




Chapter 24

African Women Labour Migrants: Assessing the African Union Free Movement of Persons Protocol

Nompumelelo Ndawonde 

*Institute for Pan African Thought and Conversation,
University of Johannesburg, South Africa* 
nndawonde@uj.ac.za

Introduction

In the contemporary world, the trend of women's migration has grown increasingly prominent. In 2020, the global international migrant stock included approximately 135 million female migrants, accounting for 48.1% of the total, meaning nearly half of the world's migrants are women and girls (UN DESA 2020). This increasing visibility of women in international migration is often referred to as the feminisation of migration. This term captures the rising prevalence of women who travel independently in global migration patterns (IOM 2021).

Historically, men have been the primary labour migrants in Africa. However, in recent times, there has been a noticeable shift, with women assuming a prominent role in the dynamics of labour migration. This emerging reality illustrates a broader societal shift where women are increasingly more active in the labour force despite the entrenched structural and systemic inequities of a gendered world. African women labour migrants represent a particularly interesting demographic within this context. Their stories are detailed with the hopes of improvement in their socio-economic status and are often overshadowed by the harsh realities of vulnerability and exploitation. As these women navigate borders in search of employment and security, they carry

with them not just the promise of their labour, but the potential to capitalise on the opportunities offered by regional economic developments and integration. Push factors, such as abject poverty, gender inequality, climate change, political instability, and the scars of conflict, force these women to leave their homes; while pull factors such as economic opportunities and higher standards of living drive them to seek opportunities beyond their native borders. The need to survive, coupled with the ambition to strive, reflects the dichotomy of migration. For some, it is a compulsion, whereas, for others, it is a choice.

Against this backdrop, the 2018 Protocol to the Treaty establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment (AU FMP) becomes relevant in this discourse. The protocol reflects the continent's ambition to support the free movement of persons between countries and labour migration. The African Union (AU)'s Agenda 2063 vision for integration places the free movement of people as a critical element in its quest to "accelerating Africa's economic growth, trade and development as well as promoting [its] common identity by celebrating [its] history and [its] vibrant culture" (AU 2023a). Within the AU FMP, 11 labour mobility-migration provisions have been stipulated; however, it is unclear whether these provisions are gender inclusive or whether they acknowledge the vital role women play in the pursuit of the AU's Agenda 2063. Thus, this begs the question: What tangible prospects does the AU FMP offer for African women migrant workers? This becomes important because they serve as a cornerstone of economies, yet their wellbeing is frequently marginalised.

This chapter seeks to unpack the intricate layers of this question by assessing the responsiveness of the AU FMP to the multifaceted challenges faced by African women labour migrants on the continent, drawing from the South African case. It critically examines the labour migration-mobility-related provisions within the protocol through a gendered lens, probing their depth, reach, and efficacy. Furthermore, it proposes forging robust, gender-responsive policy frameworks that recognise and safeguard the interests and rights of women labour migrants. It is

through such dedicated policies that the AU FMP can truly become an instrument of empowerment and protection for women labour migrants, thereby fulfilling its promise and potential as a cornerstone of the AU's broader vision for an integrated and prosperous continent.

The Feminisation of Migration in Africa: Challenges and Policy Perspectives

Although the media is saturated with reports of Africans migrating to Europe, the reality is that over 80% of migration occurs within Africa and across its regions (Ardittis 2017). Indeed, between 1960 and 2000, more Africans migrated within the African continent than from Africa to other parts of the world (Flahaux & de Haas 2016). In 2019, the majority of Africa's migrant population resided in East Africa and West Africa. Combined, these two regions accounted for 58% of the continent's international migrants, hosting over 7 million migrants each. The distribution of the remaining migrant population across other African regions included 23% in Southern Africa, 12% in Central Africa, and 7% in Northern Africa (AU 2021:23). Indeed, "These flows include increasing numbers of migrant women, rural to urban migration, migration for seasonal work and labour migration, and a rise in search of decent work and educational opportunities as well as irregular migration and large numbers of refugees, asylum seekers and internally displaced persons" (AU 2018a:9). African women migrants are increasingly participating in the formal and informal labour market with the International Labour Organisation (ILO) indicating that in the Sub-Saharan Africa region, the labour participation rate of female migrant workers stood at 47.3% (ILO 2018). Many studies indicate that various factors account for women's intra-regional migration in the continent.

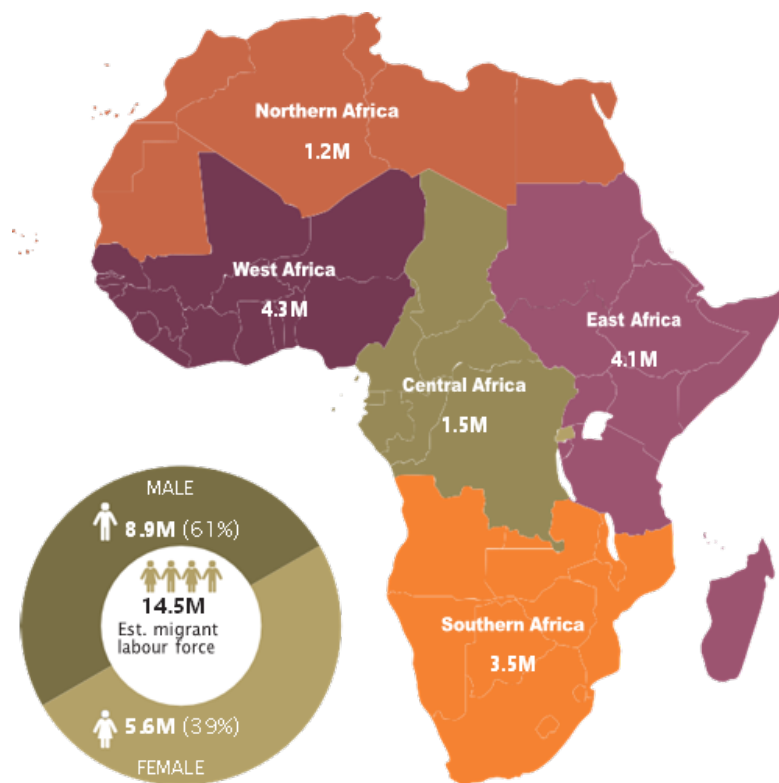


Figure 24.1: Distribution of International Migrant Workers in Africa Across Geographical Sub-regions, 2019 (millions)

Source: STATAFRIC Migration Database

The West

As of mid-2020, it was estimated that approximately 7.6 million international migrants were living in West Africa. Nearly 34% (2.6 million) resided in Côte d'Ivoire, while 17% (1.3 million) were in Nigeria (IOM 2020). Historically, migration was a response to population pressures, environmental catastrophes, poor economic conditions, conflicts, and the negative impacts of macroeconomic restructuring. During the 1970s oil boom, Nigeria

was a major immigrant country, however, recently, countries such as Senegal have served as a transit route for migrants aiming to reach Europe, and Côte d'Ivoire has welcomed migrant workers in the agricultural sector (Adepoju 2003:37). Contemporary migration trends in West Africa are deeply influenced by socio-economic, political, and historical-cultural factors that have directed development paths, economic activities, and significantly impacted international migration patterns.

Movement within and from the sub-region encompasses a range of migrants, including temporary cross-border workers, female traders and farm labourers, professionals, undocumented workers, and refugees. These movements are predominantly intra-regional, short-term, and male-dominated, reflecting the interconnected economies of neighbouring countries (Adepoju 2003:37). For many, the harsh economic conditions in the region have largely influenced the trajectory of migration (Horwood *et al* 2018). Afrobarometer (2019) reveals that between 70% and 90% of respondents from all 14 surveyed Western African countries identified economic factors such as 'finding work', 'economic hardship', 'poverty', and 'better business prospects' as the primary reason for contemplating emigration.

Over time, the migration patterns in the region have evolved, marked by an increase in the 'feminisation' of migration, commercialisation of migration, and a diversification of migration destinations across the West African region (Ikwuyatum 2012). For women, the search for better economic opportunities is the primary motivation to migrate (MMC 2018). Notably, commercial migration has mainly been driven by women, who play a pivotal role in bolstering the economies of smaller countries like Benin, Togo, and The Gambia through interregional trade. (Adepoju 2003:37-38). Women from Nigeria, Senegal, and Ghana are increasingly participating in the formal and informal labour markets as a survival strategy to supplement meagre family incomes (Awumbila *et al* 2014).

Most employment opportunities available to women migrants are in domestic work, trade, and commerce (Adepoju 2005:38). It has contributed to an increase in women migration

and has been the driving force behind the rise in child and women trafficking across the sub-region. This includes the trafficking of children from Togo, Nigeria, and Mali to the plantations of Côte d'Ivoire and for domestic work in Gabon, as well as the trafficking of women from Ghana, Nigeria, Mali, and Sierra Leone as sex workers in various European Union (EU) countries (Yaro 2008:10-11; Manby 2015). Currently, estimating the number of women migrant workers in West Africa is challenging due to limited data on this demographic. This is further exacerbated by the predominance of women migrants in the informal sector, where data collection is more difficult, and thus a significant number remain undocumented.

National laws and policies in the region are not sufficiently aligned with continental, regional, and sub-regional frameworks that are designed to protect women migrant workers, and there is a notable lack of effective enforcement. The Economic Community of West African States (ECOWAS) adopted the Protocol on the Free Movement of People and the Right of Residence and Establishment in 1979 to facilitate interstate migration within the West African region.¹ The three phases of the protocol included abolishing entry visas, the right of residence, and the right to establishment. In 2018, “the Migration and Development Common Approach” was annexed to the protocol with the assistance of the Organisation for Economic Co-operation and Development (OECD) and the IOM to address the rising negative impacts of migration, particularly that of West Africans on Europe (Kabbanji 2017:110). Progress has been slow due to “the absence of adequate mechanisms to control the infiltration of criminals, perverse corruption of

1 Article 3 of the Protocol on the Free Movement of People and the Right of Residence and Establishment of 1979 gives nationals of member states of ECOWAS the right to “respond to job offers, to move freely in the territory of member states, to spend time and to reside in a member state in order to carry out a job conforming to the legislative, regulatory, and administrative arrangements governing domestic workers, to remain in conditions defined by legislative, regulatory, and administrative provisions of the host member state, on the territory of a member state after having worked there”. The protocol further outlines the right of the host country to expel migrants and their families “for reasons of national security, public order, and accepted standards of behaviour” (Article 14).

border officials, [and] diverse and incompatible national laws and policies on migration and labour” (Amadi 2019:82). Further, these existing migration labour-related provisions mainly apply to men and women in the formal economy, yet remain inadequate for informal women migrants (Rueda 2020)

The East and the Horn

In the East and Horn of Africa, the migration landscape is irregular, forced, and highly reactive to sub-regional shocks, which has resulted in the displacement of civilians, many of whom are women and children. Of the half a billion people living in the region, 8.5 million are migrants. Labour migration is a significant aspect of the mobility landscape, encompassing 4.7 million migrant workers. Additionally, the region hosts 22.3 million displaced individuals, comprising 16.9 million internally displaced persons alongside 5.4 million refugees and asylum seekers (Abebe & Mukundi-Wachira 2023:17).

Asylum seekers, refugees, and economic migrants move within and beyond their regions, driven by violent conflict, environmental issues, and political oppression and persecution in countries such as Ethiopia, Somalia, South Sudan, and Sudan. Somalia has been involved in a protracted conflict since the early 1990s, leading to state collapse, and the two-year Ethiopia-Tigray war claimed the lives of approximately 600 000 people (Pilling & Schipani 2023). Economic factors have further driven migration in countries such as Uganda and Kenya. Ethiopia, Somalia, South Sudan, and Uganda are characteristically identified as countries of origin, transit, and destination, while Kenya and Sudan predominantly function as transit and destination countries for irregular migrants. Human smuggling and trafficking have become significant problems, leading to sexual exploitation and forced labour, including child soldiers. Tragically, women and children are the most susceptible to these practices. The situation is further aggravated by government officials who, through bribery and corruption at border posts, are complicit in these activities (Marchand *et al* 2017). For those who attempt the treacherous movement to the EU illegally via the sea and the Sahara Desert, reports of violence, rape, and forced

disembarkation from overcrowded boats are rampant. Women and girls are particularly at risk, as they are often on deck and are frequently subjected to sexual and gender-based violence (SGBV) (Horwood 2015).

Article 104 of the Eastern African Community (EAC) treaty makes provision for the implementation of strategies to facilitate the free movement of individuals, labour, and services, while guaranteeing the rights of citizens within the community to establish and reside (Treaty for Eastern African Co-operation 1979:79). Partner states are also mandated to “harmonise their labour policies, programmes and legislation including those on occupational health and safety” (Treaty for East African Co-operation 1967:79). Despite the regional initiative for free movement of persons and labour, stringent national policies relating to work permits, employment contracts, and processing fees have hindered progress. Some argue that the EAC framework insufficiently addresses the gender aspects of labour migration and focuses on occupations biased towards men, thereby restricting migration opportunities for women seeking employment.

Additionally, the EAC policies maintain a gender-neutral stance, with the assumption that labour migration is predominantly male activity and that women’s experiences of migration mirror those of men (Masabo 2015). Women migrants face gender disparities in the labour market, often encountering abusive working conditions, particularly in the informal sectors. The current EAC framework has not explicitly acknowledged that both genders migrate in search of improved economic prospects. Thus, the EAC actors should incorporate occupations predominantly assumed by women into the scope of the EAC Common Market Protocol and address gender disparities within domestic labour markets (Masabo 2015).

The Intergovernmental Authority for Development (IGAD) has been commended for its efforts towards prioritising migration on its policy agenda,² through its adoption of the 2019 Kampala

2 IGAD’s policy agenda was inspired by the 2016 New York Declaration for Refugees and Migrants (NYD) and the 2018 Global

Declaration on Jobs, Livelihoods, and Self-Reliance for Refugees, Returnees, and Host Communities; the 2018 Declaration of the 10th IGAD Health Ministerial Committee Meeting on Refugees and Other Cross Border Health Programs; the 2017 Nairobi Declaration on Durable Solutions for Somali Refugees; and the 2017 Djibouti Declaration of the Regional Ministerial Conference on Refugee Education (Ahimbisibwe & Nkiko 2023:3). Despite these efforts, IGAD's policies and frameworks have been constrained due to the large number and prolonged presence of refugees, limitations of member states, IGAD's authority constraints due to non-legally binding declarations, capacity shortcomings, and insufficient consultation with member states (Ahimbisibwe & Nkiko 2023:3).

The Southern Part

The Southern African region was home to 363.2 million people in 2020, with 6.4 million migrants (Migration Data Protocol 2023). Migration trends in the region are characterised by a vast array of patterns, including permanent, temporary and contract migration, asylum-seekers, refugees, and irregular migration (UN 2008). While the history of colonialism and apartheid in the region has influenced current labour migration trends, the post-apartheid dispensation has witnessed shifts in regional migration patterns, especially in relation to movement to and from South Africa. Several factors have influenced the long-standing migration patterns and dynamics in the region; notably, the abolition of apartheid opened avenues for both internal and cross-border movement, the majority of which were for long-term relocation.

Moreover, the SADC member states have a history of forced migration. For instance, the ongoing social and economic effects

Compact on Refugees (GCR), who encourage a comprehensive, multistakeholder approach to refugees and migration such as “national and local authorities, international organizations, international financial institutions, regional organizations, regional co-ordination and partnership mechanisms, civil society partners, including faith-based organizations and academia, the private sector, media and the refugees themselves” to protect and assist refugees and to support the host states and communities (UN, GCR 2018:43).

of civil conflicts in Mozambique and Angola, alongside unrest in the Democratic Republic of the Congo and economic turmoil in Zimbabwe, continue to have profound impacts on the pattern of migration. The region also faces challenges related to a high number of refugees and the emergence of new asylum-seeking demographics, due to ongoing conflicts in various African locales (Crush *et al* 2005:177). The Internal Displacement Monitoring Centre (2019) reported that natural hazards such as cyclones and flooding affected the migration patterns of countries like as Madagascar, Malawi, and Mozambique. The migration trends of countries like Botswana, Eswatini, Lesotho, Namibia, and Zambia were impacted by slow-onset disasters, such as drought (SADC 2019).

The unique characteristic of Southern Africa, compared to the other regions, lies in its historical reliance on labour migration, particularly the movement of contract workers across the region. In South Africa, Zimbabwe, and Namibia, workers were primarily employed in the mining industries, largely from Botswana, Mozambique, and Lesotho. Commercial agriculture also played a significant role in drawing labour migrants to Southern Africa, with thousands, especially women, finding employment on farms in Zimbabwe and Mozambique. The history of labour migration in this region highlights its critical economic role for receiving countries like South Africa, which have depended on low-skilled foreign labour for many years (Kitimbo 2015:5). Labour migration in the region has always been heavily gendered. Women were restricted from migrating during the colonial era; however, in more contemporary times, there is a growing trend of women joining the class of skilled migrant labour (Dobson 2008:1).

The SADC Protocol on the Facilitation of the Movement of Persons of 2005 was established to formulate strategies aimed at gradually removing barriers to the unrestricted flow of capital and labour, goods, services, and the general populace within partner states. This includes provisions to allow individuals to enter member states without a visa for lawful reasons for up to 90 days, and to enable permanent and temporary residency in another state. It further encompasses settling and seeking employment in other member states. Additionally, the protocol outlines the

stages of implementation and addresses the need to harmonise state laws and immigration procedures (SADC 2005). The protocol is enhanced by the 2014 SADC Protocol on Employment and Labour, which urges member states to guarantee that migrant workers and their families are granted essential rights concerning labour, employment, and social protection. To further aid the implementation of prioritised areas, an updated SADC Labour Migration Action Plan covering the period 2016–2019 was approved in May 2016. Criticisms of the protocol relate to slow implementation, limited ratification by member states, inadequate protection for migrant workers, focus on high-skilled migration, and the insufficient harmonisation of national laws to regional policies (Dodson & Crush 2015; Segatti 2017).

Women labour migrants in the region are primarily employed in sectors of domestic work, agriculture, and informal cross-border trading. Despite their significant contributions, these women persistently encounter obstacles, including exploitation and abuse, lower wages compared to men, and limited employment prospects. The SADC Protocol on Gender and Development of 2008 was established to address these issues by eliminating gender inequalities and enhancing women's participation in the socio-economic development of the region (SADC 2008). The protocol has been criticised for implementation inconsistencies between member states, duplication of the AU Protocol on the Rights of Women, rising incidences of gender-based violence, cultural transformation challenges, and monitoring and evaluation insufficiencies (Munalula 2011; Forere & Stone 2009; van Eerdewijk & van de Sand 2014; Kanengoni-Malinga 2016; Zongwe 2008).

Despite the differences in the circumstances across the different regions, African women share comparable reasons to migrate and face comparable challenges. Poverty, political instability, and conflict are principal drivers of the growing need to supplement low-income households. Many fall victim to abuse in several forms and, upon reaching their destination countries, face further hardships, including poor working conditions and insufficient social protection. The problem is particularly acute for women working in informal economies,

where labour practices often go unchecked due to ineffective policy implementation. In this context, labour practices evade scrutiny, allowing exploitation to flourish in the absence of regulatory oversight, leaving women migrant workers gravely vulnerable and lacking protection. Additionally, African women, whether native or migrants, tend to be positioned at the lower echelons of the occupational ladder in both formal and informal labour sectors. Since the current regional protocols seem to have yielded unfavourable outcomes, it may be important to shift our focus towards evaluating continental frameworks for a potentially more optimistic perspective. Further, the AU FMP could provide the missing link.

The African Union's Vision for Migration: A Continental Approach

Established in 2002 as the successor to the Organisation of African Unity (OAU), the AU represents the collective ambition of its 55 member states to accelerate economic, social, and political integration towards achieving a peaceful, prosperous, and integrated continent (AU 2023b). The AU's vision for migration is encapsulated in several key documents, including the Lagos Plan of Action of the 1980s, which laid the foundation for an integrated continent with the free movement of people and goods, and the Treaty Establishing the African Economic Community (AEC) – also known as the Abuja Treaty – of the 1990s. The Abuja Treaty further elaborated on this vision by setting a roadmap towards a unified market, highlighting migration as a critical component for economic integration (AU 2023b).

In 2006, the African Union Commission (AUC) collectively endorsed the African Common Position on Migration and Development (African Common Position) and the Migration Policy Framework for Africa (MFPA) during a meeting in Banjul, The Gambia. The frameworks were developed as a comprehensive guide for AU member states, providing a set of principles, policy guidelines, and recommendations aimed at managing migration effectively, enhancing its positive impacts, and minimising its negative consequences. The endorsement of the migration policy

frameworks in Banjul marked a pivotal moment for migration governance in Africa, highlighting the continent's commitment to a co-ordinated and coherent approach. The frameworks addressed various aspects of migration, including labour migration, irregular migration, forced displacement, rights of migrants, integration policies, and the nexus between migration and development (AU MPFA 2006).

By adopting the frameworks, AU member states acknowledged the importance of migration in achieving socio-economic development and regional integration. The policy encouraged member states to harmonise their national migration policies with the framework's guidelines, aiming for enhanced mobility, protection for migrants, and leveraging migration for development. The framework further emphasised the importance of collaboration between AU member states, regional economic communities, and international partners. It advocated for strengthening the capacities of African states to manage migration more effectively and called for improved data collection and research to inform evidence-based policies (Abebe & Mudungwe 2018; Dinbabo & Badewa 2020).

The literature emphasises the predominance of the regional economic communities (RECs) such as ECOWAS and SADC, with limited research acknowledging the AU as a significant migration actor. Further, the EU's stance on migration related to Africa continues to be the focus, particularly on how "the EU's system of multilevel governance significantly limits its capacity for international migration co-operation" (Hampshire 2015:3). The lack of specific institutional frameworks to oversee or ensure compliance by AU member states, and the minimal support in delivering data-driven suggestions for tangible policy measures to assist member states to apply human rights, accordingly, are also highlighted (Achieme & Landua, 2015). South Africa, being a key destination country, has implemented progressively more restrictive and xenophobic migration management practices to curtail the growing number of migrants (Mbiyozo 2018:5-7).

The African Union Free Movement Protocol

In 2016, the AUC initiated a review of the 2006 AU's migration protocol and engaged member states and RECs to identify required amendments. Following this, a revised draft was distributed, establishing the Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment at the AU Assembly in Addis Ababa in 2018. This protocol is central to the AUC's vision for a borderless Africa and reflects the AU's long-standing vision of a more integrated Africa, where the movement of people across national borders is seamless, enhancing development through employment, trade, tourism, and technology transfer (AU 2018b). Possibly the most significant alteration is the incorporation of the Migration Policy Framework for Africa (MPFA) and Plan of Action (2018-2027), which outlines measures for implementing the recommendations presented in the 2018 MPFA for Africa. Eight fundamental pillars related to migration are emphasised, related to migration governance, labour migration and education, diaspora engagement, border governance, irregular migration, forced displacement, internal migration, and trade (AU MPFA 2018). The 2018 MPFA refocuses its attention on intergovernmental co-operation and "increased inter-State co-operation and enhanced dialogue" (AU MPFA 2018:8). As highlighted by Knoll and de Weijer (2016:14), it further draws attention to the frequently neglected southern migration route. It also the impact of intra-African migration on South Africa (AU MPFA 2018:5). As envisaged by the AU:

The free movement of persons, capital goods and services will promote integration, Pan-Africanism, enhance science, technology, education, research and foster tourism, facilitate inter-African trade and investment, increase remittances within Africa, promote mobility of labour, create employment, improve the standards of living of the people of Africa and facilitate the mobilisation and utilisation of the human and material resources of Africa in order to achieve self-reliance and development (AU 2018b:4).

The protocol further outlines several guiding principles for its implementation, including non-discrimination,³ respect for laws and policies on the protection of national security, public order, public health, the environment, and any other factors that would be detrimental to the host state, and transparency.

These principles are further highlighted as part of the 11 flagship projects of AU's Agenda 2063, which includes the African passport and the free movement of people. Despite the protocol's significant potential to drive continental integration and development, its ratification and implementation processes have encountered obstacles, with a relatively low number of countries ratifying it since its adoption. Currently, of the 55 AU member states, only 32 have signed the protocol, with just four countries (Mali, Niger, Rwanda, and Sao Tome and Principe) having ratified it, thus failing to meet the necessary 15 ratifications needed for the AUC MPFA to become effective (Tralac 2022). In September 2023, The AU's Economic, Social and Cultural Council (ECOSOCC) held its third and concluding session of national dialogues for the year on the AU MPFA. At the session, supported by the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH on behalf of the German government, it was concluded that, despite the establishment of migration policy frameworks, the adoption and familiarisation of these policies among AU member states and within African civil society have been limited, failing to produce the anticipated outcomes.

William Carew, ECOSOCC's head of secretariat, said:

I implore all of you to use your voices as non-state actors to help popularise, ratify, and adopt the Free Movement Protocol. I call on you to push member states to take action whenever they drag their feet. Everyone in this meeting is to be an ambassador of change around the FMP conversation. Let us go beyond just talking but push the messages to the right stakeholders so that we properly influence change (AU 2023c).

3 For more information, see AU (2018b).

Some scholars have questioned the ability of the AU MPFA to be a panacea in reducing border porosity due in part to member states' reluctance to adopt a paradigm shift towards recognising the distinction between border security and border defence (Okunade & Ogunnubi 2019). Others question the protocol's ability to address issues of Afrophobia and mass expulsion following the deficiencies of similar provisions by several regional economic communities (RECs), such as ECOWAS, the EAC, and IGAD (Chime & Nwogu-Ikojo 2022).

Regarding labour migration and mobility, the AU MPFA outlines eleven specific provisions listed in Articles 5, 14, 15, 18, 19, 23, 24, 25, and 26 of its protocol. They encompass a broad spectrum of critical issues, from the right of entry, residence, and establishment to the mutual recognition of qualifications, transferability of social security benefits, and protective measures for migrant workers and their families. Through these comprehensive provisions, the protocol endeavours to foster a more inclusive, equitable environment for labour migration within the continent.

The African Union and Women

Alongside the 2006 AU MPFA and the revised 2018 AUC MPFA, specific policies on women migrants are integrated within broader migration and gender equality frameworks. In 2000, the AU initiated the Women, Gender, and Development Directorate (WGDD), which has since evolved into the Women, Gender, and Youth Directorate (WGYD). This organ was created to enhance and integrate gender equality across the union and its member states. Key initiatives have been introduced, such as the Solemn Declaration on Gender Equality in Africa in 2004, serving as a monitoring mechanism for gender equality and women's empowerment. The 2003 Maputo Protocol also lays down a comprehensive legal foundation to protect the rights of African women across various domains, including civil, political, economic, social, cultural, and environmental areas.

Furthermore, the 2013 Pact for Youth and Women Employment in Africa advocates for enhancing labour mobility

across regions and sub-regions. It urges the development of a labour migration plan by the AU and regional economic communities (RECs) (Anichie & Moyo 2019:77). These foundational efforts have led to further regional commitments, including the integration of gender equality and women's empowerment within Agenda 2063 and the formulation of the 2018-2028 AU Strategy for Gender Equality and Women's Empowerment. This strategy aligns with Agenda 2063's objectives and promotes gender mainstreaming across the AU's activities (AU 2023). Despite these efforts, women across the continent continue to fall victim to trafficking for prostitution and forced labour (MOAS 2018; Rohweder 2016).

The AUC MPFA potentially offers a policy framework that could significantly improve the migration landscape for African women labour migrants by addressing gender-specific challenges and promoting equal opportunities in the pursuit of economic and social integration across the continent. The prospects and challenges of these provisions are examined through a case study in the following section, for a detailed assessment of their potential impacts on the experiences of African women labour migrants.

South Africa as a Choice Destination Country: Case Studies

In mid-2020, an estimated 2.9 million migrants lived in South Africa (UN 2020). This makes the country the leading host of immigrants in Africa, and the primary choice for labour migrants due to its middle-income economy, stable democratic institutions, and relatively advanced industrial sector (ReliefWeb 2021). South Africa has had a growing appeal to African women seeking better opportunities. In 2019, South Africa was home to a significant population of migrant women, with estimates indicating up to 1 875 588 individuals, representing 44.4% of the migrant population (UN DESA 2019). A 2007 study conducted by the United Nations International Research and Training Institute for the Advancement of Women (UN-INSTRAW) and the South African Institute of International Affairs (SAIIA) revealed that

the South African informal sector plays a crucial role in providing employment opportunities for African women labour migrants, who commonly engage in vending, street trading, or hawking (Hughes 2007). The study revealed a pronounced representation of female labour migrants from the Democratic Republic of the Congo, Lesotho, Zimbabwe, Ethiopia, Somalia, and Nigeria (Ferraro & Marinda 2020).

Despite South Africa being a popular destination for migrants, the journey is often an uncertain and challenging experience, particularly for women migrants. Migrant women frequently endure physical violence, blatant discrimination, social alienation, and economic manipulation. Such unfavourable conditions adversely impact wages, work conditions, work security, and, as a result, the number of remittances sent (Hughes *et al* 2007). A more recent report by the Institute for Security Studies (ISS) revealed that migrant women in South Africa confront a triple form of discrimination, which encompasses xenophobia, racism, and misogyny, including gender-based or sexual violence, which constitutes one of their primary concerns (Mbiyozo 2018).

Zimbabwean Women Labour Migrants in South Africa

Many women from Zimbabwe have migrated to South Africa, a pattern that has been particularly noticeable between 2005 and 2010. Several detrimental policies in Zimbabwe – including the political unrest surrounding President Robert Mugabe’s 2009 re-election, the 2005 Operation Murambatsvina aimed at clearing slums, and the poorly executed Fast Track Land Reform Program in 2000 – compelled millions of Zimbabweans to seek a better life in South Africa (Sisulu *et al* 2007:555). Thus, this migration trend was largely driven by desperation caused by the economic meltdown and escalating poverty levels in Zimbabwe. A Zimbabwean woman (39) migrant in Durban, South Africa recounts her motivations to travel to South Africa: “I came here because of three things: *mari, nzara, nhamo chaiyo* (money, hunger, and poverty – I mean extreme poverty. That kind of

poverty that leaves you with nothing to cook for meals made me leave. When I decided to leave, I left my kids without enough food to sustain them for a long period” (Mutambara & Maheshvari 2019:1781). For others, the declining economic landscape resulted in the shrinking of formal employment sectors where women were previously employed, thus propelling them to seek better employment opportunities (Crush *et al* 2015:367).

Twenty-eight-year-old Joyce expresses her experience:

I came here to South Africa in 2008, when things got difficult. When I left, things were not okay, there were no jobs, most of the companies had shut down and there was a cash crisis. Before I came here, I was involved in buying and selling of different products. However, it was difficult to sustain the business as many did not pay in time because of the cash crisis. I started to plait hair when I came here to South Africa; as it is right now with the little that I can manage to get from my job, I am able to take care of my family back home, as well as take care of my wellbeing (Mutambara & Maheshvari 2019:1782).

These differences in the motivations above highlight the push and pull factors of migration, including the duality of migration; for some women, the situation is one of necessity, while for others, it presents an option for betterment. Based on this assessment, Zimbabwean women migrants to South Africa are labelled as economic migrants.

Migration to South Africa is most challenging for non-professional women, with physical and bureaucratic hurdles. This includes the difficulties and costs (logistical, material, and financial) of crossing borders in the face of stringent immigration policies and the risks associated with undocumented travel. While some of these women crossing to South Africa possess legitimate immigration documents, a significant portion are undocumented. This lack of proper documentation increases their susceptibility to various forms of violence (Rutherford 2020:172). According to Human Rights Watch (HRW) (2006), undocumented Zimbabwean migrants, in particular women, encounter extremely

harsh conditions, especially when crossing the crocodile-infested Limpopo River or navigating corrupt law enforcement at border posts. Women traders from Taka Village in Zimbabwe, working in South Africa, relayed experiences of harassment from border officials and police seeking bribes, including degrading body searches and incidences of sexual assault from soldiers. For women, especially those carrying infants, this hardship is compounded, differentiating their experience significantly from men's (Hlatshwayo 2019:6-11). They experience discrimination, social isolation, xenophobic attacks, and violence, and are often labelled as the "other" (Akinola 2014). These conditions are shaped by the intersectionality of their identities, notably their gender, race, and immigration status (Von Kitzing 2017).

Undocumented migrants find employment primarily in the agricultural, domestic, and hospitality sectors, where they regrettably experience exploitation and unfair labour practices through low remuneration and unpaid work. Some "felt that employers took advantage of their desperation and that their legality was unclear" (Rutherford & Addison 2007:627). Therefore, although migration presents an opportunity for Zimbabwean women to improve their livelihoods, it also tends to perpetuate traditional gender roles that place women in subordinate roles in their destination countries. Challenges in the informal sector also emerged from the absence of protective regulations for women's work and struggle to navigate extremely restrictive regulations reserved for citizens or those with valid permits.

Yomella, a Zimbabwean woman street vendor in South Africa, explained: "If jobs are limited, you are obliged to try selling on the road. But you need a permit even for selling on the road. If you don't have your permit, the police will come, and they will take your things and go with them to the court. You have to go pay a fine because you are using state soil for free. You are supposed to pay the state" (Erwin & Marks 2022:270). Professionals recruited for critical skills positions have the advantage of work permits being processed through the South African High Commission in Zimbabwe, yet they too are not immune to the struggles of labour migration. Despite this, women commonly receive lower wages than men. Among male agricultural labourers, 22% earned R700

or more monthly, but only 14% of women achieved this earning level (Bloch 2008:12).

South Africa's migration policies, particularly those concerning Zimbabwean nationals, underscore a nuanced alignment with broader continental and regional frameworks, notably the AU MPFA and the SADC migration protocol. The ease of acquiring a visitor's visa for Zimbabweans⁴ and the establishment of specific permits through the Dispensation of Zimbabweans Project (DZP) reflects a commitment to facilitate mobility, uphold human rights, and ensure the regularisation of migrants in line with the AU MPFA's objectives. These actions are aimed at regularising undocumented Zimbabwean nationals, reducing deportations, easing the strain on the asylum and refugee system, and granting amnesty to those with fraudulent documents. The revisions and eventual expiration of these permits, including the non-renewable nature and restrictions on seeking permanent residency, reveal the complexities of harmonising national migration laws with the aspirations of the AU MPFA and SADC frameworks.

While South Africa's migration policies towards Zimbabweans exhibit regional solidarity and adherence to continental migration frameworks, they also highlight the challenges of fully aligning national interests with regional and continental integration goals, prompting some criticism regarding the limitations imposed on migrants. There is no specification of any measures or policies that directly address Zimbabwean women within the context of South African migration laws. Addressing the specific needs and challenges faced by women – including protection, access to services, and legal rights – is crucial for ensuring gender-sensitive approaches.

4 Visitors' visas are issued to any eligible Zimbabwean at all points of entry into the country. Zimbabweans can have visitor's visas validated from one day to three months (South African Immigration Act 13 of 2002, as amended in 2014).

Congolese Women Labour Migrants in South Africa

Unlike Zimbabwean women such as Yomella, many women from the Democratic Republic of the Congo (DRC) flee their country seeking asylum in South Africa due to ongoing political unrest and economic instability that has plagued the country for decades. By April 2022, South Africa was home to more than 242 988 people of concern individuals seeking refuge and asylum, predominantly from various African states such as Burundi, the Democratic Republic of the Congo, Rwanda, South Sudan, Somalia, and Zimbabwe (UNHCR 2023). Of these people, 75 511 are refugees and 167 477 are asylum seekers. There is scarce documentation on asylum seekers and refugees from the Congo in South Africa, but estimates suggest that their population might be around 600 000 (Alfaro-Velcamp 2017). Although asylum seekers in South Africa are permitted to work, they do not benefit from the same rights as individuals with refugee status. The permits issued to asylum seekers are only valid for brief periods, typically ranging from three to six months, creating difficulties in seeking employment opportunities. Dina from the DRC recounts her experience:

The kinds of jobs you are getting are the ones that pay a meagre salary. When you go to look for a job, you are told you need an ID [Identity Document] . . . they say ‘here we don’t hire foreigners without an ID’ . . . My first job here was as a security guard at New Germany. They paid us one month and then they started telling us that no, they had to deduct for our uniform, our shoes, this and that. They first told us that they will be paying us R2 500. Then they changed and started paying us R1 500. This was a disservice to us. I worked for three months and then I stopped (Erwin & Marks 2022:271).

The South African Refugee Act 130 of 1998 grants an individual the right to stay in South Africa lawfully and to move within the country without restrictions while awaiting a decision on their refugee status. This determination process assesses if the individual is escaping persecution based on factors like race, ethnicity, religion, nationality, political beliefs, membership

in a particular social group, facing external aggression, or disturbances to public order. Despite this, the South African Department of Home Affairs (DHA) is plagued by administrative inefficiencies and corruption, leading to prolonged delays in the processing of asylum applications. These delays often extend into years, with the appeals process also experiencing significant holdups. Notably, the rate of rejection for all asylum applications soared to 96% in 2019, highlighting the challenges faced by asylum seekers in obtaining approval (Moyo 2021).

For Congolese women, obtaining proper documentation is a critical challenge. This lack of documentation is frequently cited as a major hurdle affecting their daily lives, including their poverty status and limitations in accessing healthcare, education, and employment opportunities. Even after obtaining refugee status or other legal documentation, refugees and migrants often face challenges, with their permits often disputed and denial of access to employment, healthcare, and education. They also frequently encounter police harassment, discrimination, insecurity, and threats. However, possession of documents does not guarantee financial security and stability, as exclusionary policies of the government and dispositions of some of the ruling elites and anti-migration groups effectively criminalise all asylum seekers and refugees, irrespective of their documentation status (Crush & Tawodzera 2017; Walker 2021; Walker & Vearey 2022).

Prospects of AU MPFA for African Women Labour Migrants

The AU FMP (2018) and its provisions on labour mobility offer a critical lens through which to examine the experiences of Zimbabwean and Congolese women labour migrants in South Africa. While these provisions may offer significant opportunities for empowerment, the effectiveness of their implementation is contingent on various factors, including political commitment, harmonisation of policies, and the capacity of the South African state. An assessment of these provisions reveals both the potential and the challenges in realising the objectives of the AU FMP for women labour migrants in South Africa. The following sub-

sections attempt to illuminate the gaps between policy intentions and actual outcomes, the role of gender in migration experiences, and the broader socio-economic implications for South Africa and its migrant communities.

Phase Implementation and its Impact on Women Labour Migrants

Article 5 outlines a phased approach to the realisation of free movement, residence, and establishment rights. It provides for the free movement of persons, right of residence, and right of establishment, which shall be achieved progressively through the following phases:

1. Phase 1, during which states parties shall implement the right of entry and abolition of visa requirements;
2. Phase 2, during which states parties shall implement the right of residence; and
3. Phase 3, during which states parties shall implement the right of establishment.

The initial phase focuses on entry rights and visa abolitions, crucial for women labour migrants from countries like Zimbabwe, where stringent visa requirements often pose significant barriers to mobility. The subsequent phases, emphasising residence and establishment rights, could significantly benefit women from regions like the DRC, offering them greater security and stability in host countries. However, the progressive nature of this realisation might delay the actualisation of these benefits, especially in regions with slow implementation rates. In regions where the implementation of such policies and frameworks is slower, the expected opportunities for migrants might not materialise as quickly as envisaged. Furthermore, some may argue that South Africa's immigration policies have become more restrictive and securitised, focusing on border controls. This reality is reminiscent of the challenges experienced within the SADC region.

Equal Employment Opportunities and Challenges

This provision promises equal employment opportunities without discrimination. Article 14 on the free movement of workers holds that,

1. The nationals of a member state shall have the right to seek and accept employment without discrimination in any other member state in accordance with the laws and policies of the host member state; and
2. A national of a member state accepting and taking up employment in another member state may be accompanied by a spouse and dependents.

For women from Zimbabwe working in South Africa, this should result in improved access to job markets and reduced discrimination. However, the clause “in accordance with the laws and policies of the host member state” leaves room for varied interpretations, potentially limiting the effectiveness of this provision in practice. Additionally, the inclusion of family members in migration, while beneficial, requires host countries to provide adequate social and educational services, which might not always be feasible. The provision in the AU FMPA for free movement of workers does not parallel South Africa’s critical skills visa and general work visa policies, which allow foreign nationals to work in the country. These visas are subject to strict criteria and do not fully embody the non-discriminatory spirit of the AU FMPA, often requiring an employment agreement to be issued. Greater harmonisation with AU FMPA could involve easing these requirements for African nationals to support more inclusive labour mobility.

Regulatory Frameworks and Women’s Access to Work

The issuance of permits and passes as per Article 15 is a cornerstone for operationalising the free movement of labour migrants. It states that:

1. A host states party shall issue residence permits, work permits, or other appropriate permits or passes to nationals

- of other member states seeking and taking up residence or work in the host member state;
2. Permits and passes shall be issued in accordance with the immigration procedures applicable to persons seeking or taking up residence or work in the host member state; and
 3. The procedures referred to in paragraph 2 shall include the right of a national of another member state to appeal against a decision denying them a permit or pass.

The AU FMP provision for the free movement of workers, although not aligned with South Africa's specific visa policies, offers a structured pathway for women labour migrants to achieve legal employment and residency. However, the effectiveness of such provisions in promoting equitable opportunities for women migrants must be considered within the context of South Africa's domestic realities, particularly regarding gender relations. In a setting where gender discrimination is prevalent among the local population, foreign women are likely to encounter similar, if not exacerbated, gender-based challenges. This intersection of migration status and gender discrimination can significantly hinder the actualisation of the AU policy's objectives for women labour migrants, underscoring the necessity for South Africa to address gender biases not only among its citizens but also in its treatment of migrant populations.

The prevalence of systemic gender discrimination thus poses a critical barrier to the empowerment and integration of female migrants. It becomes imperative for policy practitioners to be sensitive to these gender dynamics to truly support the aspirations of women labour migrants in South Africa. The promotion of a gender-sensitive migration policy for women labour migrants can provide a structured pathway to legal employment and residency. However, the dependency of continental protocols on the host country's immigration procedures can lead to inconsistencies in application and potentially discriminatory practices, especially in countries like South Africa, with stringent immigration policies.

Economic Contributions of Women Migrants

Remittances are a vital aspect of labour migration, especially for women who often send earnings back to their families in their home countries. Article 23 on remittances holds that, “States parties shall, through bilateral, regional, continental, or international agreements, facilitate the transfer of earnings and savings of nationals of other member states working, residing, or established in their territory”.

Facilitating this process can significantly contribute to the economic empowerment of women migrants. However, the efficiency of such transfers is dependent on the banking and financial systems of member states, which can vary widely in accessibility and reliability.

Vulnerable Groups and Special Considerations

This article recognises the need for specific procedures for vulnerable groups, which include women facing specific challenges such as human trafficking or seeking asylum. Article 24 on the procedure for the movement of specific groups states that:

1. A states party may, in addition to the measures provided for by international, regional and continental instruments, establish specific procedures for the movement of specific vulnerable groups, including refugees, victims of human trafficking and smuggled migrants, asylum seekers, and pastoralists; and
2. Procedures established by a member state under this article shall be consistent with the obligations of that member state under the international, regional and continental instruments relating to the protection of each group of persons.

The article acknowledges the unique vulnerabilities faced by women, which is crucial for Congolese and Zimbabwean labour migrants to South Africa. Many of these women are fleeing economic hardship and political instability, while some are seeking asylum, which places them in situations of heightened vulnerability to exploitation, violence, and discrimination. However, the implementation of these guidelines in South Africa – as evidenced by the hardships faced by these women, ranging

from bureaucratic hurdles to outright exploitation and abuse – highlights a dissonance between policy and practice.

Collaborative Border Management

Enhanced co-operation in border management is essential for facilitating smooth intra-regional movement. Article 25 holds that:

1. States parties shall, in accordance with the AU Convention on Cross-Border Co-operation, co-ordinate their border management systems to facilitate the free and orderly movement of persons; and
2. States parties shall record, document, and upon request, make available all forms of aggregated migration data at the ports or points of entry or exit from their territory. States parties shall, through bilateral or regional arrangements, co-operate with each other by exchanging information related to the free movement of persons and the implementation of this protocol for women labour migrants. Streamlined border processes can reduce vulnerabilities to exploitation and abuse. However, effective implementation requires robust bilateral and regional co-operation, which might be hindered by varying levels of capacity and political will among member states.

This provision is especially pertinent to the safety and security of women labour migrants, for whom streamlined border processes could significantly mitigate vulnerabilities to exploitation and abuse. However, the realisation of this provision's objectives encounters substantial challenges, primarily due to the disparate levels of capacity and political will among member states. While the protocol advocates for robust bilateral and regional co-operation to ensure effective implementation, the reality often reflects a patchwork of compliance and collaboration. The heterogeneity in border management practices among states complicates the establishment of a coherent regional migration regime and creates gaps that can be exploited, thus exposing women labour migrants to greater risks.

Harmonisation of Policies

Harmonising national policies with the AU FMPA is pivotal for its success. Under Article 26, it states that:

1. In accordance with Article 881 of the Abuja Treaty and guided, as appropriate, by the implementation roadmap annexed to this protocol, states parties shall harmonise and co-ordinate the laws, policies, systems, and activities of the regional economic communities of which they are members which relate to free movement of persons with the laws, policies, systems, and activities of the union; and
2. States parties shall harmonise their national policies, laws, and systems with this protocol and be guided, as appropriate, by the implementation roadmap annexed to this protocol.

For women labour migrants, consistent policies across states can ensure a predictable and secure migratory environment. Notwithstanding, the challenge lies in reconciling national interests with regional commitments, a process that can be complex and politically sensitive. The call for the harmonisation of continental, regional, and national migration policies addresses a fundamental challenge within the AU, which often leads to inefficiencies and obstacles in achieving the free movement of persons. Moreover, the effectiveness of such harmonisation is contingent upon robust co-operation among member states, and political commitments of the AU actors.

Conclusion

The chapter attempts to reflect on the impact of the AU MPFA on women's labour migration in Africa, drawing from the case of South Africa. The AU's ambitious framework was designed to facilitate the movement of persons, labour, and services across the continent; yet the lived experiences of African labour migrants reveal a stark contrast. There is a conflict between the envisioned free movement initiatives and the realities of migration, characterised by bureaucratic hurdles, exploitation, and gender discrimination. Migration policy in most African states, such as South Africa, underscores a significant gap in the implementation

of the AU MPFA, particularly in addressing the gender-specific challenges faced by women migrants.

While the protocol outlines progressive steps towards free movement and employment rights, the actual benefits for women labour migrants remain limited. The issues of short-term permits, lack of recognition of qualifications, vulnerability to exploitation, and inadequate protection against gender-based violence highlight the need for a more nuanced approach to migration policy and practice. Furthermore, the challenges encountered in the informal sector and the precariousness of undocumented migration further highlight the urgency of implementing comprehensive and inclusive frameworks that address the specific needs of women labour migrants. The following recommendations are offered:

1. The migration landscape on the continent is characterised by gender inequality and inequity. Therefore, there is a critical need for the inclusion of specific protections against exploitation of women and gender-based violence experienced by women labour migrants by acknowledging the unique vulnerabilities faced by these vulnerable women. Targeted measures must be implemented to enhance the protection of female migrants by establishing legal frameworks that specifically address and mitigate the risks of exploitation and gender-based violence.
2. It is essential to enhance legal frameworks to safeguard these women's rights, ensure fair labour practices, and provide equal access to justice and social protection. These protections should extend beyond the workplace to include healthcare, education, and social security benefits for migrants and their families.
3. By simplifying the processes for obtaining necessary documentation and legal status, states can significantly reduce the vulnerability of women migrants, who are usually subjected to exploitation and abuse (sexual, physical, and psychological), facilitating their safe and legal migration.
4. It is crucial to foster co-operation among AU member states and invest in the collection and analysis of gender-specific

- data to better inform policymaking and effectively address the needs of women labour migrants.
5. A comprehensive approach to identifying the root causes of migration – such as political instability, economic distress, and gender inequality – is central to developing targeted interventions that address these issues effectively and mitigate forced migration.
 6. By engaging with migrant communities, civil society, and local governments, states can create supportive environments for women migrants.
 7. The AU should mobilise its member states to provide access to legal aid, health services, and social support networks, which would assist women migrants in navigating their new contexts more successfully.
 8. There should be a review of national migration policies, such as South Africa’s emphasis on economic protectionism, nationalism, and migration securitisation, to better align with the AU MPFA objectives for seamless borders and unrestricted labour mobility.
 9. Active dialogue and co-operation among AU member states are crucial to overcoming policy non-alignment challenges and pursuing a vision of a united and prosperous Africa collectively.

The experiences of Zimbabwean and Congolese women migrants underscore the urgent need for policies that not only facilitate free migration but also ensure the protection and empowerment of those who undertake these journeys. Therefore, the AU must impress on its member states the important place of free mobility in continental integration and the attainment of Agenda 2063.

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