The Free Movement of People in SADC

Reflecting on the Experiences, Dilemmas and Strategic Considerations

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Abstract

The Southern African Development Community (SADC) member states committed under Article 5(2) (d) of the SADC Treaty to develop policies aimed at the progressive elimination of the obstacles to the free movement of capital, labour, goods and services. The 2005 SADC Protocol on the Movement of People was celebrated as a giant step towards the realization of the regional integration objective of building SADC into a regional community that is fully integrated where citizens enjoy the freedom of movement across regional borders. Whilst substantial efforts have been invested in developing various legal and policy frameworks to open up borders for the free movement of people within SADC, thirty (30) years since the formation of SADC in April 1980 as the Southern African Development Coordination Conference (SADCC); the region is facing serious challenges relating to the free movement of people, migration and labour movement. In reality, SADC member states' governments have been confronted with serious feasibility challenges, complexities, risks and dilemmas as they attempt to implement commitments made towards the free movement of people in the region, with political, security, economic, strategic, and technical factors often cited as obstacles. This paper sought to critically reflect on the feasibility aspects, policy dilemmas at member state level as well as strategic considerations that stand on the way of free movement of people in SADC. The focus was on examining possibilities, capacities and prospects of SADC member states (in their collectivity and individuality) in addressing the underlying, structural and operational obstacles that are impeding the free movement of people in the region. Secondary data sources are used for analysis, and the three concepts of free movement of people, migration and regional integration provide conceptual lenses for analysis. Findings are key in providing perspectives on how SADC member states may need to collectively address the fundamental questions and issues that facilitate the free movement of people in the region.

Keywords: free movement of people, regional integration, SADC.

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Introduction

The SADC regional integration agenda is aligned to the African regional integration agenda and imperative. The SADC policy and legal framework on the free movement of people, mainly comprising of provisions of Article 5(2) of the SADC Treaty of 1992 (Article 5); SADC Protocol on the Facilitation of Movements of Persons of 2005, SADC Protocol on Trade of 1996, the SADC Protocol on Trade in Services of 2012, the SADC Regional Indicative Strategic Development Plan (RISDP, 2020-2030), the SADC Vision 2050 are all constructively aligned to the African Union legal and policy instruments that were adopted to guide member states towards facilitating the free movement of people on the continent and within their respective sub-regions. Whilst there is general policy consensus on the ideal need and desirability to allow the free movement of people in order to facilitate trade, labour circulation and investments in SADC; the empirical reality is that thirty (30) years since the formation of SADC in April 1980; the region is facing serious challenges relating to the free movement of people, migration and labour movement. SADC member states (especially those that are relatively stable economically, socially and politically) have been confronted with serious feasibility challenges, complexities, risks and dilemmas as they attempt to implement commitments made towards the free movement of people in the region, with political, security, social, economic, and strategic interests and considerations, as well as technical factors often cited as obstacles. This paper examines the efforts made by SADC in opening its borders to facilitate the free movement of people in the region. It further reflects on the empirical feasibility of allowing the free movement of people in SADC, and analyses the possible dilemmas and strategic considerations that confront SADC member states in adopting and implementing the free movement of people concept.

Organizationally, the first section is dedicated to conceptual framing, focusing mainly on the concept of 'free movement of people'. The third section presents a brief analysis of the existing policy and legal framework that government the movement of people across borders within the region. An examination of the progress made in facilitating free movement of people and analytical discussion of the complexities and dilemmas in free movement of people is presented in the third section. The last section highlights the conclusion and recommendations of the study. This paper makes use of a miscellany of secondary data sources in the form of SADC reports, SADC member states policies and laws, books, journal articles, publications from national and international organizations, newspapers and other relevant materials.

Conceptual Frames: The Concept of 'Free Movement of People' in Regional Integration

Generally, free movement of people as a concept denotes

The African Union (AU) Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Rights of Establishment (2018:5) defines free movement of people as follows;

> "*Free movement of persons means the right 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*".

Thus, the concept of free movement of people has generally been used in reference to mobility rights or the human right that every individual possesses to travel from one place to the other within the territory of a country, as well as the right to leave a country and return to it. Article 13 (1) of the United Nations Universal Declaration of Human Rights of 1948 constitutes a solid foundation of free movement rights under international law. The provision confers people with the right to freedom of movement within their state borders whilst Article 13 (2) provides that "[e]veryone has the right to leave any country, including his own, and to return to his country" (United Nations, 1948). In a similar fashion, Article 12 (2) of the International Covenant on Civil and Political Rights states that "[e]veryone shall be free to leave any country, including his own" (*see* United Nations, 1966:176).

It has to be stated here, however, that the right to freedom of movement is not absolute or unfettered as countries have rights to limit the freedom of people to move into their territories. Exceptions under which the freedom of movement may be curtailed by states are provided for under the Article 12 (3) of the International Covenant on Civil and Political Rights, which states that restrictions on the freedom of movement may be effected "to protect national security (ordre public), public health or morals or the rights and freedoms of others" (*see* (United Nations, 1966:176). In international law, therefore, there is scope and latitude in statutes, protocols and treaties for states to prohibit people from entering into their territories on the basis of national laws designed to protect their national security, public order or public health. This has oftentimes created and raised arguments of state sovereignty and territorial integrity (provided for under Article 2 of the United Nations Charter) as a political defense and justification whenever some governments are accused of restricting or controlling the entry of migrants into their territories or violating the rights of migrants, refugees or asylum seekers (Dauvergne, 2004; Guiraudon and Lahav, 2000). However, states have to understand that when they make commitments to allow the free movement of people and labour within the framework of regional integration, they cede part of their sovereignty – through the process of sovereignty re-configuration – for the 'common good' of regional development, regionalism, regionalization and globalization (Vhumbunu, 2019). Nevertheless, in reality, it is difficult to escape the temptations and tendencies of populism, public opinion pressures as well and the usual argument that 'governments are obligated to do the best for their own citizens' each time governments are reminded to open borders and facilitate the free movement of people.

Within the context of regional integration, the free movement of people is usually considered as one of the 'four freedoms' that facilitate deeper and wider integration. The 'four freedoms', that constitute the fundamental pillars in any linear model of economic integration as was adopted by the European Union, are *free movement of people, free movement of goods, free movement of services and free movement of capital.* It is these freedoms that are enablers of, and stepping stones towards, trade and market integration, macro-economic policy convergence, and harmonization of sectoral policies as states progress through the linear model of economic integration stages of a preferential trade area (PTA), free trade area (FTA), customs union (CU), common market (CM), economic and monetary union (EMU) and political union (PU) (*see* Balassa, 1994; Vhumbunu, 2019). Moreover, the free movement of people is considered a critical component of the three factors of production in economics (that is natural resources, human resources and capital).

Even within the World Trade Organization (WTO) trade regulatory architecture, the free movement of people is essential for the realization of the four modes of service supply provided by the General Agreement on Trade in Services (GATS) of 1995, especially Mode Four (*presence of natural persons*) which entails the movement of labour to supply services in a foreign market. Through the Treaty Establishing the African Economic Community (Abuja Treaty of June 1991), the AU member states target that by the end of 2023, there should be free movement of people and effective rights of residence and establishment across Africa so as to achieve the African Economic Community by 2028. Notwithstanding the desirability of this milestone to achieve greater continental integration, the consideration of economic, social, political, security and strategic factors, benefits, merits, and demerits makes African countries and RECs to adopt different approaches in regulating the movement of people within their regions. This has slowed the attainment of free movement of people and opening of borders in most regional integration schemes including within North American Free Trade Area (NAFTA), Association of Southeast Asian Nations (ASEAN), Arab League (AL), Caribbean Community (CARICOM), and the Central American Integration System (SICA) (*see* Sanchez–Alonzo, 2019; De Haas et al, 2019; Kaur, 2018).

There is always a heated debate in academic and policy circles with regard to the empirical socio–economic benefits of free movement of people in host states. Several empirical studies have mixed results and findings, which leaves the empirical question of whether the free movement of people benefits economies or not difficult to answer conclusively. While the benefits of free movement of people have often been argued to outweigh the real and potential benefits derived from it (*see* African Union, 2017:1); countries are often mindful of the reality that migrants may arrive and settle within their territories which may ultimately exert pressure on the host states' capacity to deliver social services, increase competition on scarce resources, worsen unemployment, widen inequalities and also pose threats to peace and security.

Some empirical studies have found out that countries and regions that allow for the free movement of people have often reaped vast socio–economic benefits in return through increasing the national workforce, addressing skills gaps and human capital development, labour market flexibility, taxes and other social contributions; and may bring innovative ideas and new ICT initiatives. In *Is Migration Good for the Economy?,* the OECD (2014) reports that in countries such as Australia, Canada and New Zealand, labour migration continue to play an important role in national development. In the EU, migrant labour has been credited for addressing imbalances on the labour market, contributing taxes and other social contributions to host states, with migrants in Switzerland and Luxembourg providing a net benefit of around 2 percent of the GDP to the national fiscus (OECD, 2014:2).

However, studies by Dustmann et al (2008) have concluded that whilst migrant labour positively impact on public finances in general, it tends to decrease wages and the employment prospects for certain groups, particularly the low–skilled. With specific reference to the EU, Benton and Petrovic (2013), on the other hand, argue intra–EU mobility may have negative consequences because member states' governments have the inability to control the skill level of inflows into particular areas which increases the risk of influx of workers competing for available low–skilled jobs. This is the reality in most African RECs. For instance, even though South Africa has a Critical Skills List which guides the issuance of visas to migrant labour to address the skills gap needed to achieve the objectives of national strategic development programmes such as the National Development Plan (NDP) and Industrial Policy Action (IPAP); the government admittedly struggles to control the influx of migrants into low–skilled menial jobs. In terms of the common argument that free movement of people burden public service delivery in host states, Benton and Petrovic (2013:19)'s study on the EU has revealed that those EU migrants who have resided in the

UK long enough to be eligible for public services such as healthcare benefits are net contributors to the national fiscus and low users of public services. Perhaps, this is why the European Union (EU) countries usually experience problems in reconciling the right to free movement of people and the policy objectives of fighting poverty and social exclusion (Verschueren, 2015).

Even outside the EU in other regional integration schemes in North America, Latin America, Asia, Pacific, and the Middle East, there appears to be anti-free movement of people waves. When Donald John Trump was the President of the United States, he proposed policies such as the construction of the US-Mexico Border Wall, more border patrols and stricter deportation policies all to prevent migrants from "taking [US] jobs", including the enactment of the *Build the Wall, Enforce the Law Act* of 2018 which amended the *Illegal Immigration Reform and Immigration Responsibility Act* of 1996 (*see* United States Government, 2018). In ASEAN, the ASEAN Economic Community (AEC) calls for free movement of people have continued to exclude the movement of low or lower-skilled workers despite the fact that 87 percent of intra-ASEAN migrants are either low-skilled or unskilled workers (Olivier, 2018). This is because, whilst migrants address labour shortages and facilitate skills upgrading; the free movement of people in ASEAN is considered to exacerbate the challenges posed by migrants who are mostly undocumented, with 60 percent of intra-ASEAN migrants being informally employed (Olivier, 2018).

Within the context of African regional integration; the free movement of people (together with that of capital, goods and services) is understood to be fundamental in promoting regional integration, intra-African trade and investment, tourism facilitation, pan-Africanism, free circulation of ideas, education and research, labour mobility and increase remittances (*see* Vhumbunu and Rudigi, 2020; Okunade and Ogunnubi, 2021; Adepoju, 2002; Kayizzi-Mugerwa et al, 2014). With regard to remittances, for instance, Sub-Saharan African countries received US$42 billion in remittances in 2020, although this remains lower than other regions such as South Asia (US$147 billion), East Asia and Pacific (US$136 billion), Latin America and the Caribbean (US$103 billion), Middle East and North Africa (US$56 billion), and Europe and Central Asia (US$56 billion), for the same year (World Bank, 2021). Some African countries receive huge remittances annually whose transformational impact cannot be underestimated. In 2019, for example, Nigeria received remittances amounting to US$23.8 billion, and Ghana received US$3.5 billion, Kenya (US$2.8 billion) and Senegal (US$2.5 billion) (*see* Knomad, 2022).

Some benefits also accrue in other economic sectors through free movement of people. In Seychelles, the abolition of visas for African nationals is reported to have resulted in a 7 percent annual growth in tourism between 2009 and 2014 (African Development Bank, 2016). After the relaxation of its visa requirements, Rwanda also experienced a 22 percent increase in African travelers into the country in 2013, with the countries cross-border trade with Kenya and Uganda surging by 50 percent (African Development Bank, 2016). However, African countries – especially those that are relatively stable economically and politically – have tended to consistently approach the regional agenda of free movement of people with measured caution and reservations. They fear that acceding to free movement of people will be accompanied by the uncontrollable influx of citizens (especially undocumented or illegal migrants) from geographically contiguous states in search of economic opportunities and 'welfare tourism'/'benefit tourism' which would compromise their national economic, social and political security whilst also pressuring their public service delivery capacities. In the end there is 'criminalization of migrants' and xenophobic tendencies (Atak and Simeon, 2018; Akinola and Klimowich, 2018).

The issuance of entry visas, work permits, residence permits and other relevant permits, visas and passes for free intra-African travel is a nightmare in most countries despite the implementation of the AfCFTA and the Single African Air Transport Market (SAATM) initiative (*see* Hirsch, 2022;

Olasoji, 2022). In addition to this, one of the Agenda 2063 flagship projects is *The African Passport and Free Movement of People* whose aim is to remove restrictions for Africans to travel, work and reside across their own continent. Domestication of regional and continental commitments, however, remains a challenge. For instance, the AU Protocol on the Free Movement of Persons has been signed by 33 member states but up to now only four countries have ratified the Protocol, that is Mali, Niger, Rwanda and Sao Tome & Principe (African Union, 2022). With intra-African migration accounting for 48 percent of the total migration of Africans (African Centre for Strategic Studies, 2022), consideration of free movement of people that advances regional integration, continental growth and development is critical as it is urgent generally in Africa, and particularly in SADC.

SADC Policy and Legal Framework on the Free Movement of People

Considering that RECs are building blocks for the creation of the African Economic Community (AEC), the SADC policy and legal frameworks that have been put in place to facilitate the free movement of people are constructively aligned to African Union policy and legal frameworks. At the continental level, the AU Treaty Establishing the African Economic Community (Abuja Treaty of 1991), the African Common Position on Migration and Development (ACPMD) of 2006, the Migration Policy Framework for Africa of 2006 and Plan of Action (2018-2030), the African Union Protocol on the Free Movement of Persons, Right of Residence and Right of Establishment of 2018, AU Agenda 2063, the African Passport Initiative, and objectives of the African Continental Free Trade Area (AfCFTA) all have objectives that obligate African countries to gradually remove obstacles to the free movement of persons, goods, services, and capital and the right of residence and establishment in Member States.

The African Union Protocol on the Free Movement of Persons provides the right of entry which includes the right for African citizens to travel across the continent without visas (Article 6); the right of establishment which includes the right to set up businesses or be employed in any African country (Article 16); and the right of residence which includes the right to become a resident in any African country (*see* African Union, 2018). In consistent with the objectives of the SADC Protocol on the Facilitation of Movement of Persons, SADC adopted the SADC Common Position on the AU Protocol on Free Movement of Persons in 2017. In the SADC Common Position, SADC member states agreed that they will not sign the AU Protocol on Free Movement of Persons until a number of pre-conditions have been met, and these pre-conditions include the existence of peace, security and stability on the continent; macro-economic convergence and reduction of economic imbalances in Africa; and compatibility of ICT systems at ports of entry to facilitate exchange of information amongst African states (*see* Department of Home Affairs of South Africa, 2017:4).

In SADC, the following nine legal and policy instruments guide the REC and member states in implementing initiatives meant to facilitate the free movement of people in the region;

- The SADC Treaty of 1992
- The SADC Protocol on Trade of 1996
- The SADC Protocol on the Facilitation of Movements of Persons of 2005
- The SADC Protocol on Trade in Services of 2012
- The SADC Protocol on Employment and Labour of 2014
- The SADC Common Position on the AU Protocol on Free Movement of Persons (2017)
- SADC Labour Migration Action Plan (LMAP, 2020-2025)

- The SADC Regional Indicative Strategic Development Plan (RISDP, 2020–2030)
- The SADC Vision 2050

Article 5(2) (d) of the SADC Treaty of 1992 provides that SADC shall "develop policies aimed at the progressive elimination of obstacles to the free movement of capital and labour, goods and services, and of the people of the Region generally, among member states". The SADC Protocol on the Facilitation of Movements of Persons of 2005 (which replaced the draft Protocol on the Free Movement of Persons of 1996 and entered into force in 2001) has its main objective as that of developing "policies aimed at the progressive elimination of obstacles to the free movement of persons of the Region generally into and within the territories of State Parties". The Protocol, under Article 3, obligates member states to allow other SADC citizens to enter into their territories without a visa (or non-chargeable visa) for a maximum of 90 days per year for "bona fine visit" and in accordance with the laws of their respective national laws. Member states are also obligated to facilitate temporary and permanent residency, establishment and working. SADC member states also commit, through Article 7 of the SADC Protocol on the Facilitation of Movements of Persons, to harmonize their national laws, statutory rules, regulations and immigration practices that facilitate the free movement of people in the region. The conditions of entry of persons into SADC member states is governed by Article 14 (2) of the SADC Protocol on the Facilitation of Movements of Persons, and these include the possession of valid travel documents, presentation of evidence of sufficient funds to support oneself for the duration of the visit, entry through official ports of entry, and that entry is only granted to persons who are not prohibited immigrants. Relatedly, the SADC Protocol on Employment and Labour of 2014 and the SADC Labour Migration Action Plan (LMAP, 2020–2025) both create a legal and policy framework for labour migration and labour mobility in SADC.

The SADC Protocol on Trade of 1996 and the SADC Protocol on Trade in Services of 2012 are key legal pillars of the SADC Free Trade Area (FTA) that was achieved in August 2008. These two Protocols recognize the utility of allowing for the free movement of people, as an essential component of trade in services, in order to develop SADC economies. In particular, the SADC Protocol on Trade in Services provides general obligations for SADC member states with respect to the treatment of services and service suppliers whilst mandating them to progressively negotiate the removal of barriers to the free movement of services.

The SADC Regional Indicative Strategic Development Plan (RISDP, 2020–2030) acknowledges the importance of free movement of people in advancing the regional integration agenda in SADC whilst the SADC Vision 2050 recognizes that the free movement of people assists in creating an environment that fosters regional cooperation and integration. In particular, the RISDP (2020–2030) emphasizes the vitality of free movement of people in the SADC regional integration matrix under three selected pillars of SADC regional integration, namely the Industrial Development and Market Integration pillar, the Infrastructure Development pillar, and the Social and Human Capital Development pillar (*see* RISDP, 2020:10).

Free Movement of People in SADC: Tracking Empirical Progress, Complexities and Dilemmas

It is now 30 years since SADC was formed, when the SADC Heads of State and Government agreed to transform the Southern African Development Coordination Conference (SADCC) on 17 August 1992 so that the REC focuses on the integration of economic development. Whilst notable milestones have been achieved in ensuring the free movement of people within the region through the SADC Treaty of 1992, and the other above-discussed instruments, in overall the movement of people within the REC is still lagging on four fronts and indicators. Firstly, the state of free

movement of people in SADC is not consistent with the SADC visions and aspirations as reflected in the REC's legal and policy instruments. Secondly, SADC is way behind the targets set in the Abuja Treaty of June 1991 in which AU member states agreed that by the end of 2023, there should be free movement of people and effective rights of residence and establishment across Africa so as to achieve the African Economic Community by 2028. Thirdly, SADC's performance in the free movement of people dimension of regional integration is lagging behind when compared to that of other African RECs. Fourthly, there are several concerning legitimate reports of existing barriers to the free movement of people in SADC as well as continued mistreatment and discrimination of SADC citizens in other SADC countries, including xenophobic violence.

Status of Free Movement of People in the SADC Region

A more objective assessment of free movement of people in African RECs has been attempted through the Africa Regional Integration Index (ARII)1 – developed by the United Nations Economic Commission for Africa (UNECA) jointly with the AU and African Development Bank (AfDB). The ARII shows that SADC member states are making slow progress in facilitating the free movement of people as shown on Figure 1 below.

Figure 1: The State of Free Movement of People in SADC Countries
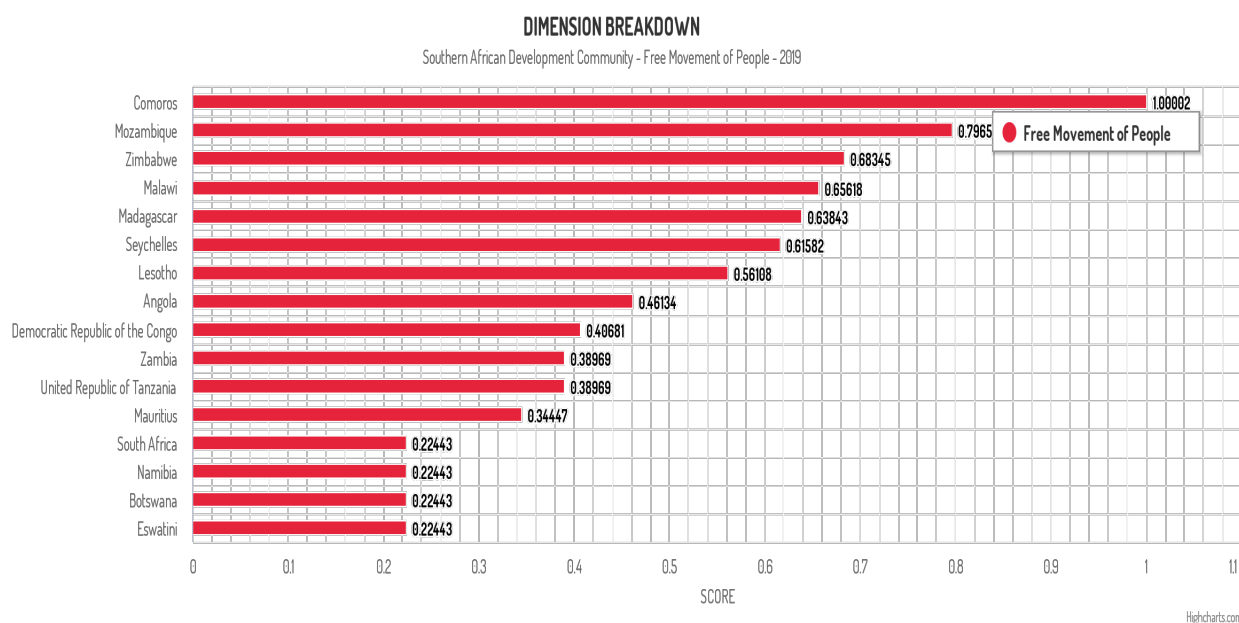
Source: United Nations Economic Commission for Africa (UNECA)/African Union (AU)/African Development Bank (AfDB, 2022). Available at: https://www.integrate–africa.org/

As shown in Figure 1, half of SADC member states (50 percent), have scores below the African average score of 0.441 in terms of free movement of people. Overall, SADC member states, except Comoros, still have stringent visa regimes and have not ratified the AU Protocol on the Free Movement of Persons, Right of Residence and Right of Establishment of 2018. In fact, a number

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1   The Africa Regional Integration Index (ARII) is a composite index comprising 16 indicators grouped into five dimensions, namely: trade integration, productive integration, macro-economic integration, infrastructure integration and free movement of people. There are three indicators used by ARII for measuring the performance of countries in terms of the extent to which people can move in the region for tourism, social purposes, trade and business, that is, (a) *the number of countries that may obtain a visa on arrival;* (b) *the number of countries that require a visa*, and (c) *the number of countries that have ratified the AU Protocol on the Free Movement of People.*

of SADC member states are yet to sign the Protocol, namely, Botswana, Madagascar, Mauritius, Namibia, South Africa, Seychelles, Eswatini and Zambia (*see* African Union, 2022).

In Africa, out of the 19 higher-performing countries with over 0.668 scores on the ARII Index, SADC accounts for six of them (that is Comoros, Mozambique, Madagascar, Seychelles, Malawi and Zimbabwe). Out of the 19 worst-performing countries in terms of free movement of people in Africa (with a below-average score which is less than 0.333), SADC accounts for five of them (namely Zambia, Botswana, Eswatini, South Africa and Namibia). The continued existence of stringent visa regimes and restrictions on the free movement of people cripples regional integration in SADC as it impedes intra-SADC investments, intra-SADC tourism, restrains labour mobility and disrupts trade in services.

By inter-REC comparison, SADC's performance is below several RECs with respect to free movement of people as depicted on Figure 2 below.

Figure 2: The State of Free Movement of People in SADC compared to other RECs
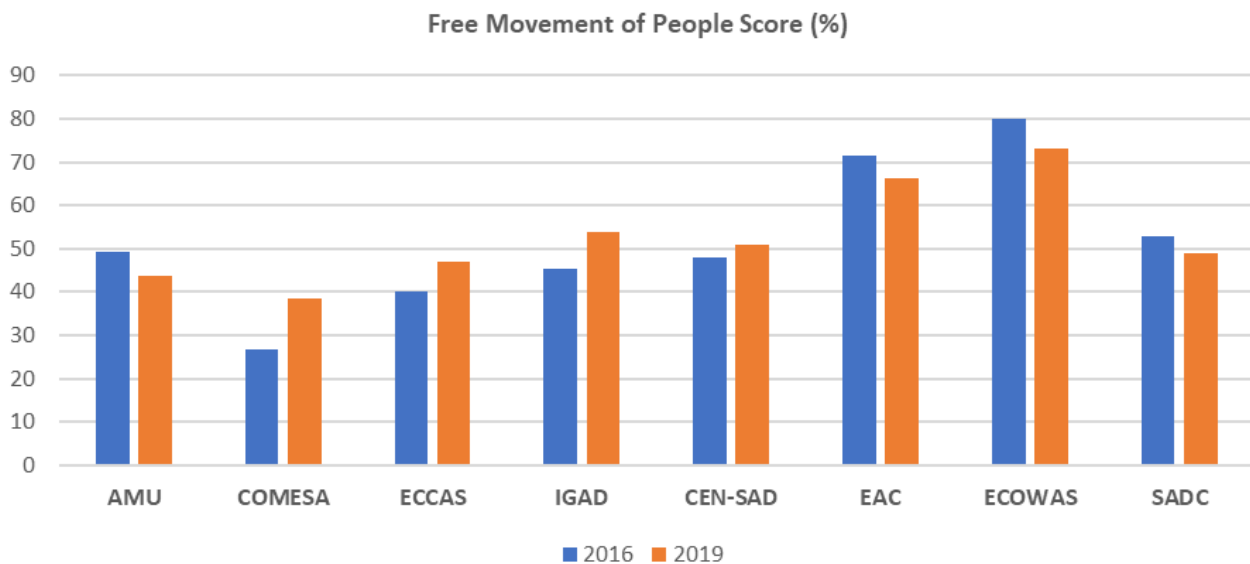
Source: United Nations Economic Commission for Africa (UNECA)/African Union (AU)/African Development Bank (AfDB, 2022). Available at: https://www.integrate-africa.org/

The RECs of ECOWAS, EAC, IGAD and CEN-SAD are performing better than SADC in terms of free movement of people as exhibited on Figure 2 above. These high performing African RECs are making great progress in facilitating the free movement of people within their regional configurations, despite facing implementation challenges. The EAC, for instance, introduced the East African Passport (with diplomatic, service and ordinary categories) since January 2018 as a travel document to ease intra-EAC border crossing for EAC citizens and the East African Passport has a six months' multiple entry validity and is valid for up to 10 years (East African Community, 2017). In addition, some EAC member states (namely Kenya, Rwanda and Uganda) adopted the East African Tourist Visa (EATV) which is a single-entry electronic travel permit for tourists to travel across the three countries using once document (Ngoga et al, 2021). ECOWAS also introduced the ECOWAS Passport in December 2000 to allow for visa-free movement by ECOWAS citizens (UNECA, 2022a). SADC performs better than only three RECs (that is, ECCAS, AMU and COMESA) out of the eight RECs recognized by the AU.

There has been a slow pace in the domestication of legal instruments meant to facilitate the free movement of people in SADC. Currently, the SADC Protocol on the Facilitation of Movement of Persons of 2005 is not yet in force because it has not been ratified by the requisite two-thirds of the REC's member states as prescribed under Article 36 of the Protocol. Some provisions of the Protocol make it difficult to realize the intentions to facilitate the free movement of people. For instance, whilst member states are obligated to allow visa-free entry of SADC citizens into their country under Article 3 of the Protocol as well as a permanent residence, temporary residence and establishment; visa-free admission specified under Article 14 are too demanding and difficult to satisfy for several SADC citizens. An example of legal provisions and conditions that have resulted in the illegal entry of migrants into other SADC member states is the provision that admission of entry is conditioned upon the presentation of evidence of sufficient funds to support oneself for the duration of the visit as well as the 90-day maximum visa-free entry per year provision. Most SADC migrants, especially labour migrants who are permanently or temporarily out of their countries in search of employment and business opportunities in SADC countries that are relatively stable and economically prosperous such as South Africa, Botswana, Namibia, and Mauritius. The majority of these SADC migrants are impoverished to the extent that they do not have sufficient funds to present to immigration officials upon entry as evidence that they will be able to support themselves in the countries of their destination. Even those who manage to present such monetary evidence, the majority of them are unable to satisfy the visa extension requirements or application requirements for alternative visas/work permits for them to continue staying or working in the host countries. In the end, SADC migrants are forced to live in their host countries as undocumented immigrants which exposes them to the vices of migrant labour exploitation, corruption by law enforcement agencies and discrimination in accessing essential public services.

Due to the existence of strict conditions of entry and stringent visa requirements, there has been a surge in the use of illegal border crossing points in intra-SADC migration and cross-border trade. For example, at the Beitbridge Boarder Post, there are reports that several migrants, refugees, asylum seekers and cross-border traders from other SADC countries such as Zimbabwe, Zambia, Malawi, and DRC use illegal and irregular border crossing points through paid 'escorts' who even use canoes and floaters during the rainy season to carry them across the Limpopo River and then connect to Musina Town, in Limpopo Province, South Africa using well-connected commuter omnibus drivers/'cross-border drivers' (popularly known as *'Omalayitsha'*) (Tshivhashe, 2020a; Ncube, 2017; Evans, 2015). In some instances, corrupt border control agents are complicit as they demand bribes to allow irregular migrants a safe passage (*see* Tshivhashe, 2020a; Evans, 2015). This is a two-way process, as many travellers also use the same modus operandi crossing the border from South Africa into Zimbabwe, avoiding the official exit point at Beitbridge Border Post as they would have either entered into South Africa illegally or would have overstayed in South Africa well-after the expiry of their visas, itself a serious offense that would attract an exorbitant fine and banned from entering South Africa for a specified period depending on the duration of overstay, or even face imprisonment if one cannot afford to pay the stipulated fine.[2] However, it has to be stated here that this is not unique to South Africa alone, all SADC countries have more or less similar provisions and rules in their Immigration laws. This has given rise to the phenomenon of migrant smuggling in SADC, together with human trafficking (*see* Vhumbunu, 2020). For instance, the *Global Report on Trafficking in Persons of* 2020 reveals that the SADC countries of Botswana, Eswatini, Lesotho, Malawi, Mauritius, Namibia, South Africa

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2   According to the Immigration Act Number 13 of 2002, a South African visa overstay of less than 30 days attracts a ban of a period of 12 months during which one is given the status of an "undesirable person", and if a traveller overstays their visa for over 30 days, the effected ban will be for at least 5 years, and one is also given the status of an "undesirable person". In both cases, visa overstay attracts imprisonment if one is not unable to pay a fine.

and Zambia reported trafficking of victims who are nationalities of other SADC countries (United Nations Office on Drugs and Crimes, 2021:3).

Other than challenges relating to strict conditions of entry and stay imposed on travellers in some SADC countries, the emergence of anti-migrant sentiments in a number of SADC countries, also directed at other migrant SADC citizens has been an obstacle to the free movement of people in the region. In some cases, this has manifested in collective xenophobic violence. For example, as of 11 July 2022, a total of 942 incidents of xenophobic violence have been reported in South Africa since 1994, and this has resulted in the death of 642 people and displacement of 123 760 people whilst 4 849 shops have been looted during the xenophobic skirmishes (Xenowatch, 2022). Cases of systematic discrimination and stereotyping of migrants as well as xenophobic attitudes – in some instances accompanied by violence and/or conflict – directed at other SADC citizens have also been widely reported in Botswana (*see* Akinola, 2018; Campbell and Crush, 2015; The East African, 2014).

Several reports against intolerance, animosity, harassment, and inhuman treatment of both documented and undocumented SADC migrants at other SADC countries' ports of entry continue to be widely reported in the region. For instance, women traders continue to be subjected to harassment and violence at border crossings (*see* Tizora, 2021; Jacobson and Joekes, 2019; Blumberg et al, 2016). In SADC, where 70–80 percent of informal cross-border traders (ICBTs) are women, 34 percent of women ICBTs have reported sexual harassment by border officials with other cases of men reporting sexual exploitation, coercion and harassment by border agents and police (Blumberg et al, 2016:37; Tizora, 2021). Facilitating free movement of trade will even be beneficial to intra-SADC trade, as ICBT is currently contributing 30–30 percent of intra-regional trade in SADC (Tizora, 2021). However, the strict interpretation of border control laws and measures by immigration, customs and security personnel at ports of entry consequently forces travellers, cross-border traders and migrants to utilize alternative routes and other illegal means used to evade the stringent rules and measures that regulate the cross-border movement of people, which then motivates migrant smuggling. For instance, South Africa deported 351 840 migrants between 2012 and 2016, with 343 774 of these (98 percent) being nationals of SADC countries (United Nations Office on Drugs and Crimes, 2022) whilst a total of 14 859 undocumented migrants were also deported between 1 April 2020 and 31 March 2021, with four SADC countries (Mozambique, Zimbabwe, Malawi and Lesotho) accounting for over 90 percent of these deportations (Chambers, 2021). In January 2022, it was reported that South Africa arrested and deported over 89 000 undocumented migrants (eNCA, 2022). In Botswana, a total of 22 000 undocumented migrants from Zimbabwe were deported in 2015, and another 29 000 were deported in 2018 (Dube, 2019).

The construction of circumvallation structures and impenetrable border walls in SADC states may not be a positive sign and signal that member states have embraced the concept of free movement of people. This re-territorialization of the region may serve to remind everyone about the pre-colonial fortresses that characterized the state formation struggles between and among kingdoms, fiefdoms and empires that preceded the 19th century in Southern Africa. Whilst this may easily be normalized as a global trend and pattern of de-globalization since a number of countries in the world such as the USA, Kenya, Tunisia, Estonia, Saudi Arabia, Hungary, and others have been reported to have announced and/or begun constructing barriers on their frontiers since 2015 (*see* Vallet, 2022; Gianna-Grun, 2021); the emergence of border fences in SADC may be argued to be against the letter and spirit of the SADC Protocol on Free Movement of Person and SADC Common Vision for an integrated and prosperous society. Certainly, there may be other dignified, humane and brotherly means and ways of controlling the irregular movement of

people within SADC than the reinforcement and fortification of borders. The situation is worsened when borders are over-militarized, with constant deployment of troops, military patrols, drones and/or digital surveillance; especially when there responses are not a reaction to, or preventive measures against, any serious security threats of trans-national terrorism, insurgency, conflict, pandemics, epidemics or any emergency situations. South Africa, for instance, announced the deployment of helicopters by the South African National Defence Force (SANDF) to patrol the Zimbabwe-South African border in Musina and boat patrols along the Limpopo River, with the Minister of the Department of Home Affairs arguing that "strict measures" will continue to be implemented "to stop people [from] entering the country illegally" as this undermined South Africa's sovereignty (eNCA, 2021).

In 2003, Botswana started constructing a 500 metres-long and 2.4-metre-high electric fence at its border with Zimbabwe. Although the Government of Botswana insisted that the border fence was motivated by the desire to control cross-border livestock movement in light of deadly foot and mouth disease (FMD) outbreaks that were affecting the country's lucrative beef exports into the European Union market together with the "problem with Zimbabwean illegal immigrants" (News24, 2006), the then Zimbabwean Ambassador to Botswana argued that "Botswana [was] trying to create another Gaza Strip" through the barrier, and further observed that "people [would] continue to destroy the fence because it has divided families on either side of the border" (Carroll, 2003). Likewise, South Africa erected a 40 metre-long and 1.8 metres high 'border security' fence at its border with Zimbabwe at the cost of R7 million (around US$2.5 million) although the border fence has now been damaged and vandalized, allowing easy crossing by irregular migrants from the region (Tshivhashe, 2020b). Border fence projects, however, also appear to be motivated by anti-migration populism and therefore become populist public relations exercises where governments must be seen to be taking action against nationalistic anti-immigrant sentiments and the unregulated influx of undocumented migrants in affected SADC countries.

Complexities and Dilemmas in Facilitating the Free Movement of People in SADC

Whilst there appears to be broad consensus amongst SADC member states in their deliberations on the need for deepened and widened regional integration in the region, including the free movement of goods to facilitate intra-regional trade, investments, tourism, labour mobility and skills circulation; the empirical reality on the ground suggests otherwise. Individual member states' positions on the free movement of people are guided by their realist intentions to protect their national economic and strategic political interests. Member states that are relatively stable and economically prosperous in SADC (such as South Africa, Botswana, Namibia, Mauritius and Seychelles) have often exhibited presentiment and disquietude towards wholesale and wholesome embrace of the concept of free movement of people. There are legitimate fears that allowing the free movement of people will overwhelm their domestic public service delivery capacities whilst presenting socio-economic challenges relating to competition for shrinking jobs and other economic opportunities.

The SADC Common Position on the AU Protocol on Free Movement of Persons which was adopted in 2017 clarifies the complexities and dilemmas confronting most SADC member states. In the SADC Common Position, member states of SADC agreed not to ratify the AU Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Rights of Establishment. The same pre-conditions are also relevant in explaining the reasons behind the stonewalling and foot-dragging that characterize SADC member states' negotiations on commitments relating to the free movement of people. The SADC Draft Protocol on the Free Movement of Persons was developed in 1996 but it went through extensive revisions

and reviews before it was replaced by a more restrictive SADC Protocol on the Facilitation of Movements of Persons adopted in 2005 (UNECA, 2022b). The following three main issues therefore continue to present complexities and dilemmas to member states in the regional quest for free movement of people 30 years since the formation of SADC.

(a) Existence of economic imbalances amongst SADC countries. There is apparently wide disparities between and among SADC member states in terms of socio-economic development which defines the pull and push factors behind intra-SADC movement of people. Economically advanced countries in SADC currently host more economic migrants from fellow SADC countries as they search for better economic opportunities, especially employment. For instance, on the latest Human Development Index (HDI)[3] rankings, Mauritius, Seychelles, Botswana and South Africa are considered to be highly and very highly developed countries, with HDI indices of over 0.7 index score whilst other SADC countries such as Malawi, DRC and Mozambique are very under-developed and constitute the bottom 16 of the 189 countries ranked on the HDI Index, with less than 0.5 index scores (United Nations Development Programme, 2020). Figure 3 shows the state of disparities in SADC in terms of human development and prevalence of poverty.

Figure 3: State of Human Development and Poverty Rates in SADC coutries as of 2020
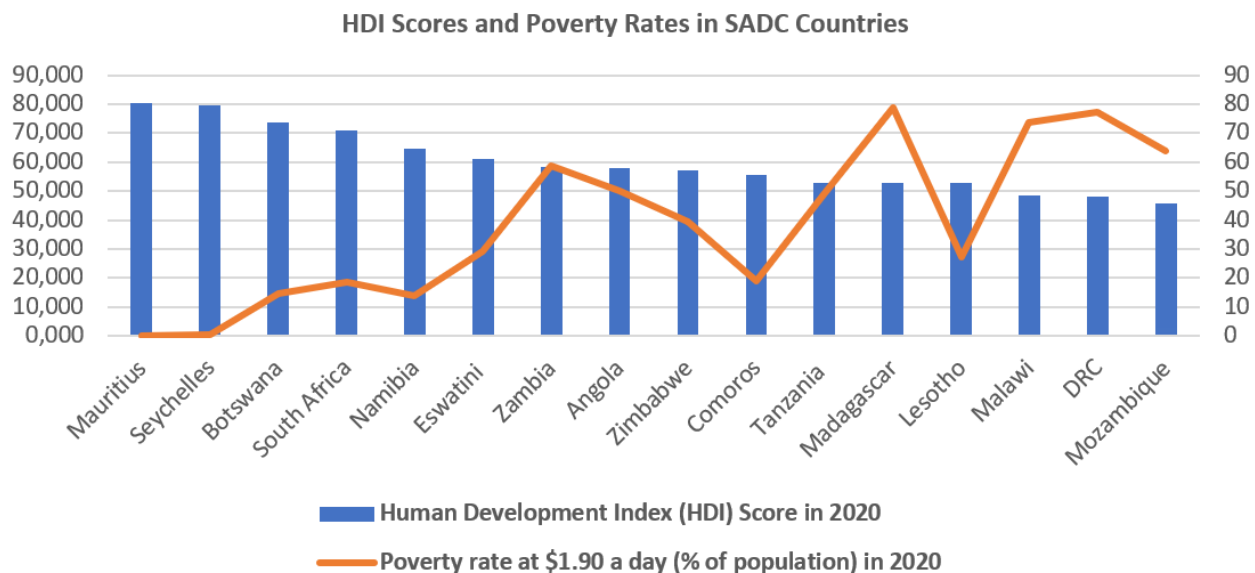
Source: UNDP Human Development Report (2020) and World Bank (2022)

As depicted on Figure 3 above, it is Mauritius, Seychelles, Botswana, South Africa and Namibia that have very low levels of poverty and corresponding high levels of human development in SADC. It is therefore not surprising that these are the same countries that are experiencing an influx of intra-SADC migrants, mostly in search of economic opportunities. Sustainable solutions to prevent unnecessary migration, especially low value-adding and often unwanted unskilled labour or migrants without any critical skills required by migrant-receiving countries, should emphasize more on effectively addressing the triple challenges of poverty, unemployment and inequality in all SADC countries.

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3   The Human Development Index (HDI) is a statistic composite index of life expectancy, education, and per capita income *indicators, which is used by the United Nations Development Programme (*UNDP)'s Human Development Report Office to rank and measure a country's development.

Although other SADC countries ranked low in economic development are hosting substantial populations of migrants, these are in the form of refugees and asylum seekers from the Horn of Africa and the Great Lakes Region. The DRC, for example, hosts a total of 529 000 refugees and asylum seekers whereas Tanzania hosts 246 000, Zambia (105 000), Angola (57 000) and Malawi (52 440) (*see* United Nations High Commissioner for Refugees, 2022). There have been arguments from migrants hosting states that the influx of migrants is burdening their public service delivery capacities and increasing competition for scarce economic opportunities. In South Africa, there have been clamours for the removal of migrants with the proliferation of anti-migrants' vigilant groups and movements such as *Operation Dudula, Put South Africa First,* and *All Truck Drivers Foundation (ATDF)* (*see* Landau and Misago, 2022). These are also pilling political pressure on the South African government to seal off their national borders and strictly enforce the national migration regime. Perhaps, this may explain why South Africa opts for a 'phased approach' in implementing the regional instruments on the free movement of people (*see* Department of Home Affairs of South Africa, 2017:5).

(b) Peace, security and stability challenges in SADC. With widespread conflicts and wars in Africa as well as some SADC member states, the number of refugees and asylum seekers in SADC countries continues to increase. The Armed Conflict Location & Event Data Project (ACLED, 2022) reports that between 1 January 2022 and 30 June 2022; the Southern African region experienced a total of 465 riots, 114 violence against civilians, 11 war battles and a single incident of violent explosions or remote violence. Currently, there is Ansar al-Sunna Islamist terrorist insurgency in Mozambique's northern province of Cabo Delgado since October 2017 whilst the DRC has been at war since the late 1990s whilst other SADC countries such as Zimbabwe, Eswatini and Lesotho have experienced protracted instability mainly triggered and perpetuated by contested election outcomes and democratic transitional politics. There are legitimate fears that such conflicts pose security threats to other SADC countries and conflict-induced displacements in the form of refugees and asylum seekers may worsen in the event that there is free movement of people in the region. All this can only be addressed if SADC countries commit to create conditions that are conducive for peace and stability whilst SADC member states need to adopt a new approach that seriously aim at addressing conflict and instability in the region as envisaged in the SADC Protocol on Politics, Defence and Security of 2001, the SADC RISDP of 2020-2030, the SADC Revised Strategic Indicative Plan for the Organ (SIPO II) of 2012, the SADC Mutual Defence Pact of 2003 as well as the African Union initiative of *Silencing the Guns by 2030.*

(c) Compatibility of ICT systems at Ports of Entry in SADC to facilitate the exchange of information. The immigration systems in most SADC member states are not automated and interfaced to allow for digitalization of immigration system as well as exchange of information. South Africa, for instance, has an Automated Biometric Identification System (ABIS) and Automated Fingerprint Identification System (AFIS) which feeds into the Department of Home Affairs' Enhanced Movement Control System (EMCS). The EMCS also assists with digital database capture of information relating to fugitives or international terrorists such that they are prevented from entry at ports of entry. Although such ICT facilities are considered crucial in the *SADC Guidelines for Coordinated Border Management* as several SADC countries continue with their e-Government programmes which are also automating their respective immigration departments; most SADC countries do not have such advanced and compatible ICT systems at their ports of entry. The absence of a system comparable to the European Travel Information and Authorization System (ETIAS), EU Entry/Exit System (EES), Eurodac (for collection, transmission, and comparison of fingerprints), and use of machine-readable travel documents (MRTDs) makes it difficult to facilitate efficient screening and security checks of travellers and migrants, whilst limiting information sharing that

is fundamental in free movement of people. All this may be better implemented and coordinated when the relevant immigration laws in SADC member states are harmonized.

Conclusion and Recommendations

The conclusion from the analysis is that 30 years since the formation of SADC in April 1980; the REC has been very slow in facilitating the free movement of people within the region based on the focused indicators. The status of free movement of people in SADC has not been consistent with the SADC visions and aspirations as reflected in the REC's legal and policy instruments. SADC is lagging behind in pursuit of the targets set in the Abuja Treaty of June 1991 in which AU member states agreed that by the end of 2023, there should be free movement of people and effective rights of residence and establishment across Africa. By regional comparison, SADC's performance in free movement of people dimension of regional integration is lagging most of the African RECs. There are several existing barriers to the free movement of people in SADC as well as continued mistreatment and discrimination of SADC citizens in other SADC countries, including xenophobic violence. In recommendation, SADC countries are encouraged to effectively implement its RISDP (2020-2030) and SADC Vision 2050 such that the conditions necessary for the free movement of people are achieved, namely, addressing economic disparities; ensuring peace and stability in the region; implementing pro-poor national policies that addresses the challenges of poverty, unemployment and inequality; and developing strategies that harness the potential of migrants into practical socio-economic opportunities. In reality, though, the recurrent convoluted and involuted challenge has been that the existence of an assortment of protocols, policies, plans, programmes and projects meant to promote the free movement of people has not been accompanied by effective implementation and compliance enforcement. Long-term plans and visions such as the SADC Vision 2050 do not have strict targets and milestones that are accompanied by regional actions and consequences for member states that fail to reach them. In the end, free movement of people and the attainment and realization of a "peaceful, inclusive, competitive, middle-income industrialized region, where all citizens enjoy sustainable economic well-being, justice and freedom" as envisaged in the SADC Vision 2050, may continue to be elusive and remain a mirage or a political phantasmagoria.

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