



## Towards a Borderless Africa? Regional Organisations and Free Movement of Persons in West and North-East Africa

### Summary

The vision of a united Africa and the rejection of the arbitrary borders created by European colonial powers have for decades been at the heart of pan-African endeavours. Achieving the free movement of persons on the continent was a key aim of the 1991 Abuja Treaty, which established the African Economic Community (AEC). And in the ensuing decades, this goal was underscored in agreements on African economic integration and in the African Union (AU)'s Agenda 2063. In January 2018, the member states of the AU finally agreed on the Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment.

The continental agendas state that the process of implementing free movement must begin with Africa's sub-regions. This is not least due to historical reasons. The Economic Community of West African States (ECOWAS) was a pioneer in this regard, with its Free Movement Protocol dating back to 1979. The years that followed saw the free movement of persons integrated into other African regionalisation processes as well. The East African Community (EAC), for instance, has agreed, at least in part, on far-reaching steps; other sub-regions (such as the North African Intergovernmental Authority on Development (IGAD)) are currently working towards relevant accords.

The present analysis of ECOWAS (West Africa) and IGAD (North-East Africa) shows that both regional organisations face difficulties with their free movement policies, though the respective challenges emerge in different phases of the political process. In the IGAD region, member states have

so far been unable to agree on any free movement treaty, while the ECOWAS region is experiencing delays in the national and subnational implementation of established legislation. These differences can primarily be explained by historic path dependencies, divergent degrees of legalisation, and differing interests on the part of subregional powers. Finally, regional free movement is being hampered in both regions by internal capacity issues and growing external influences on intra-African migration management and border control.

From the perspective of development policy, it is expedient to support free movement at subregional level in Africa. The following recommendations arose from the analysis:

- *Promote regional capacities:* Personnel and financial support should be provided to regional organisations to assist them with formulating free movement standards and implementing them at national and subnational level.
- *Harmonise security and free-movement policies:* European initiatives on border control and migration management must provide greater support for free movement rather than inhibit intraregional migration and free movement policies.
- *Offer cross-sectoral incentives:* The German Government and the European Union should encourage progress with the regionalisation of free movement regimes in related areas of cooperation.

In order to effectively implement the recommendations, it is also important to recognise and flesh out the role of regional organisations at global level as well.

## Introduction

The vision of a united Africa has been part and parcel of the pan-African narrative for decades. The political project of dismantling the borders drawn up arbitrarily by colonial powers and work to step up economic and political integration were a key task of the Organisation of African Unity (OAU) founded in 1963 and are among the main tasks of its successor organisation, the African Union (AU), which was established in 1999. Founded in 1991 as part of the Abuja Treaty, the African Economic Community (AEC) considers the liberalisation of mobility an essential part of and prerequisite for complying with the Treaty. The AU's Agenda 2063 also views free movement as a key component in the vision of a politically unified Africa. January 2018 saw the Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment finally adopted. Significantly, the Protocol has been signed by roughly two thirds of AU member states to date.

The Global Compact for Safe, Orderly and Regular Migration, which was adopted in December 2018, affords even greater international relevance to the promotion of (regional) free movement. The non-binding pact intends to expand opportunities for regular migration around the world and also encourages regional cooperation agreements in this context. After all, most global migration flows take place within rather than between different regions of the world. This is especially true of the African context, where intra-regional forms of migration (such as seasonal labour migration) are an everyday reality and elementary source of livelihoods for millions of people. A free movement regime in a regional context that promotes the positive effects of migration (such as remittances, employment prospects and investment incentives) and minimises its material and non-material costs (e.g. bank transfer fees, legal uncertainty) is thus tremendously important from an economic and development perspective.

## Sub-regional implementation: Case study of ECOWAS and IGAD

The AU Protocol, adopted in 2018, states that the process of implementing free movement must begin with Africa's sub-regions. It envisages a special role for the Regional Economic Communities (RECs) in this context. Given the smaller number of negotiating partners involved and an existing cooperation history, for instance in dismantling trade barriers and peace-building, RECs have greater influence at this level than at continental level.

The establishment and promotion of free movement in a West and North-East African context and within the ECOWAS and IGAD regions is of particular interest from a development, migration and economic perspective. This is not only due to the fact that the two sub-regions are home to over half of the continent's population and account for more than one third of Africa's total economic output, but also because they are among the main regions of origin for (irregular) African

migration to Europe (see also Overview 1). Finally, there is a particularly high proportion of intraregional migration to these two regions. According to the United Nations, in 2015, 87 per cent of international migrants from a country in the ECOWAS region were living in another ECOWAS state; the figure for the IGAD region was 65 per cent, compared with 52 per cent for Africa as a whole.

Nonetheless, when it comes to the introduction of free movement policies, they provide contrasting case studies. In terms of the introduction and implementation of these policies, ECOWAS is regarded as the most advanced region in Africa. The opposite is true of IGAD, being the only AU-recognised REC still to formulate a free movement protocol.

## ECOWAS

ECOWAS gained considerable attention with its Protocol on Free Movement of Persons, Residence and Establishment adopted back in 1979, long before the Schengen Area was set up in the early 1990s. The protocol aimed to strengthen intraregional economic integration and to move further towards regional unity across the national and linguistic borders inherited from the colonial period.

It was to be implemented in three phases: The first phase, designed to facilitate visa-free entry and residence for up to 90 days, was fully implemented by the mid-1980s. The second phase concerned the right to reside in another member state of ECOWAS, for example, for work purposes, and came into effect in 1986. A regional travel document was also introduced in 1985 and the ECOWAS passport in 2000. The third phase, related to the right of establishment, that is, to perform self-employed work or set up a business, was originally due for implementation between 1990 and 1995.

However, the implementation process proved difficult in regard to the second and, in particular, the third phase. On the one hand, economic crises in the 1980s and 1990s in several member states, such as Nigeria, led to mass expulsions, while, on the other, there is still a lack of national implementation of free movement legislation and uptake by the population. Border checks are commonplace and there is very little standardisation of official forms.

## IGAD

Unlike ECOWAS, the IGAD region in North-East Africa has not yet formulated a free movement agreement. The free movement of persons is set to be introduced as part of the region's agreements with the AU under the Minimum Integration Programme (MIP), and the organisation has also made the promotion of free movement one of its goals in the 2012 Regional Migration Policy Framework and the 2013 Regional Migration Action Plan.

However, beyond this agenda setting, there has been little progress in policy formulation at the level of the region as a whole. Nonetheless, there is a bilateral agreement in place on visa-free entry into Kenya from Ethiopia and vice-versa, and Kenya and Uganda have established free movement

agreements in the context of the EAC. National consultation processes on the introduction of the free movement of persons have been taking place since mid-2017, coordinated by the IGAD Migration Programme and financed by the EU Emergency Trust Fund for Africa (EUTF). These processes have now been carried out in five of IGAD's seven member states. Additionally, the European Union has commissioned the ILO with conducting labour market studies in selected border regions, again financed by the EUTF.

### Factors determining the implementation of free movement

The following factors are crucial for understanding these differences in the implementation of free movement as well as the weaknesses in the implementation processes of both RECs:

- *Institutional path dependencies:* In the case of ECOWAS, efforts at government level to drive the promotion of free movement build on a key component of the region's self-understanding and social identity. This is the idea of dismantling the linguistic and national borders resulting from colonial history, for example, by means of stepping up economic and trade cooperation. For its part, since its foundation in 1986, IGAD has focused on preventing humanitarian crises (triggered by drought and armed conflict) and upholding national and regional security. While the organisation's migration programme has wide-ranging aims, the region's history plays into the hands of prioritising displacement-related topics and migration-policy challenges.
- *Degree of legalisation and institutional capacities:* 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. These differences aside, however, both regional organisations are heavily dependent on development cooperation funding for their work on migration-related issues. Weaknesses in formulating and implementing free movement regimes are also related to a comparatively limited level of donor support in this area.

- *Resistance from powerful member states:* While the free movement protocol has been repeatedly violated over the course of ECOWAS' existence (for example, through the mass expulsion of West African migrants from Nigeria in 1983), it enjoys widespread political recognition. Within the IGAD region, Ethiopia especially has proven to be a (powerful) opponent of regional free movement in the past, partly in an attempt to protect its own markets and partly as a result of security concerns. Nonetheless, more recent trade cooperation initiatives by the country, primarily at bilateral level, and the July 2018 peace agreement with Eritrea point to a window of opportunity for expanding intraregional economic and political relations.
- *External focus on counteracting irregular migration:* Ever since the 2015 refugee crisis in particular, many EU measures in both regions have focused on the (short-term) reduction of irregular migration. As such, agreements have been concluded principally with transit nations and countries of origin (including Niger and Ethiopia) on more effective

Overview 1: ECOWAS and IGAD		
	ECOWAS	IGAD
Year established:	1975	1986*
Member states:	Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, The Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo	Djibouti, Ethiopia, Kenya, Somalia, Sudan, South Sudan, Uganda
Proportion of Africa's total population:	29.4 %	21.3 %
Proportion of Africa's total gross domestic product:	25 %	10 %

The map shows the continent of Africa with ECOWAS member states highlighted in red (West and Central Africa) and IGAD member states highlighted in orange (East and Horn of Africa). The labels 'ECOWAS' and 'IGAD' are placed over their respective regions.

\*The organisation was established in 1986 under the name Intergovernmental Authority on Drought and Development (IGADD) and renamed IGAD in 1996 to reflect the expansion of its remit into the area of peace and security.

Source: World Bank (2018) World Development Indicators. <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD>

border and migration management. There are many indications that these initiatives are undermining regional free movement policies. The obstruction of intraregional and transregional trade and migration routes would mean depriving a broad swathe of the population of its material livelihood. Additionally, future economic and employment potential in Africa is being squandered. This could have devastating consequences for economic and social stabilisation at regional and continental level.

### Summary and recommendations

The vision of a borderless continent remains virtually uncontested to this day in Africa. From a development policy perspective, support for (sub)regional free movement in Africa is a practical component in the facilitation of "orderly, safe, and responsible migration" (SDG 10.7) and with respect to the expected positive effects at economic, employment and socio-political level. However, the RECs face a number of challenges in implementing free movement. Some of these challenges stem from within the sub-regions, while others can be attributed to the growing impact of EU migration policy.

Analysis of Africa's ECOWAS and IGAD regions suggests the following approaches for providing development policy support to African free movement regimes:

- *Employ capacity development measures:* In order to effectively fulfil their key role in formulating free movement standards and supporting their implementation at national level, regional organisations need to develop their technical and

financial capacities. It is also desirable to step up efforts to involve non-governmental organisations in order to raise awareness and encourage greater use of existing arrangements among the population. For example, the West African Observatory on Migrations coordinates a civil society campaign that is working to promote free movement within Africa.

- *Harmonise security and free-movement policies:* European initiatives in the areas of border control and migration management must not inhibit intraregional migration. This could mean, for example, that migration policy initiatives with key countries of origin and transit nations (in particular, the Khartoum Process, migration partnerships) include more measures for promoting intraregional mobility than in the past.
- *Offer cross-sectoral incentives for free movement:* The German Government and the European Union should integrate incentives for making progress on free movement regimes and/or agreements and integrating these in other sectors of development policy cooperation (such as economic and employment promotion, vocational training, and peace-building).

In order to implement these recommendations, it is ultimately also necessary to provide stronger support to regional free movement regimes at global level. While such regimes are explicitly advocated in the Global Compact for Safe, Orderly and Regular Migration, no mention is made of the role of regional organisations as their key formulating and implementing structures. It is here that a shift in consciousness is required.

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