the thesis states that the study focuses on the routes relevant to the EU-AU migration Policies. And the three migration routes mentioned above are selected because they are directly relevant to the topic under research.

1.2.1 The Mediterranean migration route from Africa to Europe

The southern border of Europe is the familiar migration destination from the Maghreb regions. Thousands of mixed migrants who came from different parts of Africa such as Senegal, the Gambia, Sierra Leone, Liberia, Mali, Côte d'Ivoire, Ghana, and Nigeria as well as the Democratic Republic of Congo, Cameroon, Sudan, the Horn of Africa, sub Saharan region and even Asia use the Mediterranean route to reach the shores of southern borders of Europe (De Haas, 2008) . To cross these routes the irregular migrants manly transit at the Maghreb regions (Morocco, Libya, Tunisia, Algeria and Mauritania)(De Haas, 2008).

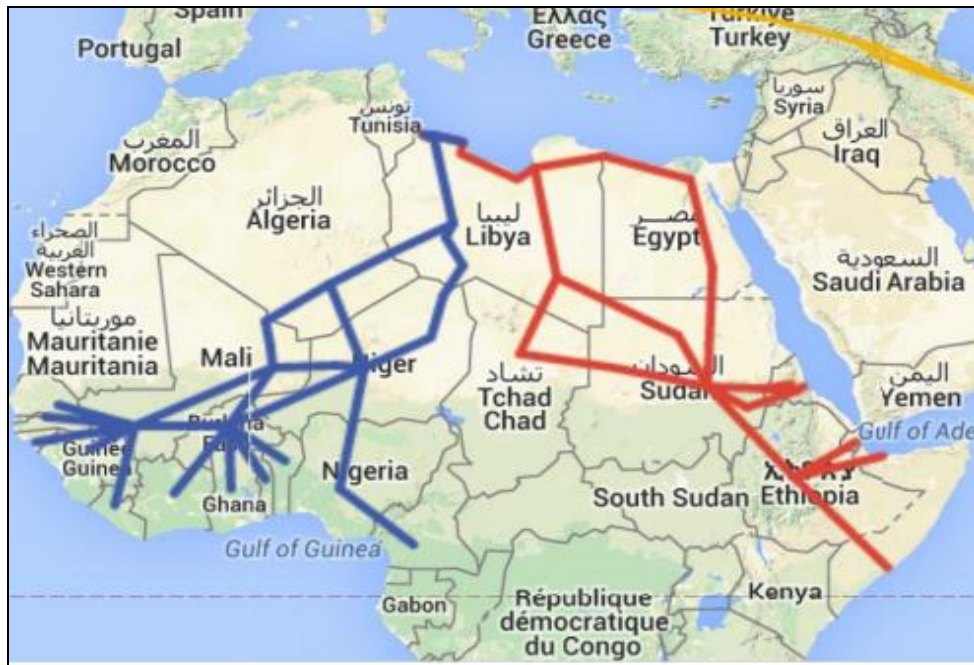


Figure 1

Blue: West and Central African Migration Route; **Red:** East African Migration Route

Source: (Katie K, 2015)

East African Migration Route



Figure 2

Source: (Katie K, 2015)

Figure 2 shows the east African migration route heading to Europe there are several meeting points. For instance Addis Ababa is the meeting point for migrants from Somali and Ethiopia, then they move Khartoum before heading to Libya (Altai Consulting/UNHCR, 2013). For the Eritrean migrants from Asmara and Massawa the Sudanese town of Kassala and El-Kadarif are the main hubs (UNODC, 2010).

Khartoum is the major transit area for the migrants who flow to Libya. Sudan's strategic setting contribute to the trans-African and African-European migratory routes. After crossing the Sudanese boarder, the south- eastern Libyan city Kufra, becomes the major center for the

irregular migrants. There is also a new route emerging where Sudanese migrants make their way to Cairo (usually by plane) and subsequently connect with smugglers who take them to the Libyan border at Salloum-Um Saad (Altai Consulting/UNHCR, 2013).

Western and Central African migration routes



Figure 3

Source: (Katie K, 2015)

As the figure 3 shows above the Central African route runs overland northwards. For migrants following the Central African route, the journey typically leads to the city of Agadéz in Niger, where they join West Africans *en route* to Libya (UNODC, 2010). For migrants from Ghana,

Togo, Benin, and Côte d'Ivoire who follow the Western African route, the first hub is Ouagadougou in Burkina Faso. From Burkina Faso, migrants who make the overland journey will again join the West African route, either through Gao in Mali, or through Agadez (Global Initiative against Transnational Organized Crime, 2014). After Agadez, migrants typically pass through the Nigerian town of Dirkou and Madama to Libya's Al Wigh, and Murzuk before entering the Libyan city of Sabha.

According to Barros et al. (2002) the route along the west coast of Africa, through Mauritania and Western Sahara to Spain, had become less favourable due to increased patrolling in the Western Mediterranean waters beginning in 2000. After 2001, a significant number of migrants from Morocco moved southward to the Western Sahara in order to reach the Canary Islands (De Haas, 2007; Carling, 2007). Increased patrols of the Spanish borders and the reinforcement of the fence between the Moroccan mainland and the Spanish enclaves Ceuta and Melilla in recent years corresponded to a decrease in the number of irregular migrants who made use of this route to cross the Western Mediterranean. For instance, RMMS (2014) reports how in early 2014, fighting in the Libyan city of Sabha and subsequent road and airport closures left several hundred migrants stranded in the town until the violence decreased. The route from the major transit point of Agadez to Sabha is one of the main routes for Western and Central African migrants who travel through Niger to reach Libya. It is also one of the most dangerous parts of their trip as it involves crossing the desert (Altai Consulting/UNHCR, 2013; Lutterbeck, 2013). In the 2007 study by De Haas, Agadez was considered an important crossing point where migration routes bifurcate to Sabha in Libya or Tamanrasset in Algeria (see Figure 3). Earlier studies also recognised the significance of the city (e.g., Simon, 2004; Brachet, 2005; Monzini, 2007).

There are other important hubs where migrants and smugglers consolidate their activities. For example, migrants departing from Bamako in Mali generally stop in the city of Gao (Mali). From there they proceed to Kidal and Tessalit (Mali) and cross the Algerian border to Tamanrasset, where they are transferred to vehicles with Algerian license plates (UNODC, 2010).¹ Algeria is

¹Altai Consulting/UNHCR, 2013; Global Initiative against Transnational Organized Crime, 2014.

easy to reach for Malian passport holders, who do not need a visa to enter the country; many migrants therefore buy counterfeited Malian passports to facilitate their travel. Migrants also access Tamanrasset from the city of Agadez before travelling onwards to Libya or Tunisia (Global Initiative against Transnational Organized Crime, 2014). Fargues stated in 2009 that more than 40 percent of the inhabitants of Tamanrasset are irregular migrants originating from bordering countries (Fargues, 2009).

Through the above mentioned irregular migration routes the migrants use different modes of transportation such as – trains, buses, inflatable rafts, rickety fishing boats, speed boats and of course on foot. They manoeuvre their way through dangerous situations, along bush paths, through deserts and inlets, to avoid authorities and check points. The journey is often made in stages and spread over many years, (Kohnert). These irregular migrants often fall into the hands of bogus agents who swindle them off their hard-earned money with the promise of safe passage by boat to the EU.

Through the entire journey, the migrants face rape, torture, slavery and loss of lives in addition to risk of dehydration during the long trek across the Sahara desert and of shipwreck during the sea crossing and many lose their lives (Boubakri, 2004).

Therefore, irregular migrants from different regions of Africa cross the European border through dangerous routes of the Mediterranean. As a result loss of lives and degradation of human rights from the beginning up to destination occur. So that The AU has been working and formulation policies regarding the Internal Displaced Persons, Refugees and also irregular migrants and free movement of people. Also the European union have policies frame works regarding asylum and migration and free movement of people and goods as the area of destination it introduced the implementation of handling the migration crisis. Both AU and EU have adopted policy frameworks towards regulation irregular migration. In order to address the root causes, on the areas of migration and development and other related issues. So this thesis will discuss those policy frameworks in regulation of irregular migration their links and their implementation towards coherence under chapter three.

1.3 Overview of Existing Mechanisms

Due to the impacts of irregular migration over the human security and state security aspect the AU made some motions concerning refugees and internal displaced persons (IDPs). The OAU passed resolutions on refugees and displaced persons in Africa in 1992. After subsequent summits and meetings member states were asked to review the draft Convention in preparation for the Summit in 2007-2008 and the draft version was adopted at the 3rd AU Ministerial Conference on Refugees, Returnees and IDPs in November 2008. The member states generally welcomed the idea of codification and participated actively in the drafting process. In October 2009 (African Union, 2009b), the Convention was signed at the Special Summit (originally planned for 2008) in Uganda (Abebe, 2010).

The Abuja Treaty establishing the African Economic Community, signed in 1991, commits African countries progressively to bring about the free movement of persons, and to ensure that Community nationals enjoy the right of residence and right of establishment (Klavert, 2011).

The African Heads of State and Government met in Cairo in 1995, making recommendations on the legal, economic, political, social and administrative aspects of inter-African migration. The Assembly of Heads of State and Government endorsed these recommendations in 1996 (African Union, 2008a).

In parallel with the negotiations on the strategic framework, an expert meeting was held in Algeria to prepare a Common African Position on Migration and Development in 2006, in preparation for a conference with the European Union on the same topic. The Position was adopted at the AU Summit in July 2006, prior to the Africa-EU Conference on Migration and Development in November in Libya. The Position (African Union, 2006c) highlights 11 priority issues and makes a number of recommendations for action at national, continental and international levels.

The EU has always perceived migration as one of the priorities of its relations with Africa, even prior to the AU's formation and the adoption in 2007 of the Joint Africa-EU Strategy, which includes a Partnership on Migration, Mobility and Employment (Klavert, 2011).

At an international level, the AU called on the EU to implement the Cairo Plan of Action, and to recognize academic and professional qualifications obtained in Africa. It called for visa facilitation to ease the movement of persons and reduce the role of traffickers, requested all actors to ratify the UN Convention on the Protection of the Rights of All Migrant Workers, and called on developed countries to reduce the costs of money transfers (Adepoju,2008).

The EU and the OAU met for the first time at summit level in Cairo in 2000, where they committed themselves to adding a new strategic dimension to the global partnership between Africa and Europe. They adopted the Cairo Plan of Action during this summit.

The Joint Declaration (AU & EU, 2006) adopted in Tripoli commits the two parties ‘to a partnership between countries of origin, transit and destination to better manage migration in a comprehensive, holistic and balanced manner, in a spirit of shared responsibility and cooperation’.

Recently ,The EU–Africa Summit, taking place in Valletta on 11-12 November 2015, gathered together representatives of EU Member States, EU institutions and specialized agencies, members of the regional policy dialogues with countries along the western migratory route (Rabat Process) and the eastern migratory route (Khartoum Process), observers to the Rabat process, representatives of the African Union Commission, regional and international organizations such as the Economic Community of West African States (ECOWAS) Commission, as well as the League of Arab States, the United Nations (UN), the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM). The European Parliament represented by its President, Martin Schulz.

The discussion was structured around five specific areas: development benefits of migration and tackling the root causes of irregular migration and forced displacement, legal migration and mobility, international protection and asylum, The prevention of and fight against irregular migration, migrant smuggling and trafficking of human beings, and Making progress on return arrangements and readmission agreements.

The summit aims to produce not only a political declaration underlining the commitment of the countries of origin, transit and destination to forge stronger partnerships on migration but also an Action Plan (AP) building on a review of ongoing and already planned measures, as well as adding new concrete actions to address migration. (Gatto, 2015)

Accordingly, the study tried to analyze the gaps regarding on the issue of regulation irregular migration with respect to the frameworks of AU and EU. As previously done studies did not cover the implementations of those frameworks done by the organizations. Also the paper try to compare and contrast the frameworks of the EU and AU with regard to irregular migration with the interests of the EU and AU.

1.4 Statement of the Problem

Migration represents both opportunity and a challenge. While well-managed migration may foster progress and welfare in origin- as well as destination countries, its mismanagement may put social cohesion, security and national sovereignty at risk. (Philippe De Bruycker, 2013).

In recent times Irregular migration becomes the global issue .From various African countries due to various reasons number of migrants flow through the Mediterranean, Gulf of Aden, and the South Africa routes. These Routes put the migrants in to the grave violations of human rights such as death, slavery, torture and gender based violence. In the last two decades, the Mediterranean Sea has become the most porous and dangerous border between Europe and its neighbors, according to UNHCR (2014).

Based on media reports, an Italian NGO estimated that 15,016 migrants had died or were missing at sea between January 1998 and 30 September, 2014 (Fargues & Bonfanti, 2014). Fargues and Bonfanti (2014) estimate that the risk of dying while crossing the Mediterranean Sea is close to two percent. Irregular migrants from the East, west and Central African routes are among the victims.

Both the AU and the EU have long been committed to a normative framework. While progress on norm-setting has been relatively swift, it is regrettably very slow on implementation. Since The policies put forward in the advanced AU-EU policy documents require coherent, consistent and comprehensive implementation, Due to the variation of priority and interests between the

sending, transit and host countries created a policy gap. In the mean time the escalated number of ‘mixed migration’ resulted huge challenges for governments and international organizations with regard to promoting the rights of migrants, border management, ensuring national security and correct immigration procedures, and countering the activities of criminal networks.

1.5 Objective of the study

1.5.1 General Objective

The general objective of the study is to assess the legal and policy frameworks of the European Union and African Union in regulating irregular migration. In addition to that the study try to identify the compatibility between the frame works of AU and EU in regulation of irregular migration with regard to Human security and State security.

1.5.2 Specific Objectives

- Identifying the AU and EU frameworks with regard to irregular migrants, refugees and mixed flows.
- Identifying the links between the AU and the EU policy frameworks with regard to irregular migrants, refugees and mixed flows
- Draw some policy recommendation to implementing those policy frame works of the EU and AU with regard to Human and State security perspective.

1.6 Research Questions

- What are the legal frameworks of AU and EU regulating irregular migration from Africa to Europe or vice versa?
- What are the links between the policies of EU and AU concerning irregular migration?
- What are the mechanisms to implement policies in regulating irregular migration?

1.7 Research methodology/methods

1.7.1 Research design

The basic goal of this thesis is to come up with a sound, detailed and clear understanding of the policy frameworks of AU and EU in regulation of irregular migration and their implementation. So as to obtain necessary data for such kind of investigation the appropriate methodological design is qualitative research design.

Because, it is appropriate to understand, explain, explore, the policy frameworks regarding irregular migration. The study designs mainly entail the selection of interviewees from whom the information, through an open frame of enquiry. The parameters of the scope of a study, and information gathering methods and processes, are often flexible and evolving; hence, most qualitative designs are not as structured and sequential as quantitative ones. On the other hand, in quantitative research, the measurement and classification requirements of the information that is gathered demand that study designs are more structured, rigid, fixed and predetermined in their use to ensure accuracy in measurement and classification (Kumar, 2011, pp. 117-118)

1.7.2 Literature Review and Content Analysis

For the purpose of this research, data were collected from document analysis pertaining journals, books, regional, continental and international laws, conventions, declarations, researches, conference data, protocols brochures. researches done in relation to irregular migration.

Literatures were selected based on their relevance to the research questions. Literatures giving backgrounds, conceptualization of irregular migration, theoretical perspectives of migration and security nexus and were reviewed.

1.7.3 In-depth Interview

Most of the data collected were from policy frameworks and key informants since the research concerns with the policy frameworks and their gaps on implementation. This technique has provided the research with the opportunity to get relevant data from appropriately selected informants. As the design of the research indicates, this research is based on detailed information about matters directly and indirectly related to the topic under investigation. Logically, this demands in-depth account of the key informers in policy making process.

Accordingly, in-depth individual interview with key informants, of higher officials on the policy making process has been used as primary data collection tool. To be specific, key informants as Migration Consultant for the AU and the Intergovernmental Authority on Development (IGAD), and Former Programme Coordinator for Migration at the AU Commission and Adjunct Assistant Professor at Addis Ababa University and Pillar, Head Transnational Organized Crime at IGAD SECURITY SECTOR PROGRAM (ISSP) were interviewed.

1.7.4. Sampling Techniques and Sample Size

This research is a qualitative type which is intended to obtain a clear picture and make the necessary recommendation for that particular setting. Accordingly, it is the appropriateness of informants that makes the difference than how many informants have been involved.

Hence, the sampling techniques for this research is purposive sampling targeting those individuals who have the highest knowledge because of their:

- Position at the policy making process;
- Strongest position in IGAD member States as decision makers or advisors in migration and transnational organized crime issues;
- Special exposure to the subject matter of this study as researchers, stakeholders, responsibilities or in related ways.

By employing the criteria and sampling methods, a total of 2 individuals, who were willing, have been interviewed.

The interviews were conducted mainly by using set of questions indicated under Annex-1 which are attached at the end of this Thesis.

Data were collected so as to understand policy frameworks of AU and EU and the joint frameworks and their implementation were reviewed and analyzed.

1.7.5 Data Analysis

The data analyzed by content and comparative analysis of the policy frameworks of AU and EU in which a careful, detailed, systematic examination and interpretation of the primary data with the secondary data.

1.8 limitation of the study

Since the thesis needs the opinion of officials on the implementation several key informants were not available for interview due to official engagements. Some offices and dignitaries have refused to give information directly or through extended and repeated appointments.

To overcome the aforementioned limitations, the researcher has managed to refer over 40 materials and communications on their implementation of the European policy frameworks.

1.9 Organization of the Study

This study consists of five chapters each of which is further divided into sections and subsections. Chapter one is about the introductory part of the thesis. It includes background of the problem, statement of the problem, research questions, objective of the study, methods and methodology

Chapter two deals with the literature review of conceptual and theoretical framework of irregular migration. Chapter three mainly elaborates the legal and institutional framework for the Irregular migration on African Union and European Union level separately and jointly. The discussion includes identification of the applicable law in situations of irregular migration, the essence of the Guiding Principles on protection of migrants.

Chapter four is principally devoted to the analysis of the Gaps between normative frame works and implementation on the frameworks of African Union and European Union.

Chapter five forwards the conclusion arising from the findings of the research. Here major observations and outcomes of the thesis are summarized.

CHAPTER TWO

REVIEW OF RELATED LITERATURE: CONCEPTUAL FRAMEWORK

Introduction

There is no clear universal definition for the concept of irregular migration rather it has links with the concepts of human smuggling and trafficking. Because the concepts share something in common: illegal border crossing. But on the other side the consent of the person is the key element for the difference between smuggling and the trafficking. Irregular migration cover the wider concept since it is defined as illegal entry and stay. On the other hand those concepts of irregular migration have nexus with security studies. Since the nature of migration have influence on policy making debates towards human security and state security, and balanced approaches.

So this chapter deals with the conceptualization of irregular migration and related concepts, as human smuggling and trafficking in the first and the policy approaches to wards migration and security nexus is discussed.

2.1 Conceptualizing and defining of irregular migration

This thesis uses the terms ‘irregular’ migration and ‘irregular’ migrant(s), even though scholars argue the term ‘irregular’ is problematic but still preferable than other terms such as illegal. Because, the term ‘illegal’ can be criticized at least in three ways (Koser, 2005) . First its connotation with criminality. Most irregular migrants are not criminals. This has been emphasized by the UN Special Rapporteur on the Rights of Non Citizens, whose final report recommends that: ‘Immigrants...even those who are in a country illegally and whose claims are not considered valid by the authorities, should not be treated as criminals’ (E/CN. 4/Sub. 2/2003/23 Para 29). Second, defining persons as ‘illegal’ can also be regarded as denying their humanity (Ochoa-Llido 2004). It can easily be forgotten, such migrants are human beings who possess fundamental rights whatever their status (CDMG, 2004). Third, and of particular concern to the Office of the United Nations High Commissioner on Refugees (UNHCR), is the possibility

that labeling as ‘illegal’ asylum seekers who find themselves in an irregular situation may further jeopardize their asylum claims. According to Koser,

The two other terms that are often used in this context are ‘undocumented’ and ‘unauthorized’. It is sometimes used to denote migrants who have not been documented (or recorded), and sometimes to describe migrants without documents (passports etc.) Neither situation applies to all irregular migrants, yet ‘undocumented’ is often used to cover them all. Similarly, not all irregular migrants are necessarily unauthorized, and so this term too is often used incorrectly. A final term worth referring to is ‘irregular secondary movements’, which is used specifically in the context of asylum seekers and refugees (Koser, 2005).

This thesis uses the word irregular migration. Since scope of the study deals with the migration movements consists of different undocumented group of people. Such as refugees, asylum seekers, economic migrants, trafficked persons and so on. In general they can be called mixed movements.

2.2 Irregular migration and other related concepts:

2.2.1 Irregular migration and the concepts of Smuggling of migrants and trafficking in persons

Irregular migration as mentioned above can be defined in critical difference made in the literature on irregular migration between irregular *entry* and irregular *stay* (De Haas, 2008). According to De Haas a migrant can enter in to a country without proper authorization of the country of origin and destination or transit by different ways such as a clandestine movement so, the migrant will have a status of irregular migrant due to documentation and laws of the countries mentioned. Later on, according to the laws of the host country the migrant could have legal status to stay in the country or not(De Haas 2008). On the other hand, the migrant could have entered in the country with a regular manner but due to over stay in the country without proper authorization of the specific country could convert the migrant in to an irregular status (De Haas 2008).

Individuals can enter irregularity through three main routes: 1) entering a country without proper authority, either through clandestine entry or with fraudulent documents; 2) entering with authorization but overstaying that authorization, and; 3) deliberately abusing the asylum system (Uehling, 2004). Koser (2005; 2009) adds an additional route: movement into a territory under the control of smugglers and traffickers.

Concepts of migrant smuggling and migrant trafficking have strong links with irregular migration. And

2.2.2 Irregular migration versus Human smuggling

In looking to the relationship between the concepts of irregular migration and smuggling, from the perspective of their definition there is no universally accepted definition for irregular migration, however, most academic experts prefer the definition given by the IOM, which holds the main forms of irregular migration such as illegal entry, overstaying and unauthorized work (UNODC, 2011).

In contrast with irregular migration, the legal definition of smuggling of migrants finds wide acceptance among the academic community, which usually refers to articles 3 and 6 of the Smuggling of migrants Protocol (UNODC, 2011). Also The Palermo protocol defines human smuggling as “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident” (UNODC, 2010).

In looking at the relationship between the two concepts, smuggling of migrants plays a crucial role in facilitating irregular migration, as smugglers may provide a wide range of services, from physical transportation and illegal crossing of a border to the procurement of false documents (Heckmann, 2007).

2.2.3 Irregular migration versus human trafficking

The concept of trafficking in persons, defined under article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Trafficking in Persons Protocol) as:

The recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.

The concept of human trafficking with regard to irregular migration has a wide range of commission of crimes against human rights. It also have a significant contribution for the flow of irregular migration.

2.2.4 Human trafficking versus Smuggling

The academic debate over precise definitions for the concepts of trafficking and smuggling arose only after the mid-1990s, but those concepts were still used interchangeably in academic literature and expert reports published by intergovernmental organizations in the early 2000s (UNODC, 2011). There are basic differences between smuggling of migrants and trafficking in persons, as

Source of profit. Both smuggling and trafficking have the primary purpose of making profit (UNODC 2010). In case of trafficking the profit is one sided and it is an exploitation but in the smuggling both the migrants and the smuggler are beneficial by the act of smuggling (UNODC 2010).

In contrast, smugglers generate their profit through facilitating illegal entry or stay. After a migrant has been enabled to illegally enter or stay in a country, the relationship between migrant and smuggler usually ends. But, trafficked persons after arrival must produce profit for the traffickers. Their relationships with the traffickers, or with organizations or individuals who have paid for their delivery, are longer term, victim-exploiter relationships, in which the human rights of the victim are being abused (Kleemans, 2014).

Transnationality. Smuggling of migrants always has a transnational dimension involving at least two countries (UNODC 2010). The objective of smuggling of migrants is always to facilitate the illegal entry or stay of a person from country A in (to) country B (UNODC 2010). Trafficking in persons may also involve the illegal entry or stay of a person, but it does not always. The transportation and stay of a victim of trafficking in persons can also occur in a legal way. That is, victims of trafficking are not limited to the group of people who do not have legal opportunities to migrate. Moreover, trafficking in persons may occur within the home country of the victim without involving any border crossings (UNODC, 2011).

Victimization. Smuggling of migrants does not necessarily involve the victimization of the migrant. Smuggled migrants generally consent to be smuggled. However, other crimes are often committed against smuggled migrants during the smuggling process, involving violence or endangerment. It is also possible that smuggled migrants might retract their consent during a smuggling operation. In contrast to smuggling of migrants, trafficking in persons is always a crime against a person. Victims of trafficking have either never consented—e.g. if they have been abducted or sold—or, if they have given initial consent, their consent became meaningless because of the means the traffickers used to gain control over them, such as deception or violence (UNODC, 2011).

Consent - the trafficked migrants had no meaningful decision to migrate or transferred for their exploitation so they are completely in a vulnerable position. While the smuggled migrants have some consent to move across boarder and have some clue of their destination even if their freedom to choose may narrow or enlarge according to the circumstances (ICHRP, 2010).

The issue of mutual consent, common in human smuggling, is not always decisive in distinguishing between smuggling and trafficking (Herman 2006; Van Liempt and Doornik 2006); trafficking also usually starts with a consensual agreement between the trafficker and the future victim (Andrees 2008).

In the case of smuggling the migrants are mixed which consist all groups of population. In the trafficking mostly the flow consist women and children (ICHRP, 2010).

However, due to the complex nature of migration concepts of smuggling and trafficking becomes overlapped and confused at some point. For example from the initial point the person may had an agreement to cross the border but en route the relationship might between the smuggler and the migrants it is been witnessed that children kidnapped and women enslaved and exploited (ICHRP, 2010). Also the relationship between the smuggler and the migrant might continue with coercion and so on.

The concepts of human trafficking and smuggling have a clear boundary on their legal effects. Commission of human smuggling is a clear violation of migration laws of the country as entering the country without authorization or crossing the boundary without permission. This might be done by some groups who have a humanitarian purpose to help vulnerable groups of people without making profits. But the human trafficking action is the crime against humans for the purpose of profit making which ends up with victimization of the trafficked person.

2.3 Migration and security Nexus

The migration/security nexus can be broadly viewed from two different directions: from a security studies perspective and from a migration studies perspective (Huys mans, 2009). Indeed, the fields of security studies and migration studies are themselves complex and multi-faceted. Within security studies, security can either be approached in strategic terms as a value or condition to be achieved, or it can be approached in critical terms as a knowledge, discourse, technology or practice (Huys mans, 2009). Within migration studies, migration can refer relatively narrowly to economic migration, or it can be approached more broadly to incorporate forced migration, thus bringing refugee studies and labor migration studies into a broader field of research (Huys mans, 2009). This suggests that the very meaning of the concepts of migration and security are highly contested, and are used to identify various practices that articulate different rationales.

2.3.1 Strategic and humanitarian approaches to migration to security nexus

There are two key ways in which these strategic analyses draw attention to the relevance of migration for security studies. The analysts of this approach calculate the impact of

migration on the national security as of weather the demographic rate of the refugees occurred as a violent political actors and the availability of sufficient work force. (Choucri 2002; Heisbourg 1991; Loescher 1992).

In this regard, scholars at the nexus of security and migration have opened up the area of migration studies beyond its classical economic focus on the state's selection of migrants (e.g. Constant and Zimmerman 2005).

Second, strategic analysts draw attention to the relevance of migration for security studies by showing how security concerns impact on a state's migration policies (Loescher 1992; Rudolph 2006; Vernez 1996; Weiner 1995; Weiner 1992/93). In particular, such analyses focus on formulating general laws about how migration movements constrain or influence security policy, and vice versa.

For example, it has been argued that: '... as geopolitical threats increase, policies regarding international labour mobility (migration) should become relatively more open in order to facilitate the production of wealth to support defense' Although migration (or at least certain forms of migration) is often defined as 'threatening' national security, (Rudolph 2006:31).

In this regard after the 9/11 attack opened a new debate for security experts as a world of benefits and opportunities, but also one that offers all manner of potential forms of crimes and of threats (Walters, 2010). strategic analysts who approach security as a value or condition to aspire to have also made the case for less restrictive migration policies precisely through using security as a frame of reference.

2.3.2 Human security analysis

In contrast to strategic analyses of migration and security, analysts of human security focus attention on the security of the individual over that of the state (Huys mans, 2009). Analysts in this field emphasis on human security over state security can be understood as increasingly necessary in a context whereby political concerns regarding security and migration

have shifted beyond the state to the transnational or global level (Huysmans, 2009). In normative or ethical terms, a focus on human security signals a shift away from the state as *the* subject of security, and brings into view the security of humans who migrate. Such a focus largely entails a humanitarian approach, which has been re-affirmed in relation to refugees and asylum seekers (Nadig 2002), as well as in relation to the trafficking of (primarily women and children) migrants (Clarke 2003). Jean S.Kang argues that sanctioning human trafficking and other forms of exploitation are in assumption rather than prove, so the situation made crossing borders become more expensive (S.Kang, 2014). A platform for human security should address the need for individual protection and empowerment. Rather than tackling the state-centered factors to reduce the rate of human trafficking, a human-centered approach to challenge the conditions of human trafficking is imperative (S.Kang, 2014).

2.3.3 Normative dilemmas and the migration-security nexus

The normative dilemma analysts strongly argue the free movement of people must be identified in the field of security, from the concern that taking migration as a threat should be dignified, characterized prior to their nature, such as characterized ‘asylum seeker’ or ‘illegal migrants’ (Huysmans, 2009). Thus they argue the migration policy should be developed in terms that increase the security of both the state and migrants.

2.3.4 Critical analyses of the Migration/Security nexus

Over recent years public opinion regarding migration in many countries within the global North has become hostile toward ‘asylum seekers’ and ‘illegal migrants’ (Huysmans, 2009). For example European states, parties in whose platforms anti-immigrant or nativist themes are prominent, for instance In France, the Front National won 25% of the votes in local elections in March 2015. In provincial elections in late May in Austria, the anti-immigrant Freedom Party of Austria more than doubled its vote since the previous election to gain 27% of the vote (Matthee, 2015). The nativist Danish People’s Party obtained the second place but was the real victor of the general election in Denmark on 19 June (Matthee, 2015).

Due to such figures one can conclude European states are not welcoming for migrant. By generalized cutbacks in social protection and public services, combined with deliberate scapegoating of migrants, in which rights of migrants are limited by schemes of social, economical, and human right aspects.

In analyzing the politics of insecurity, critical security analysts examine the struggles over the legitimacy of specific methods of governing the migration area (e.g. storing finger prints on police databases versus privacy rights) and the legitimizing effects that can be derived from using security language in politics (e.g. evoking terrorism and asylum abuse to politically justify unpopular security measures in airports). Such analysts focus on the precise nature and effects of using security instruments, knowledge and discourses in the area of migration (Aradau 2008; Huysmans 2006), as well as on the institutions sustaining the process (e.g. Pilkington 1998).

But in this regard Walters strongly argues that

The problem for this critical perspective is not that identified by conventional approaches, namely how to design better security policies, or how to 'balance' security policies with other policy objectives such as free(r) trade and respect for human rights. Instead, it is the recognition that the security perspective, deeply institutionalized as it is in this apparatus of control and advanced by innumerable vested interests, actually obstructs and marginalizes the space in which other imaginations and a different politics of migration might take shape. Security policy, in other words, is not the answer but the problem. For it impoverishes our ability to fashion a society that might actually overcome the debilitating dualisms which plague the present, binaries like us/them, national/foreigner, citizen/illegal, worker/scrounger, etc (Walters, 2010).

2.3.5 Critical political theory of Migration

Critical security studies scholars have opened up a range of challenging questions that are important to the analysis of the migration/security nexus: What does framing social and political relations by means of security practice do to the assembling of relations between people? And what is the leverage of security discourse, technology, knowledge and

practice in struggles for political and professional legitimacy? To this theory security is conceived as constitutive mediator on the relation between mobility and politics. So, this theory conceived security as having various meaning and as constituting social and political techniques of governance that effectively shape human mobility.

On the one hand, the analysts raise a question on the issue of how migration becomes securitized? According to Wæver and Buzan , securitization is a ‘linguistic action’ or a ‘speech act’ marked by a specific rhetoric of ‘urgency’ and ‘priority’. ‘Speaking security’ goes as far as to influencing policies. Also Huysmans argues, ‘policies depend heavily on the language through which they are politicised’. The role of language and speech acts, therefore, is not merely to describe, but also to mobilize certain meanings, creating a ‘domain of insecurity’, which is further tackled through specific security policies. on the other hand migration is a phenomena which transforms the administrative or a structure of international order (Berman 2003: Doty1996). Also a debate raised on desecuritization of the issue of migration which took migration as a ‘threat’ can be moderated. Thus, to place the Security with in agenda that researches the political nature of mobility. So, security will become the impacts on shapes, constrains mobility relate than being the central focus (Huysmans, 2006).

As shown the above, the discussions on migration and security nexus circulate concerning the state act of enacting laws and policies. The debates on the acts and reaction of the states against the phenomena underlined from different perspective such as state security and human security (migrant) perspective. Accordingly this thesis tries to relate those approaches towards the policies of African Union and the European Union in regulation irregular migration. Since the policies and the reactions vary one to another, it is important to discuss and develop a theory with regard to it.

CHAPTER THREE

THE MIGRATION POLICY FRAMEWORKS OF THE AFRICAN UNION AND THE EUROPEAN UNION

Introduction

Migration crosses both national and regional boundaries. It is an issue that affects all policy areas economics, politics, social policy and security. The results and impact will depend on the degree of engagement, implementation and enforcement. Africa and Europe share the common agenda on migration since the concept of migration have links with different areas of security and development with the country of origin, transit and destination. So that the need for managing migration is the prioritize issue for both. This chapter discusses the objective and the recommendation of EU-Africa policy frame works in regulation of irregular migration.

This chapter has three subsections on the AU, EU and Joint Africa-EU migration frameworks. On the first subsection dealt with the African policy frameworks of migration since the time of the OAU refugee convention that dealt with the protection refugees, the Abuja treaty on the establishment of African economic committee, the Cairo plan action on the Framework for the African migration, common position of action and development, frameworks on refugees, returnees and internally displaced persons, The AU Convention for the protection and assistance of internally displaced persons in Africa.

In the second sub section the European Union common policy frameworks concerning free movement of people and migration will be discussed. Migration policy introduced by EU commission called “The EU Agenda on Migration” the measures reducing the incentives for irregular migration, Addressing the root causes of irregular and forced displacement in third countries , The fight against smugglers and traffickers , Return , Border management ,Europe's duty to protect: a strong common asylum policy , coherent implementation of the Common European Asylum System , A new policy on legal migration , Well managed regular migration and visa policy, Effective integration Maximizing the development benefits for countries of origin policies will be discussed.

The third sub section Since African and EU share a migration agenda on migration they enacted policies frameworks concerning migration and development. Number of summits and meetings held. As a result , Cairo Plan of Action , Ouagadougou Action Plan to Combat Trafficking in Human Beings, especially Women and Children , Euro-African Conference on Migration and Development in Rabat (2006) , The Joint Africa-EU Declaration on Migration and Development The Joint Africa EU Strategy – partnership on Migration, Mobility, Employment & Higher Education (2007) will be discussed.

3.1 Migration Framework for Africa

The issue of migration concerns national, regional, and international levels. Developing a strategic framework for migration policy in Africa could contribute addressing the challenges posed by migration and to ensure the integration of migration and related issues into the national and regional agenda for security, stability, development and co-operation (Council, Norwegian Refugee).

Member states of the AU are working towards free movement of people and strengthening intra-regional and inter-regional cooperation in matters concerning migration on the basis of the established processes of migration at the regional and sub-regional levels ((UNCHS), 2001)

The African Union prioritized the migration issue followed by number of summits and meetings concerning the issue of internal displaced persons, refugees and regular or irregular migration with the commitment to address: border problems that threaten peace and security in Africa; strengthening mechanisms for protection of refugees and to combat trafficking, investing in human resource development to mitigate problem of brain drain, to promoting regional integration and co-operation involving national and regional stakeholders, and to promoting economic growth, integration and trade through development of its infra-structure.so, there are number of policy frameworks done by the AU concerning the above issues with related to regulation of irregular migration (AUC, 2006).

Table 1 the African migration policy frameworks

No	Issue	Year
1	OAU the convention on the protection of refugees	1969
2	Abuja Treaty on Free movement of persons	1991
3	African common position on migration and development	1996
4	Migration Policy framework	2006
5	Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa	2009

3.1.1 Abuja Treaty of 1991

The Abuja Treaty for the establishment of the African Economic Community, signed in 1991, commits African countries progressively to bring about the free movement of persons, and to ensure that Community nationals enjoy the right of residence and right of establishment (Klavert, 2011) the Treaty entered into force in 1994, The treaty envisages the creation of an African Economic Community over a period of thirty four years using six defined stages of evolution (Adepoju, 2008). The complete free movement of persons in the regions and their partial free movement between the regions is one of the objectives of the first phase (2009-2012) of the AU's Minimum Integration Programme agreed with the regional economic communities (African Union Commission, 2010b).

As the building blocks of the continent, the AU's regional economic communities are responsible for promoting free movement in conjunction with intra-regional trade, which has reached very different levels in different regions. The African Union's role is to coordinate, monitor and evaluate (African Union Commission, 2010)

3.1.2 The Migration Policy Framework for Africa

The African Heads of State and Government met in Cairo in 1995, making recommendations on the legal, economic, political, social and administrative aspects of inter-African migration. The Assembly of Heads of State and Government endorsed these recommendations in 1996 (African Union, 2008a). In 2001, the Assembly of Heads of State and Government decided to create a strategic framework for a migration policy in Africa. It took a further five years before the framework was actually adopted (Klavert, 2011). The Migration Policy Framework for Africa is a wide-ranging document covering nine key issues

- Labor migration
- Border management
- Irregular migration
- Forced displacement
- The human rights of migrants
- Internal migration
- Migration data
- Migration and development
- Inter-state cooperation and partnerships.

The document recommends strategies and the Executive Council mandated the African Union Commission to develop a follow-up mechanism (African Union, 2006a).

Box 1 :The Migration Policy Framework for Africa

Objective: developing a comprehensive and balanced approach to migration in light of the increase in

- migratory flows.
- Agreements:
- Migration as an effective tool for development: enhances income distribution, productive growth and the empowerment of women, and improves partnership amongst the developed and African countries.
- The loss of human resources and brain drain is a handicap for sustainable development.
- Labour migration is beneficial to both countries of origin and countries of destination. African countries should establish regular, transparent and comprehensive labor migration policies.
- Remittances play a significant role in developing nations, but should not be confused with official development aid.
- African states should strengthen and enhance the involvement of the Diaspora to foster the migration development nexus.
- Irregular migration is closely linked with peace, security and stability. Combating irregular migration and establishing migration management systems can help to foster security and stability.
- Migrants' human rights should be safeguarded.
- More women migrate and their rights must be taken into particular consideration in migration management.
- Increasing numbers of children migrate irregularly. The challenge of child trafficking must be addressed.
- The consequences of the migration of elderly people need to be understood in order to cater for their needs.
- There is a need for common regional policies for the management of migration within RECs. Capacity-building initiatives should be promoted at national, regional and continental levels.
- Bilateral and multilateral efforts to strengthen cooperation on labour migration are needed.

Implementation:

- Member states, RECs, the African Union and the European Union.
- Role of the AUC: Chairperson to engage with the AU at ministerial conferences, and present positions at conferences and at the UN High-Level Dialogue on Migration and Development. Reports on follow-up: African Union 2008a, 2009d.

3.1.3 The African Common Position on Migration and Development

In parallel with the negotiations on the strategic framework, an expert meeting was held in Algeria to prepare a Common African Position on Migration and Development in 2006, in preparation for a conference with the European Union on the same topic. The Position was adopted at the AU Summit in July 2006, prior to the Africa-EU Conference on Migration and Development in November in Libya (Klavert, 2011). The Position (African Union, 2006c) highlights 11 priority issues and makes a number of recommendations for action at national, continental and international levels. At a continental level, the Position recommends:

- Creating legal frameworks for combating illegal migration;
- Concluding cooperation agreements to manage migration;
- striking a balance between security for legal migrants, freedom of movement and the : OAU Refugee Convention humanitarian obligation to protect;
- Setting up mechanisms to bring together national focal points on migration;
- Promoting effective border controls;
- Encouraging the involvement of the diaspora.

At an international level, the AU called on the EU to implement the Cairo Plan of Action, and to recognize academic and professional qualifications obtained in Africa. It called for visa facilitation to ease the movement of persons and reduce the role of traffickers, requested all actors to ratify the UN Convention on the Protection of the Rights of All Migrant Workers, and called on developed countries to reduce the costs of money transfers

Box 2: The African Common Position on Migration and Development

Objectives

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

Recommendations:

- establish regular, transparent and comprehensive labor migration policies;
- develop a pan-African framework for the free movement of persons;
- enhance the role of the AU and other regional organizations in effective border management;
- harmonize sub-regional migration policies;
- strengthen policies to prevent trafficking and develop regional countermeasures;
- create standards for return and readmission, implement the principle of non-refoulement;
- safeguard the human security needs of refugees;
- strengthen intra-regional cooperation in relation to the maximum influx of refugees
- formulate a strategic policy on the management of IDPs, address causes of internal migration;
- ensure the humane treatment of detained migrants and guarantee their access to the courts;
- promote the integration of migrants;
- gather data for effective migration management, policy and cooperation, develop common data standards;
- foster stronger relations with African diaspora;
- promote a NEPAD strategy for the retention of Africa's human capacities;
- foster the transfer of skills;
- encourage remittances.

Implementation: member states, RECs and the AU. No resource mobilisation frameworks are provided, but international organisations are invited to provide technical assistance and resources. AUC mandate: Develop a follow-up mechanism. Reports on follow-up: African Union 2008a, 2009d.

3.1.4. AU frameworks on refugees, returnees and internally displaced persons

3.1.4.1 The OAU Refugee Convention

In 1969 the OAU the convention on the protection of refugees was enacted as one of the most comprehensive legal document in the protection of refugees worldwide (Klavert, 2011). This convention has the humanitarian approach towards solving the problem of refugees. Also the obligations of the host states and refugees clearly set. As member states must receive and settle recognized refugees, □member states may appeal to the OAU or directly to other member states to lighten their burden refugees may not undertake subversive activities against another member state, □no refugee is to be repatriated against his or her will, □refugees who voluntarily return must not be penalized, member states must issue travel documents for refugees. The implementation of this convention as member states have obligation to provide the OAU Secretariat with information and data on: the condition of refugees; the implementation of the Convention; laws, regulations and decrees currently in force in relation to refugees.

Within the African Union, it was felt that an IDP Convention was also needed alongside the OAU Refugee Convention, as the majority of forced migrants in Africa in the past two decades had been IDPs (African Union, 2009a).

3.1.4.2. The AU Convention for the protection and assistance of internally displaced persons in Africa

Under the Kampala Convention (African Union, 2009c), States have a primary duty and responsibility to provide protection and human assistance to IDPs within their territory. The Convention obliges signatories to prohibit and prevent arbitrary displacement, guarantee the human rights of IDPs under international humanitarian law, and devise an early warning system. The Convention includes a monitoring and compliance article (Article 14), formulated as the result of lengthy negotiations (Abebe 2010). This article proposes that a Conference of State Parties be established, to monitor and review the implementation of the objectives and enhance the capacity for cooperation. The same article also stipulates that this Conference should be convened and facilitated by the AU. When presenting their reports under Article 62 of the African Charter on Human and People's Rights and under the African Peer Review Mechanism (APRM, only applicable to members), the member states are required to specify the legislative

and other measures that have been taken to give effect to the Convention. The Convention does not contain references to international concepts like humanitarian intervention and the responsibility to protect. These were omitted so as to avoid problems with its adoption (Abebe, 2010)

Box 3 The AU Convention for the protection and assistance of internally displaced persons in Africa

Objective:

To create a legal framework to prevent or mitigate, prohibit and eliminate the root causes of internal displacement

Obligations

- prohibits arbitrary displacement as a result of various man-made causes, such as conflicts and development projects;
- prohibits armed groups and their members from engaging in arbitrary displacement, or other violations of the basic human rights of internally displaced persons;
- reiterates the individual responsibility of members of armed groups under national and international criminal law, for violations committed against IDPs
- **Implementation:**
- Conference of State Parties to monitor and review implementation.

3.2 The European Union Migration Policy Framework

The European Union (EU) is facing the largest refugee crisis since the end of World War II (EU Policy, 2015). The current situation has to be seen in a broader context of violent conflict and destabilization from wider neighborhood. In light of this, the council enacted number of policy frame work, signed international treaties to combat irregular migration and promote legal migration. This sub section deals with the development of the European union policy frameworks for free movement of people and the policy programmes concerning asylum and migration. The sub section also examines the regulation of irregular migration from the EU perspective specially, the policies handling the migration crisis since Europe struggles to manage its largest migrant crisis, especially in the year in 2015. The migration flow to Europe increased by 400% over the previous year and more than 1000% in 2012 (Human Smuggling and on the Horn of Africa-Central Mediterranean Route, 2016).

3.2.1 The Development of the European Union frameworks on migration and asylum

Ever since the Schengen agreement (1985), which was agreed upon outside the treaty framework of the European Union (EU), the Member States have increasingly discussed migration policy together (Plathner, 2013). The Schengen agreement was a framework between five EC Member States (Belgium, Netherlands, Luxemburg, Germany and France) to liberalize free movement among the countries (Plathner, 2013). Later the Amsterdam treaty (1997) incorporated the agreement into the treaty of the EU (Boswell & Geddes 2011). It also incorporated the Schengen agreement, provisions for an EU migration and asylum policy. Since the Amsterdam treaty came into effect 1999, the EU Member States have worked with the common migration and asylum policy through five year work plans (Plathner, 2013). The workplan from 1999-2004 was called the Tampere agreement, from 2005 to 2009 it was known as the Hague Programme, and the current work plan from 2010 until 2015 is termed as the Stockholm Programme (Plathner, 2013). Some member states like as Denmark, Ireland and Great Britain have opted out of EU common migration and asylum policy (Plathner, 2013). Denmark is only part of the common agreements necessary to the Schengen cooperation while Ireland and Great Britain have the possibility to opt-in on the agreement that suits the countries.

3.2.2 The Schengen Agreement

The Schengen agreement was a framework among five EC Member States (Belgium, Netherlands, Luxemburg, Germany and France) to liberalize free movement between them, the Amsterdam treaty (1997) later incorporated the agreement into the treaty of the EU.(Boswell & Geddes 2011: 58).The Agreement is considered as one of the major achievements of European integration. The creation of an internal area without borders where persons and goods can circulate freely has brought important benefits to European citizens and business alike. It is one of the key means through which European citizens can exercise their freedoms, and the internal market can prosper and develop (EU Policy, 2015).Many non EU nationals' business people and tourists can freely circulate without being subjected to entrance permission.

The provision of Schengen agreement require irregular immigrants or third country nationals need to be legal according to Art 5 of the agreement which provides the obligations to have (a) valid travel document, (b) valid visa, if required according to Council Regulation (EC) No 539/2001 of 15 March 2001, (c) justification of purpose of stay and sufficient economical resources for the stay (d and e) no alert on SIS nor considered public threat. In this regard the Schengen agreement in addition to the economic integration and developmental benefit among member states its wide application on the legality of migration towards third country nationals shows its wide and strong application.

3.2.3 EU common migration and asylum policy

The convention relating to the status of refugees is the basic document for the foundation of the asylum policy. It was in 1951 that the key to asylum policy and refugee reception was created by the Geneva Convention, a diplomatic conference in Geneva uniting representatives from 26 states (UNHCR Convention and Protocol:8) This Convention was first created to protect European war refugees from before 1st of January 1951 but was later amended with the protocol in 1967 to include all refugees without geographical limitations. (Article 1, paragraph 3). As of September 2011, 148 states were party to one or both of these instruments related to the status of refugees (UNHCR FAQ : 2). One of the most important rights granted by the Convention and its protocol is non refoulement in article 33 §1: “No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or

freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” The Convention and its protocol also include rights such as the right not to be punished for illegal entry or presence and the right to work for a granted refuge (art. 17-19) and the right to education (art 22) as well as the right to freedom of movement within the territory (art 26) and the right to courts (art 16) and the right to get traveling documents (art. 27 -28) . However, there are also obligations set out for the refugee; “[e]very refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.” (art 2) 39

3.2.4 European Union policy towards irregular migration

Irregular migration has become the major concern for the European Union. On this basis the European Council and the European Agenda on migration also called for a constructive effort to prevent further loss of lives at sea and to reinforce the EU’s overall cooperation with the key countries of transit and origin (COMMISSION, 2015).

The EU enacted an agenda which sets out four levels of action for an EU migration policy. That are first addressing the root causes of irregular migration and forced displacement in countries of origin and transit, second Promoting peaceful and inclusive societies for sustainable development agenda, third promotion of decent work by enhancing legal mobility and fourth, border management agenda including the fight against human trafficking and smuggling, and the effective sustainable return, readmission and reintegration of irregular migrants not qualifying for protection.

This section deals with the above mentioned agendas of the EU commission briefly. The major decision of the commission is addressing the root causes of irregular migration and forced displacement in countries of origin and transit. Promoting peaceful and inclusive societies for sustainable development agenda includes strengthening the rule of law, addressing human rights abuses, improving access to education, creating economic and equal opportunities. The promotion of decent work by enhancing legal mobility and building better governance included in the decision. On border management agenda the fight against human trafficking and

smuggling, and the effective sustainable return, readmission and reintegration of irregular migrants not qualifying for protection(COMISSION, 2015).

2015).

3.2.4.1 Reducing the incentives for irregular migration

There are many different motivations behind irregular migration. The journey of irregular migration is life treating up to death. After reaching the destination country for those whose asylum claim is rejected they continue their clandestine life which resulted exploitation. So that the European Union have an agenda on addressing the root causes which cause people to seek a life elsewhere, to crack down on smugglers and traffickers, and to provide clarity and predictability in return policies.

3.2.4.1.1 Addressing the root causes of irregular and forced displacement in third countries

One of the proposed ways of addressing the root causes of irregular and forced displacement is by forging partnership with countries of origin and transit and there are a series of established bilateral and regional cooperation frameworks on migration in place(COMISSION, 2015). These will be enriched by stepping up the role on migration of EU Delegations in key countries. Delegations will in particular report on major migratory related developments in the host countries, contribute to mainstream migration issues into development cooperation and reach out to host countries to ensure coordinated action. European migration liaison officers will be seconded in EU Delegations in key third countries, in close cooperation with the Immigration Liaison Officers Network and with local authorities and civil society, with the purpose of gathering, exchanging and analyzing information(EU ,policy 2015)

3.2.4.1.2 The fight against smugglers and traffickers

Action to fight criminal networks of smugglers and traffickers is first and foremost a way to prevent the exploitation of migrants by criminal networks(COMISSION, 2015). It would also act as a disincentive to irregular migration. The goal must be to transform smuggling networks from 'low risk, high return' operations for criminals into 'high risk, low return' ones. The action will build on immediate efforts to identify, capture and destroy vessels before they are used by criminal networks.

Proactive financial investigations, aiming at seizures and recovery of criminal assets, and actions against money laundering connected to migrant smuggling will be supported through enhanced cooperation with Financial Intelligence Units on financial flows and new cooperation with financial institutions, such as banks, international money transfer services, and credit card issuers (EU Policy, 2015). This will also draw on the improved information-sharing set out in the European Agenda on Security.

Another potential source of exploitation comes from employers inside the EU. Whilst promoting better integration into the labor market of legal migrants, the Commission will step up action against illegal employment of third country nationals, inter alia through better enforcement and application of the employers sanctions directive, which prohibits the employment of third-country nationals who have no right to stay in the EU.

But The Directive is criticized with some limitations – first, the lack of a concrete definition of seriously or severely exploitative conditions. This constitutes a key issue because victims facing ‘seriously exploitative conditions’ can be granted permits of a limited duration to stay during court proceedings, second, the actual level of protection given to victims of labor exploitation and the ways of ensuring access to legal channels and assistance for claiming compensation. Unfortunately, those migrants do not enjoy those rights. Third, the obligation of employers to notify public authorities when they hire a third country national, could put the migrant worker in an even weaker and more vulnerable position in front of the employer, who would be collecting private information about the workers (Sergio, 2010).

3.2.4.1.3 Return

One of the incentives for irregular migrants is the knowledge that the EU's return system – meant to return irregular migrants or those whose asylum applications are refused. The Directive has been transposed into national law by all States bound by it (all Member States except UK and Ireland; plus the 4 Schengen associated countries: Switzerland, Norway, Iceland and Liechtenstein) (EU Home affairs, 2015).

According to Euro stat, of the approximately 425 000 persons issued with a return decision in 2013, those who, as a consequence, have left the EU are approximately 167 000. Smuggling networks often play

on the fact that relatively few return decisions are enforced – only 39.2% of return decisions issued in 2013 were effectively enforced (COMMISSION, 2015).

To increase the enforcement rate, the EU need to ensure that third countries fulfill their international obligation to take back their own nationals residing irregularly in Europe. The EU will help third countries to meet their obligations by offering support such as capacity building for the management of returns, information and awareness campaigns, and support for reintegration measures(COMMISSION, 2015).

3.2.4.2 Border management – saving lives and securing external borders

The measures described above to address the situation in the Mediterranean today have been developed as emergency measures in response to a specific crisis (COMMISSION, 2015). The rules of engagement agreed for **Triton** operations² should be seen as the model for future action on the whole of the external land and sea border(COMMISSION, 2015).

Coastguards have a crucial role both for saving lives and securing maritime borders. Managing borders more efficiently also implies making better use of the opportunities offered by IT systems and technologies(EU Policy, 2015). The EU today has three large-scale IT systems, dealing with the administration of asylum (Eurodac), visa applications (the Visa Information System), and the sharing of information about persons or objects for which an alert has been created by the competent authorities (Schengen Information System)(COMMISSION, 2015). The full use of these systems can bring benefits to border management, as well as to enhance Europe's capacity to reduce irregular migration and return irregular migrants(EU Policy, 2015). A new phase would come with the "**Smart Borders**"³ initiative to increase the efficiency of border crossings, facilitating crossings for the large majority of 'bona fide' third country

² a border security operation conducted by [Frontex](#), the [European Union](#)'s border security agency. The operation, under Italian control, began on 1 November 2014 and involves voluntary contributions from 15 other European nations (both [EU member states](#) and non-members)

³ The Package proposed by the Commission in February 2013, suggesting the establishment of an Entry/Exit System (EES) and a Registered Traveler Programme (RTP). It aims to improve the management of the external borders of the Schengen Member States, fight against irregular immigration and provide information on overstayers, as well as facilitate border crossings for pre-vetted frequent non EU travelers

travellers, whilst at the same time strengthening the fight against irregular migration by creating a record of all cross-border movements by third country nationals, fully respecting proportionality(COMMISSION, 2015).

3.2.4.3. Europe's duty to protect: a strong common asylum policy

In 2014, a record 600,000 people applied for asylum in the EU. All asylum applications must be processed and protection granted to those who qualify(Commission, 2010). One of the weaknesses exposed in the current policy has been the lack of mutual trust between Member States, notably as a result of the continued fragmentation of the asylum system(COMMISSION, 2015).But the EU has common rules which should already provide the basis for mutual confidence, and a further development of these rules will allow for a fresh start(COMMISSION, 2015).

A coherent implementation of the Common European Asylum System

The priority is to ensure a full and coherent implementation of the Common European Asylum System. This will be supported by a new systematic monitoring process, to look into the implementation and application of the asylum rules and foster mutual trust(COMMISSION, 2015). In addition, working with the Member States and European Asylum Support Office (EASO), the Commission will give further guidance to improve standards on reception conditions and asylum procedures to provide Member States with well-defined and simple quality indicators, and reinforcing protection of the fundamental rights of asylum-seekers, paying particular attention to the needs of vulnerable groups, such as children(EU Policy, 2015).

3.2.4.4. A new policy on legal migration

Europe is competing with other economies to attract workers with the skills it needs changes in the skills required by the EU between 2012 and 2025 are expected to show a sharp increase in the share of jobs employing higher-educated labor (by 23%)(COMMISSION, 2015).

Europe needs to build up its own skills base and equip people for inclusion in today's labor market which cover the shortages that have already been seen in key sectors such as science, technology, engineering and healthcare (COMMISSION, 2015). Due to this reason the Commission decides the promotion of legal migration.

But The regime for migration has not resolved the contradictions among measures favoring movement of highly-skilled workers, the absence of provisions for lower-skilled (except those covered by the recently adopted Seasonal Workers Directive) and repressive measures to deal with irregular migration, despite the latter primarily resulting from market demand for otherwise unavailable labor in a deregulatory context (Patrick, 2016).

Well Managed Regular Migration and Visa Policy

Over the next seven years, European programmes such as Horizon 2020 and Erasmus+ will attract talented individuals to the EU (COMMISSION, 2015). The Directive on Students and Researchers, now under negotiation by the co-legislators, aims to give these groups new mobility and job-seeking opportunities (COMMISSION, 2015).

The next step should be an attractive EU-wide scheme for highly qualified third-country nationals. The Blue Card Directive already provides such a scheme, but in its first two years, only 16,000 Blue Cards were issued and 13,000 were issued by a single Member State (COMMISSION, 2015). Another sector with important economic impact is services. The services sector includes well trained, highly-skilled foreign professionals who need to travel to the EU for short periods in order to provide services to businesses or governments (COMMISSION, 2015).

Effective integration

For the new programming period (2014-20), at least 20% of ESF resources will contribute to social inclusion, which includes measures for the integration of migrants with a particular focus on those seeking asylum and refugees as well as on children (EU policy, 2015). The funds can support targeted initiatives to improve language and professional skills, improve access to services, promote access to the labour market, inclusive education foster inter-cultural exchanges and promote awareness campaigns targeting both host communities and migrants (COMMISSION, 2015).

Such new models of co-existence would require different forms of recognition for religious and cultural communities and socio-economic support, rather than another failed imposition of mono cultural integration. Clearer measures to reassure indigenous citizens, to address problem areas

and to celebrate the contributions of both indigenous and migrant citizens and communities would also become necessary (Matthee, 2015).

Maximizing the development benefits for countries of origin

The EU's legal migration policy have development program for countries of origin(COMMISSION, 2015). The United Nations will shortly adopt the Sustainable Development Goals (SDGs), and migration-related targets should be included, alongside targets in areas such as promoting decent work, youth employment, wage and social protection policies which can help countries of origin to create better economic opportunities at home(COMMISSION, 2015). This would complement the work of the EU's Mobility Partnerships and efforts to mainstream migration issues into key development sectors(COMMISSION, 2015). The Commission will also make available at least EUR 30 million to support partners with capacity building on effective management of labor migration, focusing on empowering migrant workers and tackling exploitation(COMMISSION, 2015).

In that case, various governments in Europe are already contemplating co-development initiatives to make it attractive for would-be migrants to stay in their countries of origin. It is as yet unclear how much support EU member states would be willing to give to countries that absorb huge numbers of war refugees (Matthee, 2015).

3.3 Africa-EU policy frameworks for migration

3.3.1 Cairo Plan of Action

Beyond the 'purely' African or EU migration policy frameworks, the AU has also signed a number of joint frameworks with the EU . The EU and the OAU met for the first time at summit level in Cairo in 2000, where they committed themselves to adding a new strategic dimension to the global partnership between Africa and Europe. They adopted the Cairo Plan of Action during this summit (Adepoju, 2008). This includes a section on migration, in which both parties agree to:

1. support African countries in ensuring free intra-African mobility of labour and migration in the spirit of the Abuja Treaty;
2. collaborate in addressing the root causes of migration and asylum-seeking in source, transit and recipient countries;
3. collaborate further on the issue of the reciprocal integration of migrants, migrant rights and readmission agreements between the European and African countries;
4. recognize the need for measures to combat racism and xenophobia and to secure the respect of the dignity and protection of the migrants' rights (EU, OAU, 2000).

3.3.2 Ouagadougou Action Plan to Combat Trafficking in Human Beings, especially Women and Children

The Ouagadougou Action Plan to Combat Trafficking in Human Beings, especially Women and Children was signed in 2004 and adopted in 2006 (Adepoju, 2008). Various joint communiqués issued by the Troikas in 2003 and 2004 note the growing importance of jointly addressing migration-related problems (Klavert, 2011). As Klavert remarked, in Bamako in 2005, the two sides agreed to start a comprehensive dialogue on migration; the EU delegation proposed holding a joint ministerial conference on migration. During this period, there was a large influx of irregular African migrants into the EU. These flows also consisted of smuggling and trafficking (Klavert, 2011).

Another joint product is the Ouagadougou Action Plan to Combat Trafficking in human beings, especially women and children. It focuses on prevention, awareness-raising, and victim protection and assistance. It makes a number of proposals for legislative frameworks and policies that states should adopt or develop (Adepoju, 2008). On prevention and awareness-raising, states are asked to provide education and training and viable employment, empower girls, safeguard children's rights, mount media campaigns against trafficking, and mobilize families and NGOs. On victim protection and assistance, states are called upon to adopt appropriate measures for the former, encourage victims to testify against offenders (albeit taking their safety into account), avoid their criminalization and provide psychological, medical and social assistance (African Union, 2006). They are asked to ensure the effective prosecution of traffickers and strengthen training for government personnel. The Action Plan calls for the

creation of focal points and the development of regional action plans as mechanisms against trafficking.

3.3.3 Euro-African Conference on Migration and Development in Rabat (2006)

The Rabat Process was first launched at the first Euro-African Ministerial Conference on Migration and Development in July 2006 in Rabat (Klavert, 2011). It was initiated by Spain and France. It brings together governments of 55 European and African countries from North, West and Central Africa, together with the European Commission and the Economic Community of West African States (ECOWAS). The objective is to enhance dialogue and cooperation on migration more broadly (legal migration and mobility; prevention of irregular migration and measures to counteract it; migration and development; international protection), as well as to identify common priorities in order to develop operational and practical cooperation (EUC, 2015). The Rabat Process has established a solid and fruitful dialogue between the EU and countries in North, West and Central Africa, and has fostered enhanced cooperation through the implementation of bilateral, sub-regional, regional and multilateral initiatives. The Seahorse Atlantic Network is an example of a concrete cooperation at regional level between Spain, Portugal, Senegal, Mauritania, Cape Verde, Morocco, Gambia and Guinea Bissau. It enables the information exchange between authorities along the Western African coast in order to prevent irregular migration and cross-border crime. (Press release) plus to that the EU was interested in building the wider continental partnership on migration (Klavert, 2011).

3.3.4. The Joint Africa-EU Declaration on Migration and Development

The Joint Africa-EU Declaration on Migration and Development meeting endorsed a joint principle for cooperation and “a partnership between countries of origin, transit and destination to better manage migration in a comprehensive, holistic and balanced manner, and in a spirit of shared responsibility”. Participants jointly agreed, among other things, that migration is both a common challenge and opportunity for Africa and the EU and that appropriate responses can best be found together; that well managed, migration can be beneficial to both regions; that the brain drain can have serious consequences for sending countries; and that states

must uphold the dignity of all migrants (www.africa-union.org/root/au/conferences). Other decisions included commitment to capacity building to better manage migration and asylum; promotion of regular migration to help meet labour needs in host countries and contribution to the development of countries of origin; cooperation in the control of irregular migration and return in a humane and orderly manner. As a follow-up to the declaration, experts would meet regularly, exchange experiences and information and develop an implementation roadmap for the joint declaration, to be periodically reviewed by the EU-African ministerial conference (www.diplomatie.gouv.fr). The Joint Declaration (AU & EU, 2006) adopted in Tripoli commits the two parties ‘to a partnership between countries of origin, transit and destination to better manage migration in a comprehensive, holistic and balanced manner, in a spirit of shared responsibility and cooperation’. It covers nine key areas:

- migration and development;
- migration management challenges;
- peace and security;
- human resources and brain drain;
- concern for human rights and the well-being of the individual;
- sharing best practices;
- regular migration opportunities;
- illegal or irregular migration;
- the protection of refugees.

A comparison of the African Common Position on Migration and Development with the Joint Declaration suggests that the issues addressed are an amalgam of AU recommendations from the African position and EU interests, with two exceptions:

- The Joint Declaration contains a section on illegal migration and another on migration management challenges that are not found in the African position. These call for concrete action to regulate the influx of migrants from Africa. The Joint Declaration also emphasizes the link between high African unemployment and illegal migration (African Union, 2006)

- On legal migration, the Joint Declaration is more cautious, describing it as ‘regular migration opportunities’ while the AU refers to ‘labour’ migration. The Joint Declaration notes that simplified entry procedures for specific people may be discussed and seasonal temporary migration schemes developed. The EU undertakes to assist with the implementation of African regional free-movement arrangements. Strangely, this section in the Joint Declaration does not refer to the need for circular migration, although this is mentioned in the section on migration and development(African Union ,2006).

3.3.5 The Joint Africa EU Strategy – partnership on Migration, Mobility, Employment & Higher Education (2007)

The Africa-EU Migration, Mobility and Employment (MME) Partnership was launched during the Africa-EU Summit in December 2007, where the Joint EU-Africa Strategy and the First Action Plan (2008- 2010) were adopted. The EU-Africa Summit in 2014 gave new impetus to the cooperation on migration: In addition to the declaration on migration and mobility, an action plan 2014-2017 was also adopted, focusing on the following priorities:

- Fighting trafficking in human beings
- Remittances
- Diaspora Mobility and labour migration (including intra-African mobility)
- International protection (including internally displaced persons)
- Irregular migration, Legal migration and mobility promotion of a better framework for legal migration and mobility, including through circular and temporary migration schemes as well as better information and protection of migrants, including pre-departure training;
- informing potential migrants on opportunities for legal migration and on requirements for legal stay, as well as on the dangers of undocumented migration and illegal work;
- institutional and administrative capacity-building of partner countries’ authorities, through improvement of the regulatory framework, technical assistance, training, exchange of experts and best practices, etc.
- Fight against irregular migration and trafficking in human beings; border management improving the fight against migrant smuggling and trafficking in human beings, notably

through capacity-building (enhanced financial and technical assistance to support the development of national and regional strategies against migrant smuggling), joint operational measures (including risk analysis and the exchange of information and best practices) and establishing operational interoperability between the relevant border agencies of EU, Member States and the partner countries;

- development of effective mechanisms and concrete initiatives for preventing and combating irregular migration and trafficking in human beings, including through actions raising public awareness;
- improving border surveillance, border management capacities and cross-border cooperation migration and development support for voluntary return and sustainable reintegration of returning migrants, including through circular migration schemes, informing migrants abroad of the labour market situation in their home countries and their return possibilities, training of returning migrant workers and promotion of transfer of social security benefits, and stimulating entrepreneurship;
- promotion of legal and concrete measures reducing the cost of remittances, and encouraging their productive investment (African Union, 2007).
- promoting the role of (and cooperation with) diasporas. Asylum and international protection
- support to the development of a legal and institutional framework on asylum in line with international standards;
- capacity-building of partner countries' authorities to develop and implement an asylum policy and provide international protection as well as to improve the reception facilities, such as the reception of asylum seekers and submission of asylum requests through the development of specific simplified procedures, in particular for those with special needs;
- promoting the cooperation between the national authorities competent for asylum procedures in third countries and their peers in the EU Member States.

Chapter Summary

This Chapter has presented the policies and frameworks on migration from the point of view of policies at the AU and EU. The frameworks of AU concerning migration deals with different

aspects of movement of peoples, such as IDPs, free movement of people and goods, and irregular migration which concerns cross continent migration.

The AU frameworks on the protection of refugees and internal displaced persons are comprehensive and legally binding on member states which included them their national laws. The AU framework on the free movement of people and goods is not implemented properly due to lack of cooperation of RECs by the AU itself. The AU frameworks for irregular migration cover different aspects of migration management and opportunities from human and state security aspect.

The EU migration and asylum policy is common among Schengen members in the implementation aspect. The EU introduced the agenda on migration in 2015 for the use technological means to protect its borders.

The joint frameworks for the African Union and the European Union, even if they were enacted to combat common problems, their implementations vary according to their contextual situation. The frameworks seem to have similar policies on migration issues. But, the EU takes a separate path because of interests on labor, migration and border management.

In the next chapter the migration frameworks of AU, EU and the joint frameworks will be discussed from perspectives of policy documents and coherence and implementation gaps that can be observed. The writer of the Thesis attempts to evaluate compare and contrast the contents of the policies and the practical problems faced when they put to use at the EU and AU level.

CHAPTER FOUR

CONCEPTUAL AND COMPARATIVE ANALYSIS OF THE REGULATION OF IRREGULAR MIGRATION: THE EU AND AU PERSPECTIVE

Introduction

On the previous chapter, the frameworks available in AU and EU in regulation of irregular migration discussed. On this chapter the implementation and coherence of those joint frameworks according to the context of the organizations. Such as the policy implementation on free movement of people and goods from the perspective of EU and AU with regard to African RECs, the theoretical view of the EU, AU and the joint frame works, which can be linked with the discussion on the policy implementation of the EU migration agenda of return policy, the Blue card directive with regard to brain drain, the directive sanctioning the employees of third country nationals verses human exploitation.

4.1 Theoretical perspective of the Frameworks of Migration

4.1.1 Theoretical perspective of African Union framework

Africa has strong and binding migration frameworks. The 1969 OAU refugee convention, the Kampala convention on the protection and assistance of internally displaced persons in Africa and the Ouagadougou action plan on combating the trafficking. The frameworks are affirmed by the universal applicability and acceptance of the frameworks. For instance the 1969 OAU convention of refugees is the most compressive legal document in the protection of refugees worldwide since it discuss and underline the right and protection of Refugees. Also the Kampala convention is also legally binding also has significance on the right and protection of internal displaced persons. Thirdly according to interview with Dr Mehari “ the Ouagadougou convention unlike other convention it is legally binding document since many of the states ratify and enacted the criminalization of human trafficking is the major achievement of the African states in enacting the human right protection” (Mehari, 2016).

The writer strongly argues that the African frameworks have a scent of human security analysis since the frameworks' focus is largely entails of a humanitarian approach, which has been re-affirmed in relation to refugees and asylum seekers (Nadig 2002), as well as in relation to the trafficking of (primarily women and children) migrants (Clarke 2003). Jean S.Kang argues that sanctioning human trafficking and other forms of exploitation are in assumption rather than prove, so the situation made crossing borders become more expensive (S.Kang, 2014). A platform for human security should address the need for individual protection and empowerment.

4.1.2 Theoretical perspective of European Union framework

On the European Union perspective the migration frameworks entail the combination of critical security theory that raises a question of is migration a threat? if it is according to Ole weaver securitization is a 'linguistic action' or a 'speech act' marked by a specific rhetoric of 'urgency' and 'priority'. 'Speaking security' goes as far as to influencing policies. Also Huysmans argues, 'policies depend heavily on the language through which they are politicised' (Huys mans, 2009). The role of language and speech acts, therefore, is not merely to describe, but also to mobilize certain meanings, creating a 'domain of insecurity', which is further tackled through specific security policies (Huys mans, 2009).

In that case, the migration - security nexus and its securitization is reflected by on the EU policy frame works phase by phase. A Single European Act in 1986, which aimed at abolishing internal border controls, and the Schengen Implementation Agreement in 1990. Illegal migration started to emerge as a cross-border issue. Then Maastricht Treaty led to the creation of the 'Justice and Home Affairs' intergovernmental pillar, including Title IV that put migration together with other law enforcement issues, such as terrorism, organized crime, etc.

The Amsterdam treaty signaled a historical step in the 'normative and political configurations of liberty and security', transferring Title IV into the community pillar (Elsbeth Guild, 2008). The treaty was followed by the Tampere European Council, which identified specific milestones for a common EU asylum and migration policy, and emphasized the necessity to 'manage migration flows' yet at the same time promoting a 'fair treatment of third country nationals'⁴. The phrase

⁴ European Council, *Conclusions of the Presidency*, Tampere 15–16 June, 1999.

‘migration flow’, which had become of common use in the EU discourse on migration, contained a peculiar negative connotation of something unrestrained that needed management and control. (Babayan, 2011)

Also the European Union, migration framework the so called “the European Union agenda on migration” is a phenomena which transforms the administrative or a structure of international order. Migration is a securitized issue, which made a policy change of the Union.

The European agenda on migration applies various technological advances for the border management regarding the current migration crisis since the migration flow increases by 400% from the previous year in 2015(IGAD, 2015). The technological advances such as the The European Border Surveillance System (Eurosur) play an important role in the EU’s border control armory (Communication from the commissin to the European parliament and the council progress report on the implimentation of the hotspots in Italy, 2015).

It became operational in December 2013 (Commision, 2015). It includes information exchange technology that is used by national authorities of member states and Schengen participating states to strengthen border control cooperation both between states, including bordering non-EU countries, and with Frontex (Commision, 2015). Also the EU introduced the hot spot strategy for the border states of Italy and Greece to migrants and taking fingerprints even using force if they resist in collaboration with the FRONTEX (Communication from the commissin to the European parliament and the council progress report on the implimentation of the hotspots in Italy, 2015).

But the Eurosur is criticized by the human right activist that, The Regulation that established Eurosur obliges EU member states, as well as Schengen participating states to reinforce surveillance at their borders that are widely used for irregular migration (Amenesty, 2014). It also contains a number of safeguards for fundamental rights, but crucially gives no indication as to how they will be monitored or enforced (Amenesty, 2014). As discussed in chapter two the critical security analysis have reach approach towards social and political perspective which require more critical circulation of discourses on the application of technologies, sites or camps in which migrants are detained ,border areas through which migrants pass, such as airports embassies and customs (Walters, 2010). Here security becomes a language and/or interest

knowledge or professional skill linked to particular organizations which are linked to the language and practices (Huys mans, 2009).

4.1.3 Joint AU-EU Frameworks on regulation of irregular migration

On the other side the frame works of the African union the regulation of irregular migration with the European Union provides the partnership which promote the development from the states in addressing the root causes of the migration such as, migration and development, challenges of migration management ,peace and security, human resources and brain drain, and the issue of remittances and diasporas, concern for human rights and the well-being of the individual, sharing best practices, regular migration opportunities, illegal or irregular migration, the protection of refugees in the frameworks of The Joint Africa-EU Declaration on Migration and Development and The Africa-EU Migration, Mobility and Employment (MME) Partnership was launched during the Africa EU Summit in December 2007, where the Joint EU-Africa Strategy and the First Action Plan (2008- 2010) and the second action plan The EU-Africa Summit in 2014 gave new impetus to the cooperation on migration: In addition to the declaration on migration and mobility, an action plan 2014-2017 was also adopted, focusing on the above issues in addition to other issues concerning border protection and technical assistance (Klavert, 2011). The approach of frameworks of the joint African and European Union declarations on the African side it tends to create the balance between human security and state security by characterizing the movement of people with its nature. The declarations took migration from the development perspective also from the security perspective. Such approach tends to argue with the normative dilemma analysts, whose argument the migration policy should balance the state and human security (Huys mans, 2009). But it got challenges of the balance theory which argues that human security and state security as a hydraulic when one be pressed the other will elevate.

4.2 Policy towards free movement of people and goods

4.2.1. European perspective

As discussed in chapter two the Schengen agreement is the major European achievement of integration since 1985 due to its contribution on the monitoring the free movement of people and goods without borders where persons and goods can circulate freely has brought important

benefits to European citizens(EU Policy, 2015). Also and business alike mobility and free labor flow show the integration of the member states.

Through this agreement the European states are being able to develop common migration and asylum policy. So that, they are able to create an organized refugee and migration control applying technological advances by applying three large-scale IT systems, dealing with the administration of asylum (Eurodac), visa applications (the Visa Information System), and the sharing of information about persons or objects for which an alert has been created by the competent authorities (Schengen Information System) (COMMISSION, 2015). The full use of these systems can bring benefits to border management, as well as to enhance Europe's capacity to reduce irregular migration and return of irregular migrants.

I think the Schengen is not free from security threats, rather it is prone to such threats resulted from loose border control. It has limitation from the security perspective due to terrorist threats also uncontrolled migration flow is one of the phenomenons of the Schengen agreement.

4.2.2 The African perspective of free movement of people and goods.

From the African perspective of the free movement of people and goods, the Abuja treaty has good initiations on establishing the African common market it gave the responsibility to AU's regional economic communities to promote free movement in conjunction with intra-regional trade. The African Union's role is to coordinate, monitor and evaluate the implementation of RECs (African Union Commission, 2010b).

Africa is a conflict prone area, applying the free movement of people integration seems difficult on this situation . In addition to that according to the interview made . “Even RECs lack coordination among their member states. It becomes difficult to control criminal groups of smugglers and traffickers plus there is lack of trust among them” (Tumay, 2016)

In Africa there are over 14 Regional Economic Communities⁵. But The African Union commission officially recognizes 8 RECs in line with decision No. 1 of the Banjul Summit in July 2006, downgrading

⁵ Economic Community of Great Lakes countries (CEPGL), Southern African Customs Union (SACU) Mano River Union (MRU), West African Economic and Monetary Union (UEMOA), Central African Economic

all others to inter governmental agencies. The eight recognized RECs are considered building blocs⁶. But to make the free movement of people and goods and services have constraints due to different reasons. first, From currently existing RECs most countries belonging to at least two of them, regional integration in Africa is a very complex and confusing affair (Ndomo, 2009). Alves, Draper and Halleson characterize as “a spaghetti bowl that hinders regional integration by creating a complex entanglement of political commitments and institutional requirements”⁷

So, these multiple and overlapping memberships in RECs have created a complicated web of competing commitments which, combined with different rules, result in high costs of trade between African countries, in effect undermining integration.

But in some regions of RECs go further in advancing free movement of people and goods. such as ECOWAS have free migration system among the member states, as free movement, business, employment and establishment regarded as a key ECOWAS achievement. In the SADEC region the free movement is with limited access because of local labor protection. In the East African community only Rwanda has the open door policy for employment (Mehari, 2016). As COMESA adopted a Protocol on the Free Movement of Persons, Labor, Services, Right of Establishment and Residence in 2001, only four member states (Kenya, Rwanda, Burundi and Zimbabwe) had signed it, and only Burundi had ratified it (COMESA,2010). The EAC’s Common Market Protocol has been in place since July 2010. It contains an Annex on the Free Movement of Persons, setting out the right to visa-free entry. The EAC has issued an EAC passport for travel within the region. Kenya and Rwanda have abolished work permits following

and Monetary Community (CEMAC), Indian Ocean Commission (IOC)

⁶ Arab Maghreb Union (UMA), East African Community (EAC), Economic Community of West African States (ECOWAS), Southern Africa Development Community (SADC), Community of Sahel-Saharan States (CENSAD), Inter-Governmental Authority on Development (IGAD), Common Market for Eastern and Southern Africa (COMESA), Economic Community of Central African States (ECCAS)

⁷ See Alves, P., Draper, P., Halleson, D (January 2007) in Trade Policy Report No. 15: “SACU, Regional Integration and the Overlap Issue in Southern Africa: From Spaghetti to Cannelloni?” South African Institute of International Affairs, Johannesburg, South Africa

the ratification of the Protocol (EAC, 2011; all Africa, 2010). IGAD is still in the draft protocol on mobility (African Union, 2009, Tumay, 2016).

In Africa perspective the RECs have limitations on the implementation of the free movement of people, but still they are advanced than the African Union. Even if the Abuja treaty gave the responsibility to coordinate the RECs for the African Union they are not doing uniformly.

4.3 The Economic Perspective

4.3.1 Brain drain verses the Blue Card Directive

Africa is less advanced continent due to so many constraints which resulted from , insecurity, environmental degradation and poverty are significant root causes of mass migration and forced displacement which led loss of lives of migrants through the dangerous migration routes . Africa, much of its population is below working age plus to that educated and skilled man power. very limited in number. So that the high percentage of working age group is low skilled labor. In that case many of irregular migrants belong to this group.

On the other hand, the skills required by the EU between 2012 and 2025 are expected to show a sharp increase in the share of jobs employing higher-educated labor (by 23%). Shortages have already been seen in key sectors such as science, technology, engineering and healthcare (Commision, 2015). The EU is also facing a series of long-term economic and demographic challenges. Its population is ageing, while its economy is increasingly dependent on highly-skilled jobs. Furthermore, without migration the EU's working age population will decline by 17.5 million in the next decade Europe needs to build up its own skills base and equip people for inclusion in today's labor market (Commision, 2015). Migration will increasingly be an important way to enhance the sustainability and welfare of the system and to ensure sustainable growth of the EU economy. To solve this problem the EU agenda on migration introduced the legal migration, named blue card directive an attractive EU-wide scheme for highly qualified third-country nationals. and Over the next seven years, European programmes such as Horizon 2020 and Erasmus+ will attract talented individuals, Students and Researchers to the EU (Commision, 2015).

Addressing the root causes of irregular migration is the EU- Africa agenda ever since they first started discussion. As discussed above, since poverty is the main cause of irregular migration the initiatives were introduced on the migration and development on that case the EU is also giving an aid on the technical support on filling the gaps. So that the EU-Africa policy on the brain drain is not in line with EU's commitment to promote policy coherence for development . This show they have mismatch on the interest on the brain drain scheme. As Dr Mehari stated on the interview that “ there is a priority difference between AU and EU since the Au want to send its low skilled labor, on the other side the EU is filtering the skilled and wealthy ones. Even if the exporting the skilled labor is one of the means to development as India and Pakistan are doing Africa has not reached that level” (Mehari, 2016).

4.3.2 The directive sanctioning on employment of third country nationals vs Exploitation

Whether skilled or unskilled, migration contributes to the development of State economies. Migrants often maintain a web of connections with their home States creating beneficial feedback effects such as the transfer of remittances, knowledge, skills and technology, as well as short and long-term return migration (Adepoju, 2008). For the host country, migration is frequently encouraged by states and by employers because migrants meet labor shortages (ICHRP, 2010). They take unpleasant jobs that local people do not want, and provide skills that local people lack. They generate wealth, sustain services, are often a dynamic and creative element in society, and frequently cost less to employ. Strengthening these feedback effects by enhancing collaboration with the African diasporas is a key aspect in fostering the migration-development nexus with the European union.

The European agenda on facing the migration crisis introduced the directive against illegal employment of third country nationals, inter alia through better enforcement and application of the Employers Sanctions , which prohibits the employment of third country nationals who have no right to stay in the EU (Commision, 2015).

Brouwer and Kumin (2003, p. 9) point out that “most enforcement mechanisms designed to prevent illegal or unauthorized migration, such as ... carrier sanctions and immigration control activities ... have the side effect of encouraging the expansion of smuggling and trafficking networks

in addition, for many migrants and particularly asylum seekers, “being smuggled is a reasonable alternative to bureaucratic, time consuming, and therefore life endangering legal migration”

The directives which sanction the national who employ the irregular migrants have a double fold effect. Irregular migrants crosses the border through smugglers or trafficker which they face exploitation throughout the route. Then in the host country their labor is needed for the cheap price. Sanction could not do better as long as the migration continues it rather aggravate the exploitation. On other hand, the migrants weather they are high skilled or low skilled they send the remittances for the country of origin which have a return on the economic growth for the state. In that case the sending country losses such remittances.

4.4 The principle of non-refoulement verses the return to the country of origin.

This principle of non-refoulement is also considered to apply in a human rights context to prohibit the forcible sending, or returning or in any other way transferring a person to a country where he or she may face torture. The iteration of the principle in a human rights context makes it applicable to all persons and not only to refugees or asylum seekers. This has been affirmed by numerous international instruments, including Article 3 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 4 and Article 13 (4) of the Inter-American Convention to Prevent and Punish Torture (REDRESS & ILPA, 2006).

The jurisprudence of the European Court of Human Rights recognizes that the principle applies equally to torture and cruel, inhuman or degrading treatment and punishment, 6 as has the United Nations Human Rights Committee (REDRESS & ILPA, 2006). Non-refoulement is recognized as a non-derogable principle applicable in all circumstances, regardless of the nature of the activities the person concerned may have been engaged in, or their immigration status, and relates not only to the country to which the person faces immediate return but extends to “any other country where he runs a risk (Amenesty, 2014).

On the European common asylum system the principle of non -refoulment is one of the pillar for the legislation .Contrary to that, on the European agenda on migration, the return programme is

one of the main action for those whose asylum claim is not accepted also uses as the discouraging policy to combat human smuggling. Also The EU and member states are supporting the migration control systems of neighboring countries in an effort to stop migrants and refugees before they even reach Europe's actual frontiers. Cooperation arrangements with third countries such as Libya, Morocco, Turkey and Ukraine are increasingly seeking to turn these countries into buffer zones around EU borders (Amenesty International, 2014).

The cooperation arrangements take various forms such as bilateral or regional policy dialogues, agreements on visa facilitation and readmission, and funding or operational support from EU Agencies such as Frontex. They involve financing of border surveillance equipment, training of border guards and coastguards, and setting up information sharing networks so that migrants and refugees can be stopped by third countries before they reach Europe (Amenesty, 2014). EU even funds the construction or refurbishment of detention facilities, for example in Turkey and Ukraine, – helping third countries contain irregular migrants and prevent them from moving onward (Amenesty, 2014).

Although the human rights of migrants, including the protection needs of asylum-seekers, are described as a key component of the EU's external migration policy, many cooperation arrangements focus on preventing irregular migration and returning migrants through readmission agreements rather than, for example, opening up more legal channels for migration or promoting the human rights of migrants and refugees.

The above mentioned actions have the controversy with the protection of human right and with the principle of non-refoulment, which is universally declared as a non-derogable principle. In such cases the European Union Agenda on migration have limitation on its coherence through the principle of non- re foulment.

Conclusion

The implementation of the policy frameworks of the AU and EU have been discussed above from different perspectives. In addressing root causes of migration and protection of migrants, the European agenda on migration lacks coherence towards the policy framework of the AU- EU on migration Since the EUC introduced the Blue cared directive which filter the skilled labor

from third world countries could not fit to the joint EU Africa policy. Also the directive sanctioning employees of third country nationals who have no permission will make the migrants to face exploitation. The return policy of migrants is against the principle of non-refoulment.

In general, there is a gap towards AU and EU on the implementation of policies . The two organizations have common problems in combating irregular migration crisis. Apparently they have a difference in institution wise and from implementation wise. The regional integration and technological advancement, financial constraints and priority gaps are the major constraints of those institutions to go side by side.

CHAPTER FIVE

CONCLUSIONS

The present situation in Africa is characterized by an increased level of migration due to the rapid demographic growth rate of population, continuous political oppression, ethnic conflicts, racial discrimination, and the outbreak of wars. A significant section of the migrant population made their destination towards Europe and oil rich gulf countries or to economic boom zones in southern or western Africa. There are also number of irregular migration routes across Africa with the final destinations to the shores of southern Europe, Gulf countries and the South Africa. Out of these, the main routes from Africa to Europe include Eastern Africa Route and Western and Central Africa route.

The Mediterranean Sea has become the most porous and dangerous border between Europe and its neighbors with the risk of dying while crossing the Mediterranean Sea increasing from time to time. Irregular migrants from the East, West and Central African routes are among the victims of the dangerous journey across the Mediterranean Sea to Europe. As a result of such migratory movement from Africa and from other similar patterns emanating from the conflicts in Middle East, Europe is currently facing the largest migration crisis.⁸ Accordingly in the year 2014/2015, an estimated 270,867 migrants entered Europe via the central Mediterranean routes nearly; out of these 130,529 are from the sub-Saharan region.

Migration represents both opportunity and challenges both to the sending and the receiving countries, a well-managed migration prosper development and integration. If not managed properly as mentioned above, migration will lead to negative consequences on the human security and state security. In light of these considerations, the African Union and the European Union enacted migration policies in order to manage the flow of migration according to their context. As such migration has featured as an important policy area and concern both for the

⁸Since the refugee flows from Syria, Iraq and Afghanistan, and instability where years of war driving the exodus.

European and African states; a number of summits and meetings were held between the AU and the EU and joint declarations enacted to the same end.

Migration in Africa takes two broad forms: displacement (forced migration) and mobility (voluntary migration). As mentioned above, the causes of forced migration include conflicts, natural and man-made disasters and evictions. Accordingly the African Union enacted migration frame works concerning the Refugees, IDPs and free movement of people, and so on. **Generally** the frame works were enacted from the vantage point of legal, economic, political, social and administrative aspects of inter-African migration. From the perspective of the European Union the frame works for migration and asylum emanates from the Geneva conventions where management of migration the European Union agenda on migration regulations are the key implementation strategies. Also the inter Europe mobility is governed by the Schengen agreement which regulates the free movement of peoples and goods. The AU and EU have held number of summits and enacted joint frame works concerning the regulation of migration and from the aspects of security and development.

Comparing the free movement of people and goods as the key for integration and development on the frameworks of AU and EU, the EU frame work is more advanced as evidenced by the Schengen agreement which is negotiated among some of the EU member states since 1985. It is one of the major achievement of the EU member states, it does not only foster economic integration; it also help in utilizing advanced technology system towards managing irregular migration. In Africa the frame work on the free movement of people and goods are stipulated in the Abuja Treaty but it is difficult to implement due to the weak integration of RECs and the lack of coordination of them by AU. From the theoretical perspective, the AU policy frame works on migration tend to be concerned with human security aspect in which the refugee convention of the OAU was arguably considered the most comprehensive document worldwide. The Kampala declaration on the protection of IDPs is another legally binding document and the Ouagadougou action plan against human trafficking is actively implemented on the member states. The European perspective on the issue of migration is increasing securitized by the application of advanced technologies on regulation of migration and building of refugee camps in the third country. The joint African and European Union declarations tend to create the balance between human security and state security by underscoring the safe movement of people. This approach

seems to argue the argument that the migration policy should balance the state and human security. At the same time, there is a priority difference between AU and EU since some AU member states send their low skilled labor. On the other side, the EU is filtering the skilled and wealthy ones by the policy of legal migration.

The European Union's Agenda on migration introducing the return policy has limitation on its coherence through the principle of non- refoulment , which is universally declared as a non-derogable principle. Also the enactment of directive sanctioning employers of third country nationals lacks coherence with fighting exploitation.

In the final analysis, one can argue that the joint EU-AU migration frameworks are more advanced when viewed from different aspects and require coherent, consistent and comprehensive implementation. At the same time, the success of the joint frameworks are facing a bleak chance of success as African states still lack the will, determination and resources needed for effective migration governance and due to priority difference between the African states and between the AU and the EU the policies have implementation gaps.

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List of Key Informants

1. Mehari Taddele Maru

Migration Consultant for the AU and the Intergovernmental Authority on Development (IGAD). Former Programme Coordinator for Migration at the AU Commission and Adjunct Assistant Professor at Addis Ababa University

2. Tu'emay Aregawi Desta

IGAD SECURITY SECTOR PROGRAM (ISSP)

Pillar, Head Transnational Organized Crime

ANNEX I

Dear, sir

My name is Mahlet Dawit, a Masters student from IPSS (Institution of Peace and Security Studies) Addis Ababa University,

I am working my thesis on the Regulation of irregular migration: the link between African Union and European Union Frameworks. Here I attached interview questions regarding my thesis. I am looking forward for your cooperation. Thank you

Regards,

Mahlet

Interview Questions

1. What is the unit in your organization dealing with regulation of irregular migration issue?
2. What are the summits held in regulation of irregular migration and their impact?
3. What are the main policies, laws and guide lines for the organization in regulation of irregular migration currently implementing? For EU and AU?
4. How do those resolution and declarations implemented?
5. What is the policy convergence, b/n AU and EU?
6. Are the decisions on summits or the frameworks implemented effectively?
 - 6.1 if yes what changes made by who?
 - 6.2. If no why?
7. What is your opinion with regard to the interests of the continents in regulating irregular migration? From border protection, economic and human protection?
8. What should be done in the area to solve the problem?