

BRIEFING NOTE No. 153**Labour mobility as a key element of the AfCFTA:
What role for the AU's free movement protocol?****By Amanda Bisong**

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Connecting the free movement of goods and services and the free movement of persons is essential to harness the benefits of intra-African trade and economic integration. But while many African countries have ratified or signed the African Continental Free Trade Area (AfCFTA) agreement, the AU's free movement protocol (AU-FMP) has not received as much attention.

This briefing note analyses the links between the AfCFTA and AU-FMP and the free movement protocol's role in facilitating labour mobility, with a view to enhancing intra-African trade and economic integration. It provides insights on the mobility-related challenges and opportunities that have been created by the AfCFTA, as well as recommendations on how to strengthen the implementation of labour mobility-related aspects of the AU-FMP and the AfCFTA.

There are several steps African countries can take to break the current AU-FMP ratification deadlock, while providing access to necessary labour and skills to promote productivity in several economic sectors. For instance, they can facilitate entry measures for different categories of migrants, such as investors, interns, business persons and small-scale cross-border traders, or create new visa categories. In addition to these measures, greater efforts are needed to understand African countries' domestic interests in promoting mobility and the conditions under which states would move towards implementing the protocol.

Introduction

Trade and mobility on the African continent are intertwined (AU 2019a). Migration and mobility have been linked to the economic development of the African continent as outlined in several of the African Union's (AU) key policy frameworks including the Boosting Intra-African Trade (BIAT)¹ and the Agenda 2063.² In a recent report, (assessing the implementation of the Agenda 2063 objectives,) the AU notes that one key component to accelerating growth and expanding intra-African trade is the free movement of people (AU 2022). Consequently, the relationship between the free movement of goods and services across the continent through the AfCFTA and the free movement of persons through the AU-FMP is essential in order to harness the benefits of regional integration and trade (Bisong and Mayer 2021).

In furtherance of its objective to promote regional integration and as part of the Agenda 2063, the African Union (AU) in 2018 negotiated the agreement establishing the African Continental Free Trade Area (AfCFTA agreement) and the Protocol to the Treaty Establishing the African Economic Community relating to Free Movement of Persons, Right of Residence and Right of Establishment (AU-FMP). While there has been significant movement by states on the implementation of the AfCFTA, the AU-FMP has not received as much attention. Up to date, the AfCFTA agreement has been signed by 54 countries (except Eritrea) and ratified by 38 countries, while the AU-FMP protocol has been signed by 33 countries and ratified by 4 countries (it requires ratification by 15 countries in order to enter into force).³

Easier movement of persons on the continent would make African labour markets more efficient, enabling companies to bridge skills gaps by recruiting from neighbouring countries, and greater conditions for the mobility of workers has the potential to lower unemployment rates (Bisong and Mayer 2021). Furthermore, facilitating the mobility of certain categories of migrants such as business persons, entrepreneurs and investors who are essential to multi-country investments and creating jobs is in line with the vision of the AU Heads of States as contained in several key policy documents. However, to reap

these acknowledged benefits of both protocols, it is important to develop effective institutional frameworks for migration governance and trade facilitation that support and complement the implementation of these adopted protocols.

This briefing note analyses the linkages between the agreement establishing the African Continental Free Trade Area (AfCFTA agreement) and the Protocol to the Treaty Establishing the African Economic Community relating to Free Movement of Persons, Right of Residence and Right of Establishment (AU-FMP) and its role in facilitating labour mobility with a view to enhancing intra-African trade and economic integration. The note provides insights on the modified landscape of challenges and opportunities of labour mobility with the momentum created by the ratification of the AfCFTA; linked to both market access and physical presence. It concludes with practical recommendations on how the implementation of the labour mobility related aspects of the AU-FMP and the AfCFTA could be strengthened.

1. Labour mobility in the AU FMP and AfCFTA protocols

The Boosting Intra-African Trade (BIAT) Initiative recognises the importance of regional integration, especially the intra and inter-regional mobility of factors of production in promoting the economic development of African Union member states (MS) and the welfare of citizens (AU 2012). It further states that 'well managed' migration can enhance the productive capacities that contribute to boosting intra-African trade and achieving further integration on the continent. Noting the sensitivity of mobility especially as it relates to security and employment, the initiative argues for finding a balance between acknowledging existing political tensions around migration and mobility and promoting economic development (see Box 1 below) through freer movement. In addition, its action plan envisages the adoption of the Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment (AU-FMP) as a means towards improving factor market integration (AU 2012).⁴

Box 1: BIAT and free movement of persons in Africa

“Although the movement of labour across countries within some African regions is a sensitive issue that has been a source of tension, if well managed, it can serve as an important instrument for enhancing productive capacity, boosting intra-African trade, and achieving a more equitable distribution of the costs and benefits of regional integration. Indeed, if the objectives of an African Union of People and a Pan-African Economic Community, as encapsulated in the Constitutive Act of the African Union, are to be achieved; regional and continental factor market integration must be accorded some priority.” (AU 2012).

The economic development of African countries and achieving structural change and industrialisation are closely entwined with job creation, protecting the livelihoods of small and medium cross-border traders and the ability of young and skilled African workers to take up available employment opportunities in other African countries (IOM 2020). Facilitating the mobility of categories of people such as business persons, entrepreneurs and investors who are essential to multi-country investments and creating jobs is in line with the ambition of the AfCFTA, as well as the vision of the AU Heads of States. Informal Cross-Border Traders (ICBT), seasonal workers, and student migrants will also benefit from greater mobility (Stuart 2020; Kritz 2013). IOM further notes that the AfCFTA is a critical precursor of free movement as it seeks to promote the “movement of business persons across over 54 countries” (AUC and IOM 2018). The pre-existence and success of the AfCFTA means that the concept of free movement of persons is not an alien one and that a discussion can be built around this topic.

The AfCFTA protocols (including the protocols on trade in services, investment and competition (which are still in the initial phases of negotiations)) envisage the mobility of persons. This mobility may be temporary and limited to specific categories of persons but they fall within the framework of promoting labour mobility on the continent. See Table 1 below for further details on the labour mobility provisions in AU-FMP and the AfCFTA protocols.

Protocol on Trade in Goods

While the protocol on trade in goods does not make explicit reference to the free movement of persons or

labour mobility, the exclusive list in the schedule on trade in goods covers goods that are of interest to informal cross border traders in most African countries. Consequently, this has the potential to generate significant benefits for promoting informal cross border trade. More so, labour is required to boost productivity in manufacturing sectors across African countries. Therefore, labour mobility across specific sectors of interest to countries may contribute to increase in productivity and exports in these sectors (e.g. agricultural sector, automobile sector etc).

Protocol on Trade in Services (TiS protocol)

The trade in services protocol seeks to harmonise the different regional markets that already exist on the continent by establishing an unified liberalised market for trade in services throughout the continent. As a result, member states have committed to creating frameworks for regulatory cooperation in services trade. The ongoing negotiations are in five priority services – financial, communication, transport, tourism and business services – and will engage in the negotiations through a request and offer process to make specific sector commitments.⁵

The protocol focuses on the mobility of business persons and professionals in the context of service delivery as defined by the four modes of service in the agreement, specifically through mode 2 and 4 commitments. This distinction is necessary as it is narrower than the mobility envisaged through the implementation of the AU-FMP. Of primary importance to stakeholders is facilitating the movement of business persons, professionals and intra-corporate transferees (including executives,

managers and trainees) with a view to providing services across countries on the continent. Member states are therefore focusing on developing regulatory frameworks including mutual recognition requirements with the aim of easing the mobility of professionals and persons identified in the common categories. Furthermore, states as part of their schedules of commitment can stipulate the number of service providers which are allowed into their territory as well as the conditions for entry and the duration of stay within their territories while providing these services.

In addition to the regulatory requirements stipulated in the schedules and under national laws, tools such as the African Union Passport envisaged in the AU-FMP (see Article 10), and procedures to ease entry, stay and exit of persons in general under the AU-FMP will contribute to facilitating the movement of professionals and business persons covered by the TiS protocol. Furthermore, the AU-FMP envisages the movement of workers as a specific category to be addressed (Article 14). The FMP provides that workers can seek employment in other African countries and can move with their families and spouses.

Furthermore, these workers also should be issued residence and work permits or other appropriate permits needed when residing in another member state (Article 15). The protocol further provides for the portability of social benefits of workers (Article 19) and ensures that states take measures to facilitate workers sending remittances to their families (Article 23). Furthermore, the protocol protects the socio-economic rights of workers through preventing mass expulsions and forceful acquisition of property (Articles 20-22). While these provisions apply in general to all persons moving within the framework of the AU-FMP, they equally apply in addition to persons moving under the framework of the TiS protocol. Thus, the scope of the AU-FMP is much broader than the TiS protocol which applies only to identified categories of service providers.

The TiS protocol applies to persons working within the formal sector and mostly employed under a formal contract. Therefore, it does not cover service providers working within the informal sector or those engaged in informal trade (e.g. itinerant traders or

retailers). Although policymakers acknowledge the prevalence of informal service providers on the continent, they are not covered directly within the scope of the protocol. Therefore entry, stay and exit requirements for this category of service providers (and other excluded categories) fall within the scope of the AU-FMP. Given the fact that there is a high level of informal trade and informality within the employment sector on the continent, this leaves a significant part of workers excluded from the provisions of the TiS. Hence the need to ratify the AU-FMP in order to offer protection to these categories of workers.

Protocol on Investment

To promote cross-border investments as envisaged by the AfCFTA, it is important for business persons and investors to have access to free movement of persons. To date, businesses are not able to attain, move or retain professionals because of restrictive immigration laws that hamper the mobility of professional services, causing limited regional skills pooling throughout the continent.

The ongoing negotiations are based on the draft Pan-African Investment Code (PAIC) (AUC 2016). This draft code was drafted in 2016 on the recommendation of the African ministers of integration with the aim of promoting private sector participation through a comprehensive investment code (AU 2016). The draft code acknowledges that free movement of people is a fundamental pillar of African integration (see the preamble of the PAIC). The code provides for the Most Favoured Nation (MFN) and national treatment of investors and private sector entities, thus ensuring equal treatment across service providers and businesses within the continent. Furthermore, the code states that member states may facilitate the granting of visas and permits to foreign workers, employees and consultants as designated by the investor in order to assist in the management of the enterprise or company and provide services to the investor in accordance with applicable national laws and regulations. The code also provides that member states may develop fast-track visa applications for investors and business persons in order to facilitate investments in the host state (Article 35).

Table 1: Labour mobility in the AU-FMP and the AfCFTA protocols

Specific provisions relating to labour migration	AU-FMP	AfCFTA agreement and protocols	
		TiS Protocol	Investment
Movement of specific categories of persons	All categories of persons, special provisions for workers, cross-border residents, students	Service providers including natural persons, professionals, intra-corporate transferees, interns et cetera.	Investors, business persons
Entry	Entry requirements for all persons; AU passport for facilitated entry	Based on commitments indicated in the schedules and national regulations for specific sectors	Facilitated fast-track visa application processes for investors and business persons
Stay (including temporary/circular and permanent as envisaged by the protocols)	Residence permits, work permits should be granted to all workers and persons by national authorities; right to residence and establishment subject to national regulations	Based on commitments indicated in the schedules and national regulations for specific sectors	
Exit	Protection against mass expulsions; protecting the rights of property and other socio-economic rights		Protecting the rights of investors and against expropriation of investments
Access to the labour market	Nationals of member states are entitled to seek employment in other member states	National treatment and MFN provisions subject to schedule of commitments	National treatment and MFN provisions subject to national investment regulations
Qualifications	Member states to take steps towards promoting mutual recognition of qualifications	Framework on recognition cooperation	
Remittances	States should undertake measures to facilitate remittances transfers between member states	Service providers should not be restricted from international transfers and payments for transactions	
Promoting socio-economic rights	Protection of property rights, access to social and welfare services; portability of social benefits of workers		Protecting the rights of investors and the right against expropriation of investments
Promoting the rights of migrant workers and their families	Access to residence documents and permits		

Source: Author's compilation

The challenge however lies in the implementation of these policy documents and protocols, as states decide which aspects of the protocols to prioritise given domestic interests. The following section will assess some of the challenges linked to labour mobility and trade as it relates to implementing the AU-FMP.

2. Labour mobility and the current issues in linking people and markets in Africa

African states have signalled through their actions that their priority is trade and not the free movement of persons, considering the low ratifications of the AU-FMP as compared to the AfCFTA. This ignores the current realities of the trading conditions in Africa that require people to move with goods, albeit for temporary purposes (such as truck drivers, cross-border traders et cetera). Of the 54 countries that have signed the AfCFTA agreement, 44 have ratified it and several have established committees for the implementation of the agreement (Tralac 2022). But with regards to the AU-FMP, the signatory countries have not established any mechanisms to facilitate its implementation or begun the process of changing any national regulations or policies, to implement measures that will facilitate the movement of people. Thus, the focus on the implementation of trade reform and trade facilitation measures, is rarely accompanied by measures that ensure the facilitation of the movement of persons for several reasons.

Domestic interests, political barriers (including insecurity) and lack of trust between members

In 2018, a study by the AU Commission and the IOM acknowledged that security concerns, socioeconomic disparities and health pandemics contributed to the reluctance of many African countries to ratify and implement regional AU-FMP (AUC and IOM 2018). The diverse effects of the COVID-19 pandemic on societies and economies has

resulted in wider divergences between countries (AFDB 2022). States in response and as part of their efforts to tackle the social and economic impacts of the pandemic are focusing on prioritising their nationals (Maunganidze 2022). Trade has been promoted by governments as one of the key pathways for reviving their economies and boosting export revenue (Department of Trade, Industry and Competition, South Africa 2022), but this has not been associated with the possibility of creating opportunities for mobility. From the perspective of most African governments, employment created through increased trade should be focused on addressing domestic unemployment which is already quite high and increasing. Given this perspective, promoting free movement of persons is seen as a tussle between creating jobs for the domestic unemployed and/or opportunities for migrant workers from other countries. However, skills mismatches within domestic labour markets have created a constraint for employers (McCowan 2014; Morsy 2020). So while job opportunities may exist, the skills to fill these vacancies are not necessarily available in the domestic labour market. Hence, the need for labour mobility and promoting free movement to enable employers to gain access to available skills within specific sectors that exist in other African countries.

An equally important domestic interest for many countries is around the securitisation of migration. National governments perceive any form of mobility as a security threat, due to the existence of transnational rebel, terrorist and criminal groups, enhanced competition over resources and pressure on social systems. Furthermore, external actors such as the European Union (EU) contribute to fuelling this narrative in several African countries, by focusing their cooperation on securitising migration (Mouthaan 2022). Through 'pushing the Southern migration border' down into the African continent, the EU engages in bilateral agreements – above all with Libya, Niger and Morocco – to avoid irregular migrants coming to the EU, and to facilitate returns from EU to African countries (D'Humières 2018; Castillejo 2018). For some countries, this focus on securitisation has resulted in the permanent closure of borders, and more restrictive border control

processes which may equally hamper the flow of trade (Walther 2022). Restrictive border practices in West Africa constitute a non-tariff barrier in the region, slowing down the movement of trucks and traders. For example in Niger and Burkina Faso, the EU's initiative to modernise border controls has resulted in a new border regime that endangers the livelihoods of thousands of businesspeople and state agents (Donko et al. 2022).

Lastly, several member states do not have the capacity and resources to establish adequate civil registries to confirm the identity of their nationals and implement integrated border management systems thus equally posing a challenge to security. For member states like South Africa, this is one of the main challenges that hampers the signing of the AU-FMP, along with the lack of bilateral return agreements between AU member states (Department of Home Affairs, South Africa 2017). Furthermore, a lack of cooperation between national law enforcement systems may equally pose a challenge to the implementation of free movement protocols, especially in cases of transnational organised crime or persons fleeing justice from one state to another. These issues have contributed to a lack of trust between member states also seen at the REC level in the implementation of regional free movement protocols. In the context of trade facilitation, national and regional cooperation mechanisms between customs administrations exist to improve integrated border management and facilitate legitimate trade. However, limited cooperation between immigration agencies and broader law enforcement agencies exist in relation to facilitating the movement of persons.

Lack of coherence between national regulations with regional and continental commitments

Several national laws and regulations, especially as they relate to access to the labour market and employment of non-nationals, are not in alignment with the provisions of the regional and continental free movement protocols (UNCTAD 2018). This lack of coherence is particularly visible in the right of

residence and right of establishment – where there needs to be changes to the national laws to ensure adequate implementation of these provisions. This is evident even in regions where free movement has been established for several decades. For example, in ECOWAS⁶, the majority of the national labour legislations do not have specific provisions for access to employment for ECOWAS citizens (ILO 2020). Consequently, ECOWAS nationals are treated in the same category as other non-nationals. Although the free movement protocols provide for equal treatment in terms of employment, member states' nationals are still exposed to discriminatory practices that either restrict their entry into the labour market or limit their participation (Yeboah et al. 2020). More so, some sectors of employment are reserved for nationals, which creates discontentment among some ECOWAS member states. Relating to the AfCFTA, changes to national laws required to facilitate the implementation of the AfCFTA have been adopted by 45 signatories (Tralac 2022).

Poor infrastructure linking markets and migration hubs

Inadequate infrastructure remains a major obstacle towards Africa achieving its full economic growth potential. The potential benefits of the AfCFTA and the AU-FMP are currently hampered by the lack of adequate infrastructure linking economic and migration hubs on the continent. Inadequate transport, communication, water and power infrastructure limit the access of regional, continental and international partners to African markets. This lack of infrastructure is a serious obstacle to growth and development and has significantly contributed to the low level of intra-African trade and trade with other regions. For example, it is easier to move a container from mainland Africa to Europe than to another African country (Kahyarara and Simon 2018). In addition, similar challenges exist in air travel, thus Africans travelling within the continent may need to transit through Europe due to a lack of flight connections on the continent. This has prompted the AU to adopt the Single African Air Transport Market (SAATM) in 2018. This demand for key infrastructure

has been identified as a priority to promote development on the continent by the African Development Bank. Estimates by the Bank suggest that the continent's infrastructure needs amount to \$130–\$170 billion a year, with a financing gap in the range of \$68–\$108 billion (AFDB 2018). But, these infrastructure needs differ depending on the region and country contexts.

Administrative and bureaucratic barriers

Although many REC member states have adopted and are implementing regional free movement protocols, there are still several administrative and bureaucratic barriers that exist to the implementation of these protocols. For example, in some countries, the knowledge of these regional policies by the implementing agencies at the borders is sometimes limited, leading to demand for several entry documents even when visa-free regulations are in place. In addition, the requirements for work and residence permits may be stringent and difficult for low skilled intra-regional migrants to comply with, especially those who are self-employed, employed in the informal sector or itinerant traders. This frequently leaves migrant workers and other migrants without valid documentation required for stay in their countries of destination. For these migrants, there is also a need for more information about the process of acquiring work permits and knowing how long they can stay in their host countries without breaching their conditions of entry.

Socio-cultural differences and perceptions of migrants and competitive trade

Another challenge faced by states is the socio-political dimension where migrants are frequently 'othered' and are expected to reduce the wages of local workers, by undercutting the market with lower wages, and competing for scarce jobs with nationals, although there are rising unemployment rates within the domestic economy of many countries. Migrants, especially labour migrants, are often still perceived as a threat to the economic well-being of nationals. Thus migrants are frequently scapegoated as being criminals,

hoodlums and a drain on the domestic social welfare system (Solomon 2019; Bornman 2020) regardless of their contribution to the domestic economies through their businesses and job creation (UNDESA 2020: 11). Furthermore, some migrants may find it difficult to integrate into their host communities, thus leading to frequent clashes between them and the host communities. Although most Africans in a recent survey indicated the desire to have diversified imports from other African countries and more retailers from other countries in their local markets, about half of the respondents were still in favour of limiting trade and free movement requirements to protect local producers (Sanny and Patel 2021).

3. How to move the agenda forward

There is a broad consensus across policymakers that regional integration is important for regional and continental development. However, for some of the reasons mentioned above, this consensus does not result in action when it comes to enabling the movement of people as part of the regional integration agenda. In order to harness the potential benefits of the AfCFTA, it is necessary for all actors – ranging from policymakers at the national, regional and continental levels, national implementing agencies, and development partners to host and origin communities amongst others – to move beyond paying lip service to the linkages between trade and migration towards implementing the commitments made at various levels. Furthermore, it is essential that migration regimes include pathways for all forms of labour migrants, investors, business persons and others whose movement is crucial to the implementation of the AfCFTA. In addition to facilitating the mobility of persons, especially migrant workers, it's also critical to put in place additional laws that will safeguard their welfare and protection. This section discusses concrete steps that should be taken by policymakers to ensure the implementation of the AU-FMP and AfCFTA-related measures on labour mobility.

3.1. Facilitating entry measures for categories of migrants

While many African countries have taken steps to ensure visa-free entry procedures, Africans still require visas to enter several countries (46%) on the continent. In order to ensure that business persons, investors and labour migrants can take advantage of the opportunities offered in the AfCFTA, it is necessary for states to implement measures that will facilitate the entry of migrants. States reluctant to grant visa-free entry to all migrants can commence with a phased approach to promoting mobility (Hirsch 2021). This can be done through implementing measures to facilitate the entry of specific categories of migrants such as business persons, investors, labour migrants and students. Furthermore, states should also expand visa categories for migrants, especially for those engaged in business or investment activities. Currently, there are very few visa categories that enable people to move to other African countries for the purposes of investing in business opportunities or employment. African countries may invest in expanding visa pathways in specific categories, especially those that promote circular or seasonal mobility of workers. Lastly, countries should also expand and improve existing infrastructure and launch national initiatives to grant visa-free access on the basis of the good practices already established by certain member states and within regional economic communities. Using the current momentum is important given that due to more recent developments, including the COVID-19 pandemic, the continent risks losing the gains in liberal visa policies that it has realised over the years (AfDB 2021)

Although the preference of states for multilateral action on these commitments is low, as a first step, unilateral and bilateral measures are being implemented by states to facilitate entry procedures. This has been done for example through introducing bilateral visa waivers in furtherance of political cooperation. For example, South Africa will implement a tourism and business visa waiver for Kenyan nationals in order to expand business and investment opportunities and ease travel for tourists (Aljazeera 2022).

3.2. Promoting circular migration and exchange

Policymakers in African countries should promote circular migration and exchanges of students and researchers or academic staff through negotiating and implementing bilateral and multilateral (regional) agreements that promote these actions. Furthermore, these exchanges can be extended to include bilateral temporary work schemes and investment or business support initiatives for investors from third countries. These schemes could also take place within the context of the AfCFTA in facilitating mobility for specific productive sectors between origin and destination countries. International organisations and donor organisations can assist African countries in implementing such pilot schemes to promote and support labour circulation and the creation of investment or business opportunities between countries of origin and destination countries (particularly in the case of economic and migration hubs). These schemes could also focus on creating opportunities for young people to pursue employment and business opportunities across borders. There are already several of such pilots and schemes that promote exchanges between countries⁷ and lessons learned from them can be incorporated into new schemes with a focus on priority sectors of the AfCFTA.

3.3. Simplifying entry procedures for small scale cross-border traders (SSCBT), seasonal workers and business persons with the aim of reducing irregularity and informality

Empirical studies have shown that SSCBT and seasonal workers still face a lot of harassment while crossing borders in Africa (Sanny and Patel 2021). However, these small businesses and seasonal workers are also essential to creating linkages between markets and improving the productive capacity of sectors (like agriculture and mining) in destination countries. It is therefore important that the entry procedures are simplified in order to reduce the irregularity of these groups of migrants and their participation in the informal sector, where they are most likely to be exploited. To do this,

states can introduce simplified entry procedures – such as those that exist for border residents under some regional free movement protocols – with limited requirements in order to facilitate their entry and exit.

3.4. Upgrading administration and administrative capacities

AU member states need to improve their civil registration capacities, integrated border management approaches, cooperation between national law enforcement agencies and cooperation towards addressing transnational organised criminal networks based on both regional and continental approaches. Furthermore, administrative procedures at borders which cause delays should be reviewed in order to facilitate trade and the movement of persons. These delays constitute non-tariff barriers which slow down trade processes and limit productivity. Therefore, states should work towards eliminating these barriers through coordinated and harmonised border management practices. Furthermore, AU member states need to improve regulatory and competition policies to encourage investment in priority sectors while guaranteeing access to labour and other resources necessary to boost productive capacities. In addition, states need to invest in improving physical infrastructure at the border, linking productive hubs and markets and ICT infrastructure necessary to promote trade in services.

3.5. Aligning national regulations to Trade in Services and FMP provisions to ensure access to the labour market

This briefing note, along with several other studies, has shown that states have not aligned their commitments at the national level with the provisions of the regional free movement protocols. For the implementation of the AU-FMP and the AfCFTA to be successful, it is imperative that states align their national laws and regulations with the commitments undertaken under the AfCFTA especially as it relates to the Trade in Services schedule of commitments and the provisions of the AU-FMP. This will ensure that nationals from other

member states can have access to the labour market without restrictions and limitations, subject to the commitments made. Therefore, current administrative and bureaucratic barriers that prevent nationals from other member states from accessing and participating in domestic labour markets will be reduced. This will contribute to reducing the level of informality of migrant workers as many workers will be able to access employment opportunities in the formal sector. Also, states should engage in reviewing their national employment and investment laws with the aim of promoting and encouraging investment by non-nationals and employment of non-nationals in the domestic labour market. These discussions should be inclusive in order to avert conflicts with domestic labour organisations. The discussions should include all relevant stakeholders such as labour unions and workers' unions and employers' unions and other ministries, departments or agencies with responsibility for employment and investment.

3.6. Promoting better social welfare provisions for migrant workers and their families

Action should be taken to promote and strengthen protection for migrant workers and their family members, through strengthening continental and regional oversight of social security mechanisms and developing standards for the transfer of migrants' social security benefits and savings. Where best practices already exist within regions, they could serve as an example for the continental level. For example, the portability of social benefits already exists for migrants in some ECOWAS countries. In addition, countries should provide better working conditions for migrant workers regardless of the sector in which they are employed (formal or informal), especially as it relates to seasonal workers. Stricter labour laws and enforcement of these laws with regional monitoring can ensure that migrant workers are not exploited by employers because of their status. It is also important that national laws and regulations are reviewed to ensure compliance with these regional and continental commitments on promoting and protecting the rights of migrant workers and their families.

3.7. Sensitisation of government officials, border agents and traders on the rights, responsibilities and obligations of parties in FMP and access to the labour market

Although several programmes already exist that are conducting sensitisation activities for government officials and traders on their rights, responsibilities and obligations, there still needs to be a lot more done in this area as harassment and other irregular practices still exist at border crossings across the continent. It is therefore important to sensitise these stakeholders on the importance of free movement of persons to the realisation of the goals of the AfCFTA and why it is also important for migrant workers and other migrants to be able to access the domestic labour market. More importantly also, small scale cross-border traders need to be informed about the purpose of border control measures and why it is necessary to comply with them. Where possible joint programmes should be implemented with customs and immigration officials to encourage a buy-in for the two groups while promoting an integrated approach to human rights-based border management.

3.8. Promoting advocacy on the AU-FMP and AfCFTA

The African Union Commission (AUC) with the support of international organisations and donors can promote advocacy and dialogue to encourage states to sign, ratify and implement the AU-FMP and the AfCFTA, especially as it relates to promoting labour mobility on the continent. This can be done by using existing mechanisms like the Pan African Forum on Migration (PAFOM) to engage with member states and RECs on understanding the current challenges towards the signature and ratification of the AU-FMP and what steps can be taken to mitigate these. Regional consultative processes like the Migration Dialogue for West Africa (MIDWA), Migration Dialogue for Southern Africa (MIDSA), Migration Dialogue from COMESA Member States (MIDCOM) and Migration Dialogue for Central African States (MIDCAS) processes can also be used to further these dialogues.

Civil society organisations (CSOs) especially regional CSOs have an important role to play in promoting the implementation of the AU-FMP and the AfCFTA. By ensuring that member states are aligning their regional commitments with their continental commitments and acting as watchdogs to call out states where they are not implementing their commitments. More so, CSOs have a clearer picture of what happens at the grassroots levels and are thus able to advocate more strongly for the needs of the citizens (especially those on the move). These CSOs should work in collaboration with AU organs such as the Economic, Social and Cultural Council (ECOSOCC) and Citizens and Diaspora Organizations Directorate (CIDO) and similar REC structures where existent.

Furthermore, joint institutional discussions on mobility between the AfCFTA Secretariat, the AUC and special organs/institutions - like regional business councils, regional chambers of commerce, the Pan-African Chamber of Commerce and Industry, Afro champions Initiative - can be used to further the discussions on facilitating mobility for business persons and investors. This will contribute to improving movement for business persons and investors especially as it relates to the reality of movement on the continent. Lastly, the AUC can also identify a president as a national champion to promote the ratification of the AU-FMP and a prominent industrialist from the private sector to jointly drive the work on promoting the mobility of persons especially as it relates to labour migration.

Conclusion

This briefing note provides insights on the modified landscape of challenges and opportunities of connecting people with the momentum created by the ratification of the AfCFTA; linked to both market access and physical presence. The challenges faced by persons moving on the continent need to be addressed within the context of regional and continental frameworks in order to harness the potential benefits from the AfCFTA. Such benefits include filling domestic labour shortages, boosting trade in services across the continent, and promoting productive capacities of certain sectors

amongst others. It is therefore important for states to develop common solutions to addressing these challenges. While states are undertaking trade reform measures to ensure the successful implementation of the AfCFTA, these measures need to be complemented by broader policy reforms including facilitating the mobility of workers, business persons and other specific categories of service providers. In moving the discussions forward on promoting labour mobility, the role of national interests needs to be critically examined and better understood and aligned with the discussions on free movement and trade facilitation. The focus on the socio-political dimensions should be balanced with the focus on the economic benefits of free movement and trade for both countries of destination and origin on the continent.

This briefing note recommends several practical steps to member states and the AUC in order to kick-start labour mobility as part of the implementation of the AfCFTA. These steps will involve balancing the domestic interests with the realities of promoting intra-African trade. African states should take steps to facilitate entry measures

for categories of migrants such as business persons, investors, migrant workers and students in order to improve the productive capacity of states and promote intra-African mobility. Also states should work towards creating avenues to promote circular migration and exchange between countries in priority sectors of the AfCFTA. Given the importance of small scale cross-border traders across several African countries, states can introduce simplified entry and exit procedures for these traders as part of trade facilitation measures. Governments would need to invest in upgrading their administrative capacities and particularly promote cooperation between law enforcement agencies. In the mid to longer term, governments would need to align their national regulations with their commitments undertaken at the AU level to ensure labour market access while providing protection and guaranteed welfare benefits for migrants and their families. The AUC on its part, while supporting states in implementing the above listed measures would also need to continue the advocacy to promote the signature, ratification and implementation of the AU-FMP and the AfCFTA as part of its continued advocacy efforts targeted at government officials, border agencies and other identified key stakeholders.

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Endnotes

- ¹ The 18th Ordinary Session of the Assembly of the Heads of State and Government of the African Union endorsed an Action Plan for Boosting Intra-Africa Trade (BIAT). The objective of this decision was to further integrate Africa's markets and increase the effectiveness of trade as a tool for achieving quick and lasting socioeconomic development. BIAT offers a framework for addressing key constraints to intra-Africa trade and diversification under seven clusters: trade policy, trade facilitation, productive capacity, trade-related infrastructure, trade finance, trade information, and factor market integration.
- ² An equally important motivation for promoting the mobility of persons on the continent is the objective of transforming Africa's economies and promoting its productivity and competitiveness, as encapsulated in Goal 4 of Agenda 2063 (AU 2015).
- ³ 4 member states have deposited their ratifications with the AU Commission, namely, Rwanda, Niger, Mali and Sao Tome and Principe (AU 2019b).
- ⁴ See Cluster 7 of the BIAT action plan on factor market integration (AU 2012).
- ⁵ As at December 2022 48 countries had submitted initial offers on trade in services (AfCFTA Secretariat 2022).
- ⁶ The ECOWAS free movement protocols adopted between 1979- 19xx grants the rights of entry, residence, and establishment to community citizens.
- ⁷ See, for example, Towards a Holistic Approach to Labour Migration Governance and Labour Mobility in North Africa (THAMM) (UN Network on Migration 2019) .
- ⁸ As part of the study, interviews were conducted with relevant experts and stakeholders involved in the negotiations and implementation of the AfCFTA and the AU-FMP at the AU Commission and the AfCFTA secretariat. These interviews were complemented by a desk review of relevant policy documents including the AU-FMP Free Movement Protocol along with the roadmap for its implementation and relevant AU migration policies and programmes such as the AU Plan of Action on Employment, Poverty Eradication and Inclusive Development (2015), the 2018 revised Migration Policy Framework for Africa (MPFA) and the Joint Labour Migration Programme (JLMP), highlighting the important areas of alignment and synergies. Further details on the methodology can be found in the study.

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