A region without borders?

Policy Frameworks for regional labour migration towards South Africa

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MiWORC Policy Brief 1

Despite the long history of international migration in the region, Southern Africa lacks an official governance system to manage cross-border movement of persons and labour migration. Such migration is occurring at an increasing pace with the globalisation of the world economy, and South Africa attracts the largest number of cross-border migrants from Southern Africa. There is evidence that South Africa's current responses to the reality of regional migration in Southern Africa do not provide the most optimal solutions to the phenomenon.

This policy brief, therefore, makes the case for the Southern African Customs Union to establish itself as a regional migration policy laboratory, where new innovations could be introduced before considering a potential/incremental expansion to the SADC region.

This policy brief is based on findings from a wider research initiative that surveyed and analysed legislative and policy frameworks regarding labour migration at the global and regional levels and particularly in Africa, with an emphasis on the Southern African Development Community (SADC). The research sought to investigate existing policies and related similar bilateral or regional frameworks pertaining to labour migration and, in particular, labour migration originating from Namibia, Botswana, Lesotho,

Swaziland, Zimbabwe, Mozambique, and Malawi and directed towards South Africa; and to analyse South Africa's 'migration' policy responses to inflows of migrants from the 7 countries mentioned above.

Primary data included a thorough review of relevant global and regional legislations and a set of interviews and correspondence with key policy makers; secondary sources were policy briefs and scientific publications on the topic.

Background

Southern Africa is a porous region with substantial informal cross-border movements that carry political and economic costs. In 2009 there were around 2,2 million migrants in Southern Africa, making up 3,7 per cent of the population[i]. South Africa, Botswana and Namibia are favoured destinations for migrants in the SADC region and in 2010 hosted approximately 1,2 million, 76 000 and 76 000 migrants, respectively. While less than half of each country's migrants are from SADC, among international migrants from within Africa, the SADC region dominates. In the recent past, the SADC region's migrant-receiving countries have reacted to this trend by systematically opposing free movement[ii]. Brain drain, downward pressures on wages and frictions between migrants and locals in host countries are a few examples of a wide range of issues associated with informal and un-managed migration processes across the region. Although most of these problems have existed for a longer period of time, current events – including the repeated attacks on migrants in South Africa – make it paramount to address regional migration with a clear regional framework.

Amnesties and regularisations are ad-hoc measures and by no means provide the type of sustainable legal framework needed to manage regional migration effectively, let alone guarantee the basic forms of protection for both local and migrant workers. South Africa's Documentation of Zimbabweans Project in 2010/11; the 2001 regularisation of Mozambicans who were refugees of their 1990s civil war; and the 1996 broader amnesty for SADC citizens who had been living in South Africa prior to 1 July 1991[iii], all fell short of their objectives and carried additional work. The absence of a clear regional framework is also triggering continuous repatriations and 'emergency measures' such as forced deportations, which impose significant costs on governments while showing no effectiveness at controlling undocumented migration flows. In South Africa, the post-apartheid regime adopted a 'detain and deport' strategy for undocumented migrants, which achieved 180 000

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deportations per annum in 1999 and by 2007 had over 1,5 million deportees[iv]. The majority of those deported consisted of SADC citizens and especially Mozambicans and Zimbabweans. Most of the undocumented migrants that are deported from South Africa return via informal routes. South African immigration regulations today put more stringent restrictions on and discourage (especially unskilled) illegal immigration into South Africa, while pursuing a less exclusionary policy towards especially skilled migrants than before.

Apart from massive deportations and efforts to attract skilled migrants, South Africa holds several permanent or bilateral commissions with its neighbours, which influence the country's system of managing international migration. The commissions between South Africa and Botswana, Lesotho and Swaziland, respectively, categorically aim to inter alia facilitate migration between South Africa and its respective partner countries.

South Africa has long established MOUs on employment and labour with neighbours in the SACU and SADC. Similar MOUs establishing Labour Offices and accompanying functions exist between South Africa and Lesotho and Swaziland. The South African mining industry has used such agreements the most. Bilateral agreements also regulate the movement of people during crises.

Despite SACU's deep level of integration, the labour market in the area is not liberalised. No provision for the free movement of persons or labour between Member States exists in the SACU Agreement. States' individual and bilateral instruments determine and stipulate the movement of labour in the Union.

Key Findings

A SACU Region Labour Migration System

The agreements between South Africa and each of its neighbours present an alternative to a regional labour migration policy for Member States and thus are likely to dim the prospects for the ratification and implementation of the SADC Protocol on the Facilitation of Movement of Persons. At the same time, these agreements could be a stepping stone to the establishment of a regional labour migration regime if the countries were to build on the many similarities therein. The labour MOUs between South Africa and each of Botswana, Lesotho, Swaziland and Namibia do not differ significantly in content one from another. These States could, under the SACU umbrella, for instance, formalise a

Key Finding

"The [current] agreements could be a stepping stone to the establishment of a regional labour migration regime. The labour MOUs between South Africa and each of Botswana, Lesotho, Swaziland and Namibia … [could] formalise a SACU region labour migration system upon which they could harmonise migration and labour policies."

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A Parallel (Biased) Framework

Analysis of bilateral and joint cooperation in Southern Africa and especially between South Africa and neighbours reveals the existence of 'some form' of labour migration governance system in the region. This form of labour migration governance is not multilateral and thus passes for a 'parallel' system of labour migration governance. The long history of labour MOUs between South Africa and its neigbours and the way the MOUs have facilitated recruitment of labour, especially in South African mines and farms, suggest that: there are parallel managed migration systems at the bilateral level, i.e. between governments across the region involving skilled and unskilled workers, experts, professionals and government employees and diplomats; bilateral agreements are the major instruments that facilitate cross-border labour migration for at least skilled, unskilled, expert and professional labour and; consolidating the separate bilateral agreements into an official regional agreement would require to only minimally alter their contents and prevailing practices governed by the existing bilateral agreements between South Africa and each of the seven (and even all) sending SADC States discussed here. It is also worth noting, however, that some labour MOUs and, particularly those between South Africa and the SACU States, seem unilateral and biased towards South Africa. The receiving State sets the terms of labour migration. As it is, no formal regional labour migration governance system currently exists within SADC but there is a South African unilateral approach that translates into bilateral agreements. This is not formally a SADC framework but, in effect, a parallel framework for the region.

Recommendations

SACU: A Labour Migration Policy Laboratory

SACU should be seen as a policy laboratory, where new innovations could be introduced before considering a potential/incremental expansion to the SADC region. In this regard, SACU members should establish a two-tier policy whereby they work towards free movement of labour while maintaining a managed migration policy outside of SACU(e.g within SADC and or the rest of Africa).

The case can be made that significant social and economict costs would be spared by an effective free movement area within SACU. South Africa,

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for example, would save on costs associated with its deportation programmes and the management of the many official borders and ports of entry between South Africa and each SACU State (16 with Botswana; 15 with Lesotho and; 11 with Swaziland). The resources freed from such measures could, among others, then be utilised in other sectors within SACU or extended to support SADC structures or consolidation of ports of entry at SADC's periphery. A focused analysis on the cost effectiveness of such a reform would arguably point out additional merits and should therefore be supported.

South Africa should further be encouraged to establish a SADC-based multi-lateral framework for the management of labour migration and social protection issues. An operational and official multi-lateral migration governance mechanism would serve the region better than the current system of deportations and ad-hoc measures. South Africa's juggling with a variety of policy responses to flows of migrants in and out of its territory (in a bid to address the flight of skilled labour, for example) suggests that none of the policy measures it has adopted provide a lasting solution to the challenges that come with cross-border migration.

If bilateralism is the only workable practice, SADC States should place emphasis on forms of bilateralism that take regional elements into account as opposed to exclusive bilateralism. In other words, bilateralism should be encouraged only if it is incremental and used as a stepping-stone towards establishing a regional framework for migration (e.g. it should be compatible with and supportive of policies and protocols being discussed at the SADC level). Where bilateral agreements already exist, therefore, the agreements should be redesigned in order to support regional policies rather than undermine them.

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[i] United Nations, Department of Economic and Social Affairs, Population Division. (2009) Trends in International Migrant Stock: The 2008 Revision (United Nations database, POP/DB/MIG/Stock/Rev.2008).

[ii] Oucho, J.O. & Crush J. (2001, Fall) Contra Free Movement: South Africa and the SADC Migration Protocols. *Africa Today*, *48*(3), p. 154.

[iii] Mengelkoch, S. (2001) The right to work in SADC countries. Baden-Baden: Nomos Verlagsgesellschaft.

[iv] Crush, J. & Dodson, B. (2007) Another Lost Decade: The Failures of South Africa's Post-Apartheid Migration Policy, *Tijdschrift voor Economische en Sociale Geografie*, 98(4), p. 446.

The Migrating for Work Research Consortium (MIWORC)

Building on over a decade of research experience in migration studies, the African Centre for Migration & Society (ACMS) at Wits University has embarked on a partnership with a range of academic (GovINN, UP; UNU-CRIS; UNESCO Chair on Free Movement), government (Department of Labour; South African Local Government Association; Statistics South Africa), and international (ILO; IOM) partners. This partnership is expressed through the Migrating for Work Research Consortium (MiWORC).

MiWORC is based on a matching fund principle. The European Union, in the framework of the EU-South Africa Dialogue Facility (EuropeAid/132200/L/ACT/ZA), funds 50 per cent of the consortium. Beyond an ambitious scholarly agenda, one of MiWORC's objectives is to avail empirically based evidence to the EU- SA Dialogue facility, a bilateral on-going strategic partnership between the European Union and South Africa, as well as to a range of key stakeholders in government, organised labour, business, and the NGO sector.