

AU Free Movement Protocol: the Devil is in the Implementation

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Abstract

One of the major pillars of the African union is the integration of peoples and the ability to move freely from one member country to another, with the right to reside and practice their trade or profession. This aspect of integration found full expression in the *Protocol to the Treaty Establishing the African Economic Community Relating to the Free Movement of Persons, Right of Residence and Right of Establishment*, adopted in 2018. Upon operationalization, it will remove obstacles to the movement of people, capital and resources in the region and give expression to Aspiration 2 of the African Union Agenda 2063. However, significant challenges lie on the path of its implementation. This paper doctrinally reviews the Protocol looking at its prospects in promoting African integration and development and anticipates some of the problems that the Protocol will face. It concludes with recommendations for achieving its lofty but desirable ends.

Keywords: African Union; Free Movement; Treaty; Protocol; Integration; AfCFTA.

Introduction

Although connected by land, movement of goods and persons across established national borders in Africa can be an ordeal. Trans-African movement is impeded by stringent migration policies in Member States, strict visa regulations, and unwelcoming and out-rightly debilitating border experiences.¹ This challenge has been seen as a major impediment to the economic, cultural and social development of the region and the integration of African economies through migration.² The transformation of Organization of African Unity (OAU) to African Union (AU) in 1999 was meant to breakdown some of these barriers and signal intent to unite African States into a union similar to the European Union.³ The African Economic Community (AEC), founded in 1991 as part of the Abuja Treaty, considers the liberalisation of mobility an essential part of and prerequisite for complying with the Treaty.⁴ The AU's Agenda 2063, which sets out the vision for

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¹AU and IOM, *Study on the Benefits and Challenges of Free Movement of Persons in Africa*, https://ethiopia.iom.int/sites/default/files/IOM%20free%20movement%20africa%20WEB_FINAL.pdf (last accessed 24 May 2020).

² Ibid.

³A Adamu and AM Peter, "Comparative Analysis of African Union (AU) and European Union (EU): Challenges And Prospects", (2016) 3(1) *International Journal of Peace and Conflict Studies (IJPCS)* at 46.

⁴The African Economic Community (AEC) is an organization of African Union states establishing grounds for mutual economic development among the majority of African states. The stated goals of the organization include the creation of free trade areas, customs unions, a single market, a central bank, and a common currency thus establishing an economic and monetary union. See Organisation of African Unity, *Treaty Establishing the*

Africa's integration path over the next 50 years, views free movement as a key programme in the vision of "accelerating Africa's economic growth, trade and development as well as promoting our common identity by celebrating our history and our vibrant culture".⁵ The idea of continent-wide free movement dates back to the Lagos Plan of Action for Economic Development of Africa 1980-2000 envisaging an African common market.⁶ Free movement is also central to the realization of the African Continental Free Trade Area (AfCFTA)⁷ because free trade will be hampered without free movement. The agreement generally covers trade in goods, trade in services, investment, intellectual property and competition policy.⁸ The age-long aspiration found expression in several Conventions and Protocols, culminating in the Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment (FMP).⁹ The agreement on the Protocol is a manifest expression of the resolve of African Union Member States to realize economic, social and cultural development, and the integration of African economies through uninterrupted borders.

The Protocol is part of the bigger plan to "turn the continent into one of 'seamless borders' with the introduction of a single passport allowing free movement between countries".¹⁰ Its objective is to facilitate the implementation of the Treaty Establishing the African Economic Community, by providing for the progressive implementation of free movement of persons, right of residence and right of establishment in Africa.¹¹ It aims to build on existing Regional Economic Communities¹² Free Movement arrangements.¹³ Moreover, some of the regional efforts have achieved some successes while also experiencing difficulties at the implementation level.¹⁴ The free movement of persons entails that citizens of any Member State of the African Union can migrate, take up residence, and practice his/her trade in another Member State on equal footing as the nationals of that particular Member State. The Protocol defines free movement of

African Economic Community, available at < https://au.int/sites/default/files/treaties/37636-treaty-0016_-_treaty_establishing_the_african_economic_community_e.pdf > (last accessed 27 May 2020).

⁵ Agenda 2063 was launched at 50th Anniversary Solemn Declaration during the Golden Jubilee celebrations of the formation of the OAU /AU in May 2013. The Declaration marked the re-dedication of Africa towards the attainment of the Pan African Vision of an integrated, prosperous and peaceful Africa, driven by its own citizens, representing a dynamic force in the international arena and Agenda 2063 is the concrete manifestation of how the continent intends to achieve this vision within a 50 year period from 2013 to 2063. See African Union, *Flagship Projects of Agenda 2063*, available at < <https://au.int/en/agenda2063/flagship-projects> > (last accessed 23 May 2020).

⁶ The Lagos Plan of Action (officially the Lagos Plan of Action for the Economic Development of Africa, 1980–2000) was an Organisation of African Unity-backed plan to increase Africa's self-sufficiency. The plan aimed to minimize Africa's links with Western countries by maximizing Africa's own resources. See Organization of African Unity, *Lagos Plan of Action for the Economic Development of Africa 1980-2000*, available at < http://uneca.org/itca/ariportal/docs/lagos_plan.PDF > (last accessed 25 May 2020).

⁷ The African Continental Free Trade Area (AfCFTA) is a free trade area which as of 2018 includes 28 countries. It was created by the African Continental Free Trade Agreement among 54 of the 55 African Union nations. The free-trade area is the largest in the world in terms of the number of participating countries since the formation of the World Trade Organization. See African Union, *Agreement Establishing the African Continental Free Trade Area*, available at < https://au.int/sites/default/files/treaties/36437-treaty-consolidated_text_on_cfta_-_en.pdf > (last accessed 18 May 2020).

⁸ CC Ajibo, "African Continental Free Trade Area Agreement: the Euphoria, Pitfalls and Prospects", *Journal of World Trade* (2019) 53(5), 871-94.

⁹ *Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment*, available at < https://au.int/sites/default/files/treaties/36403-treaty-protocol_on_free_movement_of_persons_in_africa_e.pdf > (last accessed 4 April 2020).

¹⁰ The plan is fashioned after the EU Schengen arrangement, wherein many internal borders were removed, ensuring free movement of persons across the region. See E Henderson, "African Union Plans to Introduce Single Passport to Create EU-style 'Continent Without Borders' ", available at < <http://www.independent.co.uk/news/world/africa/african-union-africa-single-passport-travel-easier-eu-schengen-area-style-continent-border-free-a7091551.html#gallery> > (last accessed 14 April 2020)

¹¹ Art 1 of Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment 2018.

¹² The Regional Economic Communities (RECs) are regional groupings of African states. Arab Maghreb Union (UMA), Common Market for Eastern and Southern Africa (COMESA), Community of Sahel-Saharan States (CEN-SAD), East African Community (EAC), Economic Community of Central African States (ECCAS), Economic Community of West African States (ECOWAS), Intergovernmental Authority on Development (IGAD), Southern African Development Community (SADC). The RECs have developed individually and have differing roles and structures. Generally, the purpose of the RECs is to facilitate regional economic integration between members of the individual regions and through the wider African Economic Community (AEC), which was established under the Abuja Treaty (1991). The 1980 Lagos Plan of Action for the Development of Africa and the Abuja Treaty proposed the creation of RECs as the basis for wider African integration, with a view to regional and eventual continental integration. See African Union, *Regional Economic Communities (RECs)*, available at < www.au.int/en/organs/recs > (last accessed 11 April 2020).

¹³ Out of the eight recognised RECs, five have frameworks on free movement of persons. Intergovernmental Authority on Development (IGAD), Arab Maghreb Union (UMA), and Community of Sahel-Saharan States (CENSAD) do not have a framework on free movement of persons. Only Economic Community of West African States (ECOWAS) and the East African Community (EAC) have made relative progress in terms of implementing regional frameworks. B Fagbayibo, *Challenges and Prospect of the Effective Implementation of Free Movement Of Persons Across African Boundaries*, Keynote Address Delivered at the Annual General Meeting of the Forum of Immigration Practitioners of South Africa (Fipsa) on the 26 of October 2018, Johannesburg, available at < https://www.academia.edu/37719971/CHALLENGES_AND_PROSPECT_OF_THE_EFFECTIVE_IMPLEMENTATION_OF_FREE_MOVEMENT_OF_PERSONS_ACROSS_AFRICAN_BOUNDARIES > (last accessed 11 April 2020).

¹⁴ Africa Regional Integration Index Report 2019 provides a guide as to the level of integration of the various RECs in Africa. See African Union, *Regional Integration Matters: Regional integration in Africa has made tremendous strides. But the work is not done* available at < <https://www.integrate-africa.org/> > (last accessed 24 May 2020)

persons as the rights of nationals of a Member State to enter, move freely and reside in another Member State in accordance with the laws of the host Member State and to exit the host Member State in accordance with the laws and procedures for exiting that Member State.¹⁵

The potential benefits of the Protocol are substantial. The primary driver of free movement in the continent is economic. The Protocol is essential for the transfer of resources, labour, skills and technology. If fully realized, it could enhance international trade, investment and tourism. Free movement has a correlation with trade and investment as studies have shown an increase in bilateral trade between countries of origin and recipient countries as a result of the presence of migrants in a country.¹⁶ For a region that is already characterized by transboundary movement of workers, goods and services; the Protocol presents an opportunity to maximize the positive effects of migration such as remittances, economies of scale, employment prospects and investment incentives. Secondly, improved movement of goods and persons relies on transportation infrastructure. Currently, inadequate infrastructure remains a major challenge in trans-African movement as well as realization of the region's full economic growth potential. Greater commitment by Member States to the objectives of the Protocol will translate into improvement of hard and soft infrastructure required for improved Trans-African mobility. Thirdly, the Protocol could lead to and deepen shared norms among Member States on facilitating free movement, residence and establishment as well as on treatment of nationals of other States. Fourthly, it is expected to enhance African socio-cultural integration. The free movement and interaction will promote socio-cultural integration and pan-African identity.

Since the adoption of the protocol, some notable progress has been made towards achieving the overarching objectives. The African Union Guidelines for the Design, Production and Issuance of the African Passport and its annexure adopted in February 2019, was a major success towards the implementation of Protocol.¹⁷ The African Passport once produced and issued, will enable and facilitate the continental free movement of persons in Africa. However, the fact that there is little evidence of functional regional migration regimes, particularly in the Global South¹⁸ is evidence of the daunting challenge ahead of the African Union. The euphoria of signing the Protocol in 2018 is punctured by the latest African Regional Integration Index, which noted that:

Gradual progress is being made towards the free movement of people: including the launching of the Common Electronic Biometric African Passport in July 2016 and the adoption of the AU Protocol on Free Movement of Persons, Right of Residence and Right of Establishment in January 2018; however, the latter has struggled to gather country ratifications.¹⁹

Clearly, the vision of free movement of persons across the region cannot be realised by mere signing of an agreement. This article examines the challenges that lie on the path of implementing the Protocol. Part 2 provides a conceptual background of the Protocol; Part 3 sketches out the salient provisions of thereof. Part 4 x-rays some of the difficulties

¹⁵Art 1.

¹⁶ Institute for Security Studies, "Free trade and Mobility , Crucial for Africa to Prosper" available at < <https://issafrica.org/iss-today> > (last accessed 22 February 2023).

¹⁷ See *Revised Draft African Union Guidelines for the Design, Production and Issuance of the African Passport*, https://au.int/sites/default/files/newsevents/workingdocuments/35139-wd-guidelinesfinal_copy_2_1-edited_final_version.pdf available at (last accessed 24 May 2020).

¹⁸ E Dick and B Schraven, *Towards a Borderless Africa? Regional Organisations and Free Movement of Persons in West and North-East Africa*, available at https://www.die-gdi.de/uploads/media/BP_1.2019.pdf (last accessed 27 May 2020).

¹⁹ 'By early May, the protocol on free movement had already been signed by 31 member states,' it said. 'However, the AU Commission has yet to receive any ratification. While the number of signatures exceeds half of the AU membership, none of the top contributors to the AU budget – Algeria, Nigeria, South Africa, Egypt and Morocco – have yet signed the protocol, with the exception of Angola.' Another way of looking at the patchy support for the protocol could be that a country like South Africa, especially, which is already a major recipient of economic migrants from the rest of the continent, is the most wary about throwing open its borders even wider. See P Fabricius, "Can Africa's borders really become bridges?" *Institute for Security Studies* (7 June 2018), available at < <https://issafrica.org/iss-today/can-africas-borders-really-become-bridges> > (last accessed 27 May 2020). Economic Commission for Africa, *ARIA IX Key Messages and Policy Recommendations* (2019), available at < www.uneca.org/sites/default/files/uploaded-documents/CoM/2019/side-events/aria_ix_key_messages_and_policy_recommendations_en.pdf > (last accessed 27 May 2020).

that need to be addressed to realise the goal of the Protocol and some recommendations that will help ensure that the aims of the Protocol are realised.

Conceptual Background of the Protocol

The objective of the Protocol is to facilitate the implementation of the Treaty Establishing the African Economic Community by providing for the progressive implementation of free movement of persons, right of residence and right of establishment in Africa.²⁰ The Protocol was in furtherance of the commitment of the Parties under Article 43(2) of the Treaty Establishing the African Economic Community, which was adopted in Abuja, Nigeria on 3 June 1991 and entered into force on 12 May 1994.²¹ It was also designed to promote the achievement of greater unity and solidarity between the African countries and the people of Africa, and also promote economic, social and cultural development and the integration of African economies.²² The Protocol also reiterated the shared values of the parties to promote the protection of human and people's rights as provided in the Universal Declaration of Human Rights of 1948 and the African Charter on Human and Peoples Rights which guarantees the right of an individual to freedom of movement and residence.²³

The Protocol is also a restatement of the commitment of the parties to Pan Africanism and African integration, with a common vision of creating an integrated, people-oriented and politically united continent, committed to free movement of people, goods and services among Member States.²⁴ Furthermore, the Protocol builds on the commitment of the Parties to gradually remove obstacles to the free movement of persons, goods, services and capital and the right of residence and establishment among Member States.²⁵ Some of the expected benefits of free movement include enhancement of science, trade, technology education and research, fostering tourism facilitating intra-African trade and investment, increasing remittances within Africa, promoting mobility of labour creating employment, improving the standards of living of the people of Africa and facilitating the mobilization and utilization of the human and material resources of Africa, with a view to achieving self-reliance and development.²⁶ Ensuring freedom of movement of persons is also seen by the Protocol as a facilitator for the establishment of the Continental Free Trade Area.²⁷

In addition, the Protocol acknowledges the potential challenges that might arise in the aim to achieve free movement of persons and right of residence and right of establishment. It is also a prelude to instituting the African citizenship.²⁸ It recognizes the need to ensure that effective measures are put in place in order to prevent situations whereby upholding the freedom of movement of people will lead to situations where the arrival and settlement of migrants in a given host country will create or exacerbate inequalities or will constitute challenges to peace and security. Noting that there is real and potential security and economic challenges that may arise from implementing the Protocol on free movement, the African Union Council acknowledged that the benefits of the free movement outweigh the challenges perceived or generated.²⁹ The obligations under the Protocol are to be implemented in a phased approach, in consideration of the variances in the legitimate concerns of Member States.

Guiding Principles of the Protocol

²⁰Art 2.

²¹Preamble to the Protocol.

²²Ibid.

²³Ibid.

²⁴Ibid. This goal is also in line with Aspiration 2 of the African Union Agenda 2063 which aims to create 'An integrated continent; politically united and based on the ideals of Pan-Africanism and the vision of Africa's Renaissance'.

²⁵Ibid. This aim is predicated in the commitment of the Parties under Article 4(2)(1) of the Treaty Establishing the African Economic Community.

²⁶Ibid.

²⁷Ibid. The African Continental Free Trade Area was endorsed by the African Union at the 18th Ordinary Session of the Assembly of Heads of States and Governments in Kigali.

²⁸Ibid. The Solemn Declaration of the 50th Anniversary of the Union adopted this by the 21st Ordinary Session of the Assembly of Heads of State and Government in Addis Ababa on 23 May, 2013.

²⁹ See African Union, 'Report on the Implementation of Free Movement of Persons in Africa 2020-2021', 14-19. Available at <https://au.int/40515-rp-HHS62469_E> Accessed 22 February 2023.

The Protocol stipulates a number of principles that will guide the implementation thereof. Firstly, it adopts the principles of the Constitutive Act of the African Union,³⁰ which cover a broad area most pertinent to the issue of freedom of Movement, these also include sovereign equality and interdependence among Member States of the Union;³¹ respect of borders existing on achievement of independence;³² respect for democratic principles, human rights, the rule of law and good governance;³³ promotion of social justice to ensure balanced economic development;³⁴ respect for the sanctity of life, condemnation and rejection of impunity and political assassination, acts of terrorism and subversive activities.³⁵

Non-discrimination and Transparency

The Protocol provides that States Parties shall not discriminate against nationals of another Member State from entering, residing or establishing in their territory, on the basis of their nationality, race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status as provided by Article 2 of the African Charter on Human and Peoples Rights.³⁶ The provision on non-discrimination does not prevent a State Party, as a result of reciprocity or deeper integration, to give more favourable treatment to nationals of another States Party or region, in addition to the rights provided for in this Protocol.³⁷ This provision makes tacit accommodation for deeper levels of rights given to citizens of some State Members on the basis of regional arrangements³⁸ or other agreements between the Parties. The Protocol also offers protection to a citizen of another State Party, who enters, resides or establishes in a State Party in accordance with the Protocol. It demands that such citizen of another State Party shall enjoy the protection of the law of the host State Party, in accordance with the relevant national policies and laws of the host State Party.³⁹

Progressive Realization and the Role of Regional Economic Communities

The objective of the Protocol is intended to be realized progressively. The Protocol makes provision for its realization through the following phases: Phase one, during which State Parties shall implement the right of entry and abolition of visa requirements;⁴⁰ Phase two, during which State Parties shall implement the right of residence;⁴¹ and Phase three, during which State Parties shall implement the right of establishment.⁴² The annexure to the Protocol provides a Roadmap for the implementation of the various phases of the Protocol.⁴³ Despite the Roadmap and phases provided, the Protocol affords the State Parties the latitude to make more favourable provisions for the realisation of the goals thereof and to implement accelerated implementation programme.⁴⁴ This accommodates the various levels of progress in free movement that different countries and sub-regions have made with regards to free movement.

Regional Integration as a plank to continental integration

³⁰Adopted by Heads of State and Government of Member States of the then Organization of African Unity (OAU) on 11th day of July, 2002 at Lome Togo, available at < https://au.int/sites/default/files/treaties/7758-treaty-0021_-_constitutive_act_of_the_african_union_e.pdf > (last accessed 27 May 2020).

³¹Art 4(a).

³²Art 4(b).

³³Art 4(m).

³⁴Art 4(n).

³⁵Art 4 (o).

³⁶Art 4(1).

³⁷Art 4(2).

³⁸The Protocol defines regional arrangement as agreements, measures or mechanisms on free movement of persons developed and implemented by regional economic communities.

³⁹Art 4(3).

⁴⁰ Art 5(1)(a).

⁴¹ Art 5(1)(b).

⁴² Art 5(1)(c).

⁴³ Art 5(2).

⁴⁴ Art 5(3).

African Union has recognised and acknowledged regional economic communities (RECs), which have all achieved higher levels of integration, as pillars for continental integration and development. This is based on pragmatic considerations. The Protocol defines regional arrangement as ‘agreements, measures or mechanisms on free movement of persons developed and implemented by regional economic communities’.⁴⁵ Firstly, these RECs have established a history of cooperation that the continental vision can build on. Secondly, the RECs have few negotiation partners, considering that the largest REC in Africa; The Common Market for Eastern and Southern Africa (COMESA) has only 19 members⁴⁶ compared to the AU with 55 members.⁴⁷ The implication of this, is that it promotes easier decision making as few members could reach a decision within their REC faster than all the 55 AU Member States. Furthermore, the regional economic communities have their own Protocols on free movement of persons, goods, and services; which are at different levels of implementation. For illustration, the West African Sub-region has abolished visa and entry permits issuance requirement within the sub-region and the East African Community Protocol for the Establishment of the East African Community Common Market allows the free movement of people goods and services within the region.⁴⁸ Also, the Community of Sahel-Saharan States (CEN-SAD) by section 1 of the treaty establishing it makes free movement of persons within the region a core objectives and a number of its members have implemented policies to promote intra-regional mobility.⁴⁹ Similarly, section 7 of the treaty establishing the Inter-governmental Authority on Development (IGAD) provides for the free movement of persons and goods within its territory although, IGAD does not have a free movement protocol.⁵⁰ Also, in The economic community of Central African States (ECCAS) the establishing treaty provides for free movement within the territory and it has also adopted a protocol for the Freedom of Movement.⁵¹ Similarly, the Southern African Development Community (SADC) establishment treaty removes all barriers to free movement within the region, however its protocol on the Facilitation of Movement of Persons is not yet in force due to inadequate ratification.⁵² In the same vein, the Arab Maghreb Union (AMU) has Adopted Freedom of Movement Protocol, although it is yet to be fully implement because only 3 of its members have ratified it, and only Tunisia allows all citizens of AMU to access its territory.⁵³ Likewise, COMESA has also adopted a free movement protocol since 1998, but only Burundi, Kenya, Rwanda and Zambia have signed with Burundi being the only country that has ratified it.⁵⁴

Key Provisions of the Protocol to the Treaty Establishing the African Economic Community Relating to the Free Movement of Persons, Right of Residence and Right of Establishment

Right of Entry

Right of entry is defined as the right of a national of a Member State to enter and move freely in another Member State in accordance with the laws of the host Member State.⁵⁵ It obligates a Member State to permit nationals of Member States to enter into their territory without requirement of a visa; and to move freely or stay for a maximum period of ninety (90) days from the date of entry or such further period determined by Member States or through bilateral or regional arrangements.⁵⁶ Where the national of a Member State wishes to stay in the host Member State beyond the ninety (90)

⁴⁵Art 1.

⁴⁶ African Union, ‘Regional Economic Communities (REC)’ available at < <https://au.int/en/organs/rec> > (last accessed 22 February 2023).

⁴⁷ African Union, ‘Member States’ available at < https://au.int/en/member_states/countryprofiles2 > (last accessed 22 February 2023).

⁴⁸ Articles 5, 10, 11, 12 and 16; East African Community, “Immigration and Labour” available at < <https://www.eac.int/immigration> > (last accessed 22 February 2023).

⁴⁹ United Nations Economic Commission for Africa, “CEN-SAD-Free Movement of Persons” available at < <https://archive.uneca.org/oria/pages/cen-sad-free-movement-persons> > (last accessed 22 February 2023).

⁵⁰ United Nations Economic Commission for Africa, “IGAD-Free Movement of Persons” available at < <https://archive.uneca.org/oria/pages/igad-free-movement-persons> > (last accessed 22 February 2023).

⁵¹ United Nations Economic Commission for Africa, “ECCAS-Free Movement of Persons” available at < <https://archive.uneca.org/oria/pages/eccas-free-movement-persons> > (last accessed 22 February 2023).

⁵² United Nations Economic Commission for Africa, “SADC-Free Movement of Persons” available at < <https://archive.uneca.org/oria/pages/sadc-free-movement-persons> > (last accessed 22 February 2023).

⁵³ United Nations Economic Commission for Africa, “AMU-Free Movement of Persons” available at < <https://archive.uneca.org/oria/pages/amu-free-movement-persons> > (last accessed 22 February 2023).

⁵⁴ United Nations Economic Commission for Africa, “COMESA-Free Movement of Persons” available at < <https://archive.uneca.org/oria/pages/comesa-free-movement-persons> > (last accessed 22 February 2023).

⁵⁵Art 1.

⁵⁶ Art 6(4).

days or such other further period granted by the host state, he shall seek an extension of stay in accordance with the procedures established by the host Member State. The right of entry under the Protocol is permitted for a person entering the Member State through designated point or official port of entry; with a recognized and valid travel document and who is not prohibited from entering the Member State by the laws of that Member State. The right of Member States to deny entry is restricted to situations where such denial is predicated on the ‘protection of national security, public order or public health’ or such other conditions as are not inconsistent with the Protocol.⁵⁷ Since the right of entry is restricted to official points of entry, Member States are required to designate and share with other Member States information relating to their official entry and exit points or ports.⁵⁸ The points of entry shall be kept open to facilitate free movement of persons, subject to reciprocity and the protection measures a Member State may take.⁵⁹

The Protocol makes an exception for resident of border communities, by requiring State Parties to identify and facilitate their free movement through bilateral and regional agreements. Such facilitation shall not compromise the security or public health of host Member States.⁶⁰ State Parties are enjoined to resolve any legal, administrative, security, cultural or technical impediment likely to impede free movement of border communities in an amicable manner.⁶¹ In addition to encouraging students and researchers exchange programmes, State Parties shall also permit nationals of another Member State to pursue academic or research interests in their countries, by providing permits and passes that will be required.⁶² Nationals of State Parties are entitled to seek and accept employment in another Member State and to be accompanied by a spouse and dependants.

The right of free entry and employment is regulated by national laws, by which State Parties shall issue residence permits, work permits or other appropriate permits or passes to national of other Member States seeking and taking up residence or work in the host Member State. In order to guarantee the transparency and non-discrimination of these national law and procedures, the foreign national shall have the right to appeal against a decision denying them a permit or pass.⁶³

Right of Establishment

Right of establishment means the right of a national of a Member State to take up and pursue the economic activities, including the right to set up in the territory of the host Member State a business, trade, profession, vocation or an economic activity as a self-employed person in line with the laws and policies of the host Member State.⁶⁴ A facilitator of the right of establishment is the recognition of the qualification of a migrant. Hence, the Treaty encourages the State Parties to seek ways to mutually recognize academic, professional and technical qualifications of their nationals to promote the movement of persons among the Member States. Such efforts can be achieved through bilateral, multilateral or regional arrangements.⁶⁵ Beyond this, the Treaty envisions the establishment of a continental qualifications framework to encourage and promote the free movement of persons by the State Parties.⁶⁶ The Treaty leaves it to the State Parties to facilitate the portability of social security benefits to nationals of another Member State residing or established in that Member State.⁶⁷ This provision provides the groundwork for future arrangements for ensuring that the social benefits of a migrant can be utilized in another Member State that the national has migrated to.

Right of residence

⁵⁷Art 7 (c) & (2).

⁵⁸Art 8 (1).

⁵⁹Art 8 (2).

⁶⁰Art 12 (1).

⁶¹Art 12 (2).

⁶²Art 13.

⁶³Art 15.

⁶⁴Arts 1 and 17.

⁶⁵Art 18(1).

⁶⁶Art 18(2).

⁶⁷Art 19.

Right of residence is the right of a national of one Member State to reside and seek employment in another Member State other than their Member State or origin, in accordance with the national law of the host Member State.⁶⁸ Such national may be accompanied by a spouse and dependants.⁶⁹ The Treaty leaves it for State Parties to gradually implement favourable policies and laws on residence for nationals of other Member States.⁷⁰ On what grounds can the nationals of a Member State be removed from the State of Residence? The Treaty addresses this thorny issue by prohibiting the mass expulsion of non-nationals.⁷¹ It defines mass expulsion as that which is aimed at national, racial, ethnic or religious groups.⁷² The Treaty distinguishes between mass expulsion and the right of a host state to expel, deport or repatriate a national of a Member State. State Parties can expel, deport or repatriate a national of a Member State lawfully admitted into its territory, provided that such a decision is taken in accordance with the law in force in the host Member State.⁷³ In order to promote the transparency of the process of expulsion, deportation or repatriation; the host State Party shall notify the national of a Member State and the Government of that national of the decision to expel, deport or repatriate that citizen from the territory of the host Member State.⁷⁴ The expense of expulsion or deportation shall be borne by the host Member State, while the person being repatriated or his country of origin bears the cost of repatriation.⁷⁵ The Treaty recognizes the right of a Member State to refuse the national of another Member State entry into its territory. It stipulates that the person responsible for the transportation of the national shall at the request of competent border authorities re-route the persons denied entry back to the point of embarkment or where this is not possible, to the Member State that issued the citizen's travel documents or any other place where the admission of the citizen will be accepted.⁷⁶

An immigrant national has the right to acquire property in the host Member State in accordance with the laws, policies and procedures of the host Member State.⁷⁷ A host Member State shall not nationalize, expropriate, confiscate or acquire property belonging to an immigrant national, except in accordance with the law and after fair compensation being paid to that national.⁷⁸ The expulsion, deportation or repatriation of a host Member State shall not deprive a national of another Member State of his/her property lawfully acquired by that national in the host Member State except in accordance with the laws and procedures of the host Member State.⁷⁹ Such lawfully acquired assets shall be protected by the host Member State in the event of a dispute between the national's home Member State and host Member State.⁸⁰ Nationals of other Member States working, residing or established in another State can remit their earnings and savings in line with bilateral, regional, continental or international agreements designed to facilitate such remittances. State Parties shall also establish specific procedures for movement of specific vulnerable groups, such as refugees, asylum seekers, victims of human trafficking and pastoralists, in line and consistent with their obligations under international, regional and continental instruments for the protection of each group. State Parties are required to provide appropriate administrative and judicial remedy for nationals of other Member States who are adversely affected in the implementation of the Protocol.⁸¹ Having exhausted all legal remedies in the host Member State without redress, a foreign national may refer a matter to the African Commission on Human and People Rights.

Members States coordinate their border management systems in order to facilitate the free and orderly movement of persons, in accordance with the African Union Convention on Cross-Border Cooperation.⁸² This will entail keeping

⁶⁸Art 1.

⁶⁹Art 16(2).

⁷⁰ Art 16(3).

⁷¹Art 20(1).

⁷² Art 20 (2).

⁷³Art 21(1).

⁷⁴Art 21(2).

⁷⁵ Art 21 (3).

⁷⁶Art 21(4).

⁷⁷Art 22(1).

⁷⁸Art 22(2).

⁷⁹Art 22(4).

⁸⁰Art 22(3).

⁸¹Art 30(1).

⁸²Art 25(1).

and exchanging aggregated migration data at the ports or points of entry and exit from their territory, in order to track the free movement of persons and implementation of the Protocol.⁸³

Coordination and Harmonization

The Treaty obliges State Parties and regional economic communities to harmonize and coordinate their laws, policies, systems and activities in line with the Implementation Roadmap annexed to the Protocol.⁸⁴ State Parties shall be responsible for implementing the Protocol by adopting necessary legislative and administrative measures to implement and give effect to the Protocol by harmonizing all laws, policies, agreements and immigration procedures and other procedures to ensure compliance.⁸⁵

Since some Regional economic communities have their free movement initiatives, the Protocol makes them the focal points for promoting, following up and evaluating implementation thereof and reporting progress made towards free movement of persons in their respective regions.⁸⁶ The Commission has the role of evaluating, coordinating and reporting on the status of implementation of the Protocol.⁸⁷ Any dispute arising between State Parties shall be settled by mutual consent through peaceful means including negotiations, mediations, and conciliation. Where this fails, the parties can refer it to arbitration in line with the provisions of the Protocol.⁸⁸ The Protocol shall enter into force thirty (30) days after the date of receipt of the fifteenth (15th) instrument of ratification.⁸⁹ A ratifying State Party may do so with reservations, provided that such reservations are not incompatible with the object and purpose of the Protocol.⁹⁰

Entry and exits points or ports

Article 8(10) of the Protocol requires Member States to designate and share with other Member States information relating to their official entry and exits points or ports. The Member States are obliged to keep the designated official entry and exit points open in line with national or regional procedures, to facilitate the free movement of persons, subject to reciprocity and the protection measures a Member State may take.

Issues of Implementation that will determine the success of the Protocol

The aim of AU Free Movement Protocol is a daunting task. Its attainment will depend of a number of factors.⁹¹

Sovereignty, Ideological divergence and Political will

One of the allegations against African regionalisation project is the lack of sustained political commitment to implement these agreements and protocols.⁹² The integration landscape of the continent and its sub-regions are littered with good intentioned treaties, initiatives and protocols, which have not been sufficiently ratified to come into force. For instance, the African Union Convention on Cyber Security and Personal Data Protection, Protocol on the establishment of the African Monetary Fund and the African Union Convention on Cross-border cooperation (Niamey Convention) all adopted in 2014 are yet to come into force because of lack of requisite ratification.⁹³ In addition, of the 68 adopted treaties, conventions, protocols and charters of the AU only about 33 have come into force.⁹⁴ Unlike other continental integrations projects, notably the European Union, the implementation of African integration treaties and protocols have

⁸³ Art 25(2 – 3).

⁸⁴ Art 26.

⁸⁵ Art 27.

⁸⁶ Art 28.

⁸⁷ Art 29.

⁸⁸ Art 31.

⁸⁹ Art 33(1).

⁹⁰ Art 34(1).

⁹¹ L Fawcett and A Hurrell, *Regionalism in World Politics: Regional Organization and International Order* (1995, Oxford University Press).

⁹² M Qobo, "The challenges of Regional Integration in Africa: In the context of globalization and the prospects for a United States of Africa" ISS paper 145, June 2007, 1. available at < <https://www.files.ethz.ch> > (last accessed 23 February 2023) ; T Maluwa, "Ratification of African Union Treaties by Member States: Law, Policy and Practice" (2013) 13 *Melbourne Journal of International Law*, 1.

⁹³ African Union, 'OAU/AU Treaties, Conventions, Protocols & Charters' available at < <https://au.int/treaties> > (last accessed 23 February 2023).

⁹⁴ Ibid.

lagged behind. Several protocols and treaties are not executed and ratified within a reasonable time. The AU executive council had called on its members severally to ensure they ratify treaties and conventions within one year of adoption,⁹⁵ unfortunately as earlier shown this is often not the case.⁹⁶ As Chingogo pointed out “Some of the signed protocols have not yet been ratified and tentative – if not hesitant – steps have been taken towards the successive stages of complete integration. Until economic union is achieved, collective policy formulation would be difficult to implement”.⁹⁷ This can be attributed to lack of shared vision on creating seamless borders. As Okunade and Ogunnubi pointed out, “while some see the border as an open area meant to facilitate trade and economic activities, many continue to see the border as a symbol of their sovereignty which should not be negotiated for no reason”.⁹⁸ This ideological divergence may be part of the reasons some Member States have not heartily followed up with implementation of other regional free movement protocols.⁹⁹ Additionally, most of the States are unwilling to surrender a measure of their sovereignty in order to establish a stronger regional area of seamless movement, even though this does not abrogate sovereignty of any State. The consensual process of signing and ratification ensures that any degree of control relinquished is “voluntarily and mutually agreed and, ultimately, able to be rescinded by any participating State”.¹⁰⁰ A good example of this lack of hearty execution can be seen in the lethargic progress in implementing other African Union treaties and Protocols as well as other regional free movement agreements.¹⁰¹ For example, the African Union Convention on Cross-border cooperation (Niamey Convention) adopted in 2014 is yet to come into force because of lack of requisite ratification.¹⁰² Also the Arab Maghreb Union (AMU) is yet to achieve free movement of persons and goods within the region as only 3 of its members have implemented the freedom of movement protocol.¹⁰³

Social Policy Harmonization

A lot of work still needs to be done to define the extent of rights that migrants to other African countries can enjoy. Do they have indiscriminate access to social assistance, social security and protection? Or are their rights restricted to access to education and health care and under what conditions and to what extent and at what costs? Do migrants have similar rights as nationals of host Member States? If not, how long does a person stay to become entitled to the same rights as nationals of the host Member States? The nutty issue in this social policy harmonization is that it is solely within the realm of each State’s sovereignty. Coupled with the economic straits of the States and a restive population, it is obvious that much progress will not be made in this area without effective coordinated efforts. Progress in unrestricted movement of Africans across the region will require the harmonization of national and regional migration policies in the areas of right of entry/visa regulations, resident permits, and the right to settlement.

Vast National Discretion

The Protocol specifies that migrants are subject to national laws and procedures. In order to ensure uniformity, such laws must be harmonized. This can take the form of production of model immigration laws and procedures that states can adapt or adopt. Furthermore, there is need to provide a mechanism for challenging national laws and processes beyond the national judicial or adjudicatory processes. For instance, article 15(3) provides that a national of another Member State denied a pass or permit shall have the right to appeal against such a decision. The protocol did not emphasize the right of immigrants to challenge the decisions of national courts and national governments on the application of the FMP

⁹⁵ See Decision on the Status of Signature and Ratification of OAU/AU Treaties and the Harmonisation of Ratification Procedures, EX CL Dec 459 (XIV), 14th session, Agenda item 7, AU DOC EX CL/458 (XIV) (30 January 2009); Decision on the Status of Signature and Ratification of OAU/AU Treaties EX CL Dec 571 (XVII), 17th session, Agenda item 16, AU DOC EX. CL/605 (XVII) (25 July 2010), para. 4.

⁹⁶ T Maluwa, “Ratification of African Union Treaties by Member States: Law, Policy and Practice” above at note 92 at 5.

⁹⁷ M Chingono and S Nakana, “The Challenges of Regional Integration in Southern Africa”, (2009) 3(10) *African Journal of Political Science and International Relations* at 399.

⁹⁸ SK Okunade and O Ogunnubi, *The African Union Protocol on Free Movement: A Panacea to End Border Porosity?* (2019) 8(1) *Journal of African Union Studies* at 86.

⁹⁹ W Okumu, “The African Union: Pitfalls and Prospects for Uniting Africa”, (2009) 62(2) *Journal of International Affairs*, 93-111.

¹⁰⁰ AU and IOM, above at note 1.

¹⁰¹ T Maluwa, “Ratification of African Union Treaties by Member States: Law, Policy and Practice” above at note 92 at 6-8.

¹⁰² African Union, “OAU/AU Treaties, Conventions, Protocols and Charters” available at < <https://au.int/treaties> > (last accessed 23 February 2023).

¹⁰³ United Nations Economic Commission for Africa, “AMU-Free Movement of Persons” available at < <https://archive.uneca.org/oria/pages/amu-free-movement-persons> > (last accessed 22 February 2023).

at the regional level It is the contention of this paper that to afford full protection of immigrants and guarantee their access to justice such appeals should lie to the African Court on Human and Peoples' Rights (ACHPR). Although the FMP did not specifically provide for this, the ACHPR by virtue article 3 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights¹⁰⁴ has jurisdiction over all disputes relating to the interpretation and application of any human rights instrument ratified by the affected state. This will curtail the discretion of member states in the determination of the rights of immigrants in their states.

Bad governance, Terrorism, Internal Conflicts and Political Instability

Several African nations are saddled with internal conflicts arising from bad governance, terrorism and political instability.¹⁰⁵ These have caused most of the leaders of these nations to focus on domestic matters and preservation at the expense of regional integration efforts.¹⁰⁶ For illustration, the initial hesitation by South Africa, and some of its SADC counterparts in ratifying the protocol is largely hinged on security concerns relating to civil registration, border management systems, and law enforcement at national levels.¹⁰⁷ Moreover, these conflicts pose an existential threat to the notion of Free Movement of Person, as they are capable of unleashing streams of armed groups from these restive states. The hesitance of 'stable' states to ratify the Protocol can be seen as a sign of responsibility to protect its citizens.¹⁰⁸

Weak Economies and Economic Imbalance

As in all regional blocs, the levels of development among the Member States vary.¹⁰⁹ Thus, the more prosperous nations in those blocs will be the preferred destination of citizens from the poorer states. The fact that a significant number of several African countries are mired in poverty and underdevelopment, with very little to inspire hope in their populace,¹¹⁰ means that a significant percentage of their population are eager to leave their countries. Africa is largely portrayed as a continent on the move due to desperation to flee poverty and conflicts and majority of the migration is within the continent as citizens of poor African countries have less capacity to move which increases their tendency to move within Africa.¹¹¹ Thus, the more prosperous States are likely to be overwhelmed by immigration from other states. This explains the fact that the continental powers like - Nigeria, South Africa, and Egypt - have not signed the FMP¹¹² and does not show full

¹⁰⁴ All members of the AU except Cape Verde, Eritrea and Morocco have signed the Protocol, while 34 Members have ratified the Protocol See African Union, "OAU/AU Treaties, Conventions, Protocols and Charters-Status List" available at < <https://au.int/treaties> > (last accessed 24 February 2023).

¹⁰⁵For a list of conflicts in African, see Wikipedia, *List of conflicts in Africa*, https://en.wikipedia.org/wiki/List_of_conflicts_in_Africa (accessed 27 May 2020).

¹⁰⁶ B Fagbayibo, "Challenges and Prospect of the Effective Implementation of Free Movement Of Persons Across African Boundaries", above at note 13 at 6.

¹⁰⁷ Ibid.

¹⁰⁸AU and IOM, above at note 1.

¹⁰⁹For the economic overview of African economies, see African Development Bank, *African Economic Outlook 2018*, available at < https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/African_Economic_Outlook_2018_-_EN.pdf > (last accessed 27 May 2020).

¹¹⁰In Africa, there are 33 countries that are classified as least developed countries. See United Nations Conference on Trade and Development, *UN List of Least Developed Countries*, available at < <https://unctad.org/en/Pages/ALDC/Least%20Developed%20Countries/UN-list-of-Least-Developed-Countries.aspx> > (last accessed 27 May 2020).

¹¹¹ ML Flahaux and HD Haas, "African Migration: Trends, Patterns, Drivers" *Comparative and Migration Studies* (2016) 4(1), 2, 8, 16 and 17.

¹¹² A 2019 report shows that Ratifications have increased from one (1) to Four (4). The countries that have ratified and deposited the Protocol with the African Union include Rwanda, Niger, Mali and Sao Tome and Principe. The Protocol requires 15 ratifications to enter into force. Signatures to the Protocol remains at 33, including Angola, Burkina Faso, Central African Republic, Chad, Cote d'Ivoire, Comoros, Congo, Djibouti, Democratic Republic of Congo, Equatorial Guinea, Gabon, Gambia, Ghana, Guinea, Kenya, Lesotho, Liberia Mali, Malawi, Mozambique, Niger, Rwanda, Senegal, Sierra Leone, Somalia, South Sudan, Sao Tome & Principe, Sudan, Tanzania, Togo, Uganda and Zimbabwe. The names of the regional economic powerhouses by GDP figures – Egypt, Nigeria, and South Africa - are notable by the absence. See African Union, *Progress Report on the Free Movement of Persons in Africa*, Third Meeting of the Specialized Technical Committee (STC) on Migration, Refugees and Internally Displaced Persons held on 4 - 8 November 2019 at Addis Ababa, Ethiopia, available at < https://au.int/sites/default/files/newsevents/reports/37472-rp-pa25606_e_original_004_ff.pdf > (last accessed 27 May 2020).

commitments to the implementation of the free movement agreements of their respective RECs.¹¹³ This has also militated against the progress of regional free movement agreements. It will also make it challenging for the Member States to harmonize their social assistance structure because of their various levels of economic development. Furthermore, it has led to xenophobia and mass expulsion, when members of the host states feel overwhelmed by the influx of foreigners. As Deacon and Nita points out, ‘access to social provisions by all cross border movers within a region is the key to a real regional social integration. Without that, the right to move freely is merely formal’.¹¹⁴ Yet, many of the countries cannot economically afford such social infrastructure.

Poor Border Control

The Protocol focuses on migration through official entry and exit points. However, a vast number of the migration that takes place in several parts of the continents is informal and do not take place through official channels.¹¹⁵ Accordingly, there is a challenge of having reliable data of migration. Unless the incentives for using these unofficial channels are addressed, migrants will not use the designated exit and entry points. Furthermore, restriction to the use of official entry and exit points call into question, the capacity of the Member States to improve border control to regularise this form of migration.

Civil Society Engagement and Public Enlightenment

Given that public have a great role to play in accommodating and promoting cross-border movement it is important that Member States take practical and effective means of promoting public acceptance of the objectives of the Protocol. A lot of the fears and negative attitude that people have about immigrants stem from propaganda and misinformation.¹¹⁶ This poses a major challenge for controlling xenophobia as it numbs the hearts and mind of citizens to xenophobic attacks. Thus, beyond the signing of Protocol, Member States must provide their citizens with persuasive benefits of free movement of labour, goods and services. Furthermore, public enlightenment will enable citizens to be aware of their rights in the various States in the Region. With proper awareness, these migrants will be more able to stand up and avail themselves of the channels in their host states for the protection and promotion of their rights. To this end, the non-governmental bodies and civil society groups have a key role in facilitating this enlightenment as well as monitoring and advancing implementation through promoting research, policies and national dialogues.¹¹⁷

Formulation of comprehensive national implementation policies

Many countries in the region do not have comprehensive policies on immigration.¹¹⁸ The absence of this undermines implementation of any Protocol that they ratify. Legalisation and institutional capacities. Inter-governmental committees would be necessary to monitor countries’ progress in the implementation of measures under the AfCFTA. Facilitation is complex as it spans across sectors and government ministries.

Institutional Capacity

¹¹³ United Nations Economic Commission for Africa, “Free Movement of Persons” available at < <https://archive.uneca.org/oria/pages/free-movement-persons> > (last accessed 22 February 2023); S Kwarkye and M Matongbada, “Nigeria’s Border Closures haven’t Served their purpose” *Institute of Security Studies* Available at < <https://issafrica.org/iss-today> > (last accessed 20 April 2022).

¹¹⁴ B Deacon and S Nita, “Regional Social Integration and Free Movement across Borders: The Role of Social Policy in Enabling and Preventing Access to Social Entitlements by Cross-Border Movers: European Union and Southern Africa Compared”, (2013) 3(1) *Regions & Cohesion*, 32–61

¹¹⁵ See P Fabricius, *Can Africa’s borders really become bridges?* above at note 19.

¹¹⁶ A recent study in South Africa notes that ‘victim precipitation’ (i.e. immigrants allegedly bring their victimization upon themselves through their actions) is rampant.

¹¹⁷ For example, the West African Observatory on Migrations coordinates a civil society campaign that is working to promote free movement within Africa. The West African Observatory on Migrations is a network of civil society organizations based in West Africa and from the West African diaspora who spoke on the theme of migration. It was established in 11 February 2016, the Observatory aims to ensure that the right of West African migrants to free movement is respected. See West African Observatory on Migrations, *Free Movement for Development*, available at < <http://www.obsmigration.org/en/about-us/> > (last accessed 4 May 2020).

¹¹⁸ C Le Coz and A Pietropolli, “Africa Deepens its Approach to Migration Governance, But are Policies Translating to Action?” *Migration Policy Institute Feature*, April 2, 2020 available at < <https://www.migrationpolicy.org/article/africa> > (last accessed 24 February 2023).

The example of the extent of free movement in the RECs shows that the capacity of the regional bodies had a hand in determining the extent of integration.¹¹⁹ Accordingly, efforts should be made to provide the capacity building assistance at the supranational – AU and REC secretariats – and national levels, in order to drive the process. This assistance could take the form of financial support and personnel development efforts.¹²⁰ The coordinated assistance will ensure that the efforts made at the regional and continental levels are consistent and conform to the same guideline. It will also ensure that the goals and targets of each implementation phase are clearly defined, in order to give direction to the overall process.¹²¹ One major obstacle to the African regionalization programme has been the slow ratification of protocols and disinclined implementation thereof. The formations of the Treaties and Protocols have not been the product of a shared vision in cooperation as a means of achieving mutually beneficial ends as many countries see implementation as domestic threats. For instance, economic disparity and sharp difference in economic thrust could have significant impact on free movement. This scenario played out between Nigeria and its neighbours Benin, Cameroon, Chad and Niger in 2019. While Nigeria banned the importation of certain goods like rice to stimulate industrialisation and local production; its neighbours especially Benin Republic still showed preference for the importation of rice. This made them favourable destinations from which rice is smuggled into Nigeria which impelled the Nigeria government to shut its borders against goods from those countries.¹²² Another potent threat to implementation of the Protocol is Member States' lack of coordinated political will to monitor progress.¹²³

Stronger Commission

The role of the Commission, as a rule setting and rule enforcing entity needs to be strengthened in the mould of the European Commission. There is need for the development monitoring of guideline framework that needed to realise the goal of the protocol. The African Union has not developed a mechanism for enforcing implementation of these Protocols. Any hope of materialization of FMP must envisage a means of monitoring and enforcing compliance with agreed measures. In addition to monitoring, appropriate procedures are required to provide remedies for affected parties as well as appropriate sanctions for Member States that fail to comply. The AU needs to strengthen its capacity to formulate, monitor and ensure implementation of its treaties and protocols. The Secretariat and various commissions therein should be empowered to act more decisively. The AU Commission has made efforts to encourage members to sign and ratify the protocol so that it can come into force¹²⁴ but there is great need for accurate data on migration in Africa, which is currently lacking.¹²⁵ This knowledge gap can also be addressed through encouraging research on this information that would help policy makers in decision making.¹²⁶ There is also the need to integrate and coordinate the fragmented regional protocols on freedom of movement. It will also help in setting up flexible mechanism and minimum standards as well as draft legislations that Member States can adapt/adopt.¹²⁷

Conclusion

¹¹⁹ E Dick and B Schraven noted that “Due to the more supranational nature of ECOWAS, the free movement protocol adopted in 1979 has established a functioning free movement regime, despite weaknesses in implementation. By contrast, as an intergovernmental organisation, IGAD lacks the overarching decision-making authority on (migration) policy matters in member states and can only make non-binding recommendations”. E Dick and B Schraven, *Towards a Borderless Africa? Regional Organisations and Free Movement of Persons in West and North-East Africa* above at note 18.

¹²⁰ Ibid.

¹²¹ AU and IOM, above at note 1.

¹²² S Kwarkye and M Matongbada, “Nigeria’s Border Closures haven’t Served their purpose” above at note 113.

¹²³ L Abrego et al, “The African Continental Free Trade Agreement: Welfare Gains Estimates from a General Equilibrium Model”, *IMF Working Paper 2019*, available at < [file:///C:/Users/HP/Downloads/WPIEA2019124%20\(1\).pdf](file:///C:/Users/HP/Downloads/WPIEA2019124%20(1).pdf) > (last accessed 7 June 2020).

¹²⁴ African Union, ‘AU Member States urged to ratify the protocol on free movement to achieve free trade’ available at < <https://au.int/en/pressreleases/20191107/> > (last accessed 24 February 2023).

¹²⁵ African Union and the Organisation for Migration, “Africa Migration Report: Challenging the narrative” 27-8 available at < <https://publications.iom.int/> > (last accessed 24 February 2023).

¹²⁶ L Fioramonti, “Round Table Report: Advancing Regional Social Integration, Social Protection, and the Free Movement of People in Southern Africa”, (2013). 3(3) *Regions & Cohesion* 141-45.

¹²⁷ B Fagbayibo, “Challenges and Prospect of the Effective Implementation of Free Movement Of Persons Across African Boundaries”, above at note 13.

The idea of a united Africa has always loomed large and formed the *raison-detrê* for the formation of Organisation of African Unity (now AU). The challenges on the path of this initiative have disheartened many and prevented vigorous efforts at pursuing the vision. It is in this context that the formulation and signing of the FMP represents a major step forward, coming 55 years after the founding of the OAU/AU. The FMP offers a great opportunity to accelerate the process of integrating African peoples and States. It is a veritable instrument in the African Unity vision. This paper has examined some of the obstacles that lie in translating the dream to reality. But the economic and other benefits of actualizing this project far outweigh the cost of implementing and enforcing the Protocol. It is therefore desirable that the States and peoples will mobilize the resources needed to realize the ideals of this Protocol.

Conflict of Interest

None