



MIGRATION POLICIES AND LABOR MOBILITY IN AFRICA

Políticas de migração e mobilidade laboral na África

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MIGRAÇÃO LABORAL E PRODUÇÃO DE COMMODITIES NA ÁFRICA: CONEXÕES GLOBAIS

LABOR MIGRATION AND COMMODITY PRODUCTION IN AFRICA: GLOBAL ENTANGLEMENTS

ABSTRACT

Labor migration appears to be one of today's solutions to the socio-economic and cultural imbalance in Africa. Its contribution to the growing interconnection of the world over the last century through the commercialization of raw materials is undoubtedly significant, given the relief it has brought to most economies in Africa and beyond. Unfortunately, a panoramic look at the legal atmosphere that hangs over labor migration in Africa leaves one wondering. The aim of this study, which complements many others already carried out on the subject, is to determine the appropriate legal interpretation of migration policies and labor mobility in Africa. According to the results of the analysis and comparison of regional and sub-regional policy frameworks and the various state practices developed in the field of labor migration, a mixed reading reveals that the genuine political will to encourage labor mobility, affirmed at supra-state level, remains inconsistent at state level.

KEYWORDS

Migration policies. Labor mobility. Africa.

RESUMO

A migração laboral parece ser uma das soluções atuais para o desequilíbrio socioeconômico e cultural na África. Sua contribuição para a crescente interconexão do mundo ao longo do último século através da comercialização de matérias primas é sem dúvida significativa, dado o alívio que trouxe à maioria das economias africanas e fora do continente. Infelizmente, uma visão panorâmica da atmosfera jurídica que paira sobre a migração laboral na África preocupa. O objetivo deste artigo, que complementa muitos outros já realizados sobre o assunto, é determinar a interpretação jurídica adequada das políticas de migração e mobilidade laboral na África. De acordo com os resultados da análise e comparação dos quadros políticos regionais e sub-regionais e das diversas práticas estatais desenvolvidas no domínio da migração laboral, uma leitura mista revela que a vontade política genuína de encorajar a mobilidade laboral, afirmada em nível supra-estatal, permanece inconsistente nos níveis estatais.

PALAVRAS-CHAVES

Políticas de migração. Mobilidade laboral. África.

The history of migration in Africa has been three facets: pre-colonial, colonial and post-colonial migration. Over the past 15 years, migration has increased in all regions of Africa, and is characterized by a variety of flows, including seasonal and labor migration. Added to this is an increase in the number of young people seeking decent work and educational opportunities, as well as irregular migration and large numbers of refugees, asylum seekers and internally displaced people. The causes of this phenomenon are varied. They include the absence of socio-economic opportunities and the rule of law, weak governance institutions, clientelism and corruption, inequality, political instability, conflict, terrorism, social strife and climate change, all of which are major factors driving.¹ However, despite the fact that the most emphasized destination for migrants remains Europe, over 80% of inter-African migration takes place (AU, 2018). They are both intraregional² and interregional³ (AU, 2016, p. 9).

It is therefore important to note that, despite its significance and role for development, labor mobility on the continent is far from being a political priority for many governments, who still see migration as a problem to be managed (De Vulpillieres, 2017, p. 95). The problems faced by labor migration have then prompted several specialists to opt for a review of migration governance in Africa. This point of view may be entirely appropriate if labor mobility, which expected to be one of the cornerstones of economic growth and development in Africa, still fails to propel the continent's economic integration. An analysis of regional texts on the subject reveals that a number of policies relating to migration have already been defined, and continue to be defined. Indeed, the AU has on several occasions demonstrated its commitment to making labor migration a key priority in the continent's economic integration drive (Ba; Fall, 2006, p. 3).

However, what is regrettable beyond these efforts is the AU's inability to substitute for states in implementing this will by translating its global objectives into policy frameworks, binding regulations or bilateral treaties and agreements between states. Furthermore, the reality of migratory movements in Africa has revealed that the reluctance of states to implement international and regional standards relating to labor mobility issues has led to the observation that almost all African countries have a genuine interest in abandoning labor migration to the realm of illegality, in order to better control and repel it. Even if, in accordance with the international legal framework, states have the sovereign right to determine the conditions of entry and residence of foreigners on their territory, the enjoyment of certain rights by anyone crossing a border cannot be denied, despite the question of sovereignty (De Vulpillieres, 2017, p. 95; Dupuy; Kerbrat, 2018, § 133; IOM, 2024, p. 20).⁴ While the numbers of migrant workers continue to grow according to statistics presented by the IOM, the various migration policies put in place to govern this issue are far from creating a favorable climate to enable states to reap all the related significance and roles.⁵ As much

¹ In 2015, there were around 21 million migrants in Africa, 18 million of whom came from Africa and the rest largely from Europe, Asia and North America. In addition, South-South migration to Africa has increased, mainly thanks to Chinese and Asian migrant flows, with over a million Chinese estimated to have entered Africa in the last decade; V. UNECA, 2016, Issue Paper, New Directions and Trends in African Migration, p. 1.

² Mainly in western, eastern and southern Africa

³ That is, from West Africa to Southern Africa, from East Africa/Horn of Africa to Southern Africa, and from Central Africa to Southern and West Africa.

⁴ This principle derives from the exclusive sovereignty of the State over its territory. This lack of obligation on the part of the State to authorize the residence of a foreigner is clearly stated in France, for example, by the Constitutional Council in the following terms: "no principle or rule of constitutional value guarantees foreigners general and absolute rights of access to and residence on national territory". This implies, as De Vulpillieres thinks, the possibility of a restrictive regime freely defined by the legislator, since foreigners are often placed in a different situation from nationals in most countries; see also CC, August 13, 1993 *Loi relative à la maîtrise de l'immigration et aux conditions d'entrée, d'accueil et de séjour des étrangers en France* (n. 93-325 DC) Recital 2. See on respect for the rights of foreigners.

⁵ At present, the IOM estimates that over 86 million people are working in a country other than their country of origin.

as the rights of migrant workers are violated in host countries, it is more than necessary to dwell on the relationship between the nature of migration policies implemented by African states and the issue of labor mobility,

To get a better grasp of the phenomenon, it's a good idea to clear up any conceptual ambiguities surrounding the key notions that make up the theme in question. That said, in most standard legal and French-language dictionaries, the notion of *migration* is not considered in association with that of *politics*. Nevertheless, it is doctrine that has attempted to define the concept of migration policies. For this reason, Hammar, cited by authors such as Camille Hamidi and Nicolas Fischer, envisages this concept as "the set of policies, actors and institutions that govern the admission and integration of foreign migrants in the host country" (Hammar, 1985, p. 454; Hamidi; Fischer, 2017, p. 28-37). The migration glossary defines the notion of policy by referring it to that of migration as a set of guiding principles for the action of public authorities; a set of decisions and means designed to achieve specific objectives in given areas. In this sense, we can speak of immigration, asylum or migration policies (Perrouchoud, 2007, p. 61). The *Institut National d'Études Démographiques de la République française* (INED) provides a rather negative definition of the concept of migration policy, envisaging it as a set of measures designed to control (or possibly encourage) migratory movements between the country in question and foreign countries.⁶

Finally, the concept of migration policies can be seen as overall orientations or guidelines on migration issues for any country or community. This idea is implemented in the revised Migration Policy Framework for Africa and Action Plan (2018-2030).⁷

The latter concept refers to the ease with which the workforce moves between job locations and from one job to another. It corresponds more closely to the ability of individual workers to move horizontally or vertically in the labor market. Indeed, it's the flexibility with which the workforce can move from one country to another. Studying migration policies in conjunction with labor mobility in Africa is therefore based on the major concern of noting how the orientation of these migration policies can negatively or positively influence the flexibility and ease with which labor can move in Africa. For, the more flexible the migration policies defined by states, the easier it is for the workforce to move around, and vice versa.

The central question to be asked is: *what legal interpretation can be made of migration policies and labor mobility in Africa?* The result of this concern is a mixed interpretation; for, in view of the exegesis of texts, State practice (Carbonier, 2004, p. 415),⁸ and the comparison that can be made between these States (Delmas-Marty, 2004, p. 15; Von Wahlendorf, 1978, p. 173, 180; Jaluzot, 2005, p. 34)⁹ It is possible to argue that there is a real political will to encourage labor mobility, which can be seen at supra-national level (I). Yet, in several cases, this political will is far from being translated into concrete action at state level (II).

THE ASSERTION OF GENUINE POLITICAL WILL TO ENCOURAGE LABOR MOBILITY AT SUPRA-STATE LEVEL

This political will can be seen first and foremost in the AU's involvement in creating a climate conducive to labor mobility on the continent (A), to which the contribution of sub-regional organizations to achieving this objective is not insignificant (B). A. The AU's commitment to creating a climate conducive to labor mobility on the African continent. It

⁶ Definition of migration policies available at: <https://www.ined.fr/fr/lexique/politique-migratoire>, Accessed on: Jan. 17, 2024.

⁷ See: Revised Migration Policy Framework for Africa and Action Plan (2018-2030), published by Migration for Development in Africa, May 2018, p. 34.

⁸ In the context of this work, we will use both sociological positivism and the comparative method as a working method.

⁹ See: Aspiration 2 of Agenda 2063 for Africa published in 2015.

should be noted here that the AU has signed up to a number of international standards relating to labor mobility (1), before dwelling on its own developed standards for labor migration (2).

THE AU'S ADHERENCE TO INTERNATIONAL LABOR MOBILITY STANDARDS

Driven by the winds of globalization, the African Union has made several efforts to turn migration into a development opportunity for Africa. This concern is in line with Agenda 2063, in which Africa aspires to be an integrated continent by 2030, where the free movement of people, capital, goods and services will boost trade and investment between African countries to unprecedented levels. The ambition is to consolidate Africa's place in world trade, while at the same time becoming a continent with seamless borders.¹⁰ Recognizing the importance of labor migration to Africa's future, the AU has demonstrated its commitment by signing up to a number of international conventions.

The various international instruments to which the AU has subscribed fall into several categories, depending on whether they are governed by the United Nations (UN) or the International Labor Organization (ILO). Under the aegis of the UN, the first instruments have the simple value of political recommendations intended to guide the attitude of States as a moral imperative. Article 13 of the Universal Declaration of Human Rights (UDHR) sets out the principle of freedom of movement for individuals throughout the world.¹¹ Despite its limited legal value, it exerted considerable influence worldwide, encouraging and inspiring far-reaching international decisions within the UN and elsewhere, which led to the creation of new rules (Ba; Fall, 2006, p. 11). This initial international legal basis was later consolidated by the adoption of two International Covenants on December 16, 1966, namely the Covenant on Civil and Political Rights, which entered into force on March 23 1976, and the International Covenant on Economic, Social and Cultural Rights, which entered into force on September 3 1976. The binding nature of these two instruments lists a number of rights which are intended not only to create the conditions for greater labor mobility, but also to protect migrant workers in their host countries.¹² This is also the case with the 2000 United Nations Convention against Transnational Organized Crime, the Protocol against the Smuggling of Migrants by Land, Sea and Air, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (IOM, 2024, p. 20).

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted in 1990 by the United Nations General Assembly, is another instrument issued under the aegis of the UN. Today, this Convention is the most elaborate in terms of protecting the rights of migrant workers at international level.¹³

Other major advances in the application of international texts on labor migration in Africa include the AU's recognition of international instruments drafted under the aegis of the ILO. These include the Migrant Workers Convention, revised in 1949, which lays the foundations for equal treatment of nationals and regular migrants in areas such as recruitment procedures, living and working conditions, access to justice, tax and social security regulations, etc. The latter is complemented by the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, revised in 1949. This

¹⁰ See the comparison defined by Barrué-Belou.

¹¹ Article 13 of the Universal Declaration of Human Rights states in paragraph 2: "Everyone has the right to leave any country, including his own, and to return to his country".

¹² See article 2 paragraph 1 of the International Covenant on Civil and Political Rights.

¹³ See Part 5 of the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Convention is complemented by the 1975 Convention, which aims to regulate migratory flows, eliminate irregular migration and combat smuggling and trafficking. Finally, there are the various recommendations formulated by the ILO itself¹⁴ regarding minimum standards. Although the latter do not apply specifically to migrant workers, they do contain interesting provisions that could serve as a reference for the Committee of Experts in monitoring their application in the context of labor migration.¹⁵

The AU's commitment to creating a climate conducive to labor mobility on the African continent has gone beyond adhering to international standards on labor mobility, to shaping its own legal universe where migrant workers will feel secure in their migratory adventures.

ESTABLISHING AFRICAN STANDARDS FOR LABOR MOBILITY

On a continental level, the legal bases for labor mobility are to be found in simple recommendations or guidelines intended to guide the behavior of states on the one hand, and in binding standards on the other.

The first category of standards is based on AU treaties, and more specifically on the Charter signed on May 25 1963 in Addis Ababa, and revised in 2002 in Chad. This Charter affirms Africa's adherence to the UN Charter and also to the UDHR, by virtue of Article 2, which sets the AU's objective of fostering international cooperation. In addition to the Charter, which defines the general direction that labor migration should take in Africa, several other policy frameworks have been put in place by the Conference of Heads of State and Government in relation to labor mobility. These include, among others, the 2017 AU, ILO, IOM and ECA Joint Program Document on Labor Migration Governance for Development (JLMP). This document then provides a strategic framework guiding the work of member states, social partners and RECs on labor migration on the African continent.

Secondly, the AU Migration Policy Framework and Action Plan 2018 reflects current migration dynamics in Africa and provides a framework of revised strategies to guide AU Member States and Regional Economic Communities in managing migration. It also provides comprehensive and integrated policy guidance to be taken into account in their efforts to promote migration and development, and to address the challenges of migration on the continent. Among the nine themes it addresses, a special place is reserved for labor migration.¹⁶

It should also be recalled that in 2015, the AU had already adopted the Declaration and Plan of Action on Employment, Poverty Eradication and Inclusive Development in Africa, not to mention the Joint Labor Migration Program, the Cotonou Agreements of June

¹⁴ The main recommendation concerning migrant workers was adopted on June 8, 1949 by the International Labor Conference, and goes much further in the management of migrant workers by providing minimum guarantees for the protection of their rights in receiving countries. It should also be noted that in 2006, the ILO instituted a Multilateral Framework on Labor Migration, which sets out principles and non-binding guidelines for a rights-based approach to labor migration.

¹⁵ These include: Convention No.100 on Equal Remuneration (1951); Convention No.103 on Maternity Protection (Revised); Convention No.111 concerning Discrimination (Employment and Occupation), 1958; Convention No.122 on Employment Policy; Convention No.115 on Workers' Housing; Convention No.138 on Minimum Age; Recommendation No.150 on Human Resources Development; Recommendation No. 164 on Occupational Safety and Health; Convention No.168 on Employment Promotion and Protection against Unemployment; and the Private Employment Agencies Convention, 1997. on Occupational Safety and Health; Convention No.168 on Employment Promotion and Protection against Unemployment; the 1997 Convention on Private Employment Agencies, which most African countries have not yet ratified (V. Policy Note 10 on the governance of migration and labor mobility in Africa and elsewhere, available at: <https://www.diaspora-centre.org/knowledgeplatform/wp-content/uploads/2021/11/Note-de-politique-10.pdf>, accessed January 21, 2024.

¹⁶ Other themes include: Border management, irregular migration, forced displacement, human rights of migrants, internal migration, migration data management, migration and development, and inter-state cooperation and partnership.

23, 2000,¹⁷ and Agenda 2063, which promote critical areas to facilitate the free movement of workers in order to foster regional integration and development. The migration policy framework therefore recommends a number of strategies that should have a positive impact on several aspects. These include national labor migration policies, structures and strategies, regional cooperation and harmonization of labor migration policies, limiting the brain drain from migration, and harnessing the full benefits of remittances.

As far as binding standards governing labor mobility in Africa are concerned, it is the Protocol to the Treaty Establishing the Economic Community of the African Union on the Free Movement of Persons, the Right of Residence and the Right of Establishment that can be considered the only truly binding standard on the continent today. While almost all of Africa's 55 states have already ratified the treaty establishing the economy community, only a handful of four states have so far ratified its protocol on free movement.¹⁸ This situation therefore has a real impact on the willingness of African states to translate their political commitments to facilitating labor mobility on the continent into concrete action. However, it is also crucial to note that the same desire to move things forward in terms of labor mobility is a concern to which the Regional Economic Communities have not failed to lend an equally attentive ear. The contribution of sub-regional organizations to creating a climate conducive to labor mobility on the African continent. Generally speaking, regional organizations are mandated to translate any topic on the continental political agenda into bilateral policy frameworks, treaties and regulations between countries.¹⁹ With this in mind, we note that, while some Regional Economic Communities are seen today as models in terms of promoting labor mobility in view of the efforts they have made (1), others are still following suit (2).

While it's true that some RECs have made considerable efforts to promote labor mobility, it's also true that others have yet to follow suit. This observation is far from trivial, given the many reasons for it. For example, the Economic Community of West African States (ECOWAS), the Southern African Development Community (SADC) and the Common Market for Eastern and Southern Africa (COMESA), all aware of the importance of free movement, have adopted specific protocols on this subject in addition to their constitutive treaties.²⁰

Speaking of ECOWAS in particular, this community has the merit of having the oldest Protocol on free movement, the right of residence and the right of establishment (Ba; Fall, 2006, p. 11).²¹ This flagship instrument, provided for in the ECOWAS founding treaty, is an effective tool that contributes to guaranteeing member states all the advantages for both countries of origin and host countries. To this end, article 1 of the treaty stipulates that:

Subject to the provisions of police and public safety laws, as well as health regulations, nationals of member states may freely enter, travel in, stay in and leave the territory of any member state upon

¹⁷ The Cotonou Agreement signed on June 23, 2000 between the European Union and the ACP (African, Caribbean and Pacific) countries updates the former LOME agreements signed in 1975. Three of the hundred articles of these agreements concern migration and migrants: articles 13, 79 and 80.

¹⁸ The 5 states that have not yet ratified the treaty establishing the AU economic community are: Djibouti, Eritrea, Madagascar, Somalia and South Sudan; on the other hand, only four states have ratified the Protocol to the Treaty establishing the Economic Community on the Free Movement of Persons and the Right of Residence and Establishment Mali, Rwanda, Sao Tome and Principe and Niger.

¹⁹ See: Policy Note 10 on the governance of migration and labor mobility in Africa and elsewhere, op. cit. p. 4.

²⁰ At regional level, several instruments have been drawn up and adopted by SADC member states to promote rights-based labor migration. Most SADC countries have legislated regulations on the entry, stay and employment of foreigners. The issue of labor migration is therefore well managed for incoming migrants.

²¹ The provisions of the Protocol directly related to labor migration are contained in articles 3, and 59 paragraph 1, 2 and 3. The effective application of these provisions is made possible by the implementation guarantee mechanisms provided for by ECOWAS. These include protocols, decisions, directives and resolutions.

presentation of a valid national passport, without being required to comply with any prior formality such as an entry or exit visa (Art. 1 of the ECOWAS Protocol on freedom of movement).

Thus, in addition to the protocol on free movement, ECOWAS has developed additional protocols relating to employment, business creation and social protection, not to mention the treaty establishing the West African Economic and Monetary Union (UEMOA), which also contains provisions on the free movement of migrant workers.²² Indeed, thanks to the support of the ILO and IOM through the facilitation of inter-state dialogue and regional cooperation, regional organizations in general and ECOWAS in particular constitute a key pillar of the AU in the endeavor to facilitate labor mobility on the Continent (IOM, 2024, p. 20). In view of their position, the sub-regional communities have an important role to play in promoting and consolidating regional labor migration policies.²³

To this end, there is a joint program involving the AU, ILO, IOM and the Regional Economic Communities (CEA) on the governance of labor migration for development and integration in Africa. The main aim of this program is to implement the Global Compact for Safe, Orderly and Regular Migration (GSM). The long-term aspiration is to put in place an effective labor mobility regime promoting integration and development in Africa, with the governance necessary to sustain it. The Joint Program, while supporting African RECs, provides a strategic framework to guide the work of African member states, social partners and RECs on labor migration on the African continent. Other laudable objectives of this program include encouraging the ratification and integration of international labor standards into national legislation; the implementation of free movement mechanisms within the RECs; and the adoption of a policy at national level.

All the efforts made to promote labor migration in West, Southern and East Africa show that these organizations and communities are still some rare prominent examples, which is hard to say same for the cases regarding other RECs.

THE SITUATION OF OTHER REGIONAL ECONOMIES COMMUNITIES WITH REGARD TO LABOR MOBILITY IN AFRICA

It goes without saying that freedom of movement is one of the main objectives to which Africa aspires through the RECs. Freedom of movement is therefore an essential element that enables people on the move to live, work and do business under the same conditions as nationals. Indeed, as envisaged by Agenda 2063 and the provisions of the treaty establishing the African Economic Community, full integration is a process that must be achieved in several stages according to a well-defined timetable. However, it should be noted that this process is now seriously behind schedule, compared with the forecasts initially set out in the Abuja Treaty.²⁴

One of the major regrets in the construction of a united Africa lies in the fact that RECs such as the Economic Community of Central African States (ECCAS), the East African

²² The WAEMU was created on January 10, 1994. Its main provisions governing the free movement of migrant workers are as follows: Chapter I of Title IV of the Treaty provides for the establishment of guiding principles for the harmonization of Member States' legislation, Article 91 on non-discrimination against migrant workers and the right of residence, Article 92 of the Treaty expressly provides for a right of establishment throughout the Union.

²³ The various tasks referred to here include improving the capacity building of member states, providing practical advice, carrying out national labor market needs assessments, supporting the collection of data on labor migration, improving the skills of migrant workers, access to and portability of protection, fair recruitment and so on. V Policy Note 10 on the governance of migration and labor mobility in Africa and elsewhere, *op. cit.* p. 4 and 5.

²⁴ Art. 6 al. 1 and 2 of the Abuja Treaty on the African Economic Community of June 1991.

Community (EAC) and the Arab Maghreb Union, have so far only clarified the elements concerning free movement in their constitutive treaties. In ECCAS, the six countries that make up the Economic and Monetary Community of Central Africa have so far only signed a simple free movement agreement in 2017,²⁵ while protocols are being drawn up for IGAD and the Community of Sahel-Saharan States (CEN-SAD). This is an undeniable fact that testifies to the lack of any real will to promote labor mobility in these different parts of Africa. Thus, today it can only be speculated that, had the opposite been true in terms of efforts, Africa would be at a different level, comparable to certain neighboring African communities where the train of integration on all fronts is well underway.²⁶

On top of this, studies carried out on the proportion of Regional Economic Communities that have taken measures in favor of the free movement of people show that most of these communities are still lagging behind in almost all areas essential to the implementation of economic integration. In fact, the vast majority of the areas affected by this lag relate to labor migration. These include, for example, the right of establishment, the free movement of labor, the right of residence and common labor legislation (CEA, 2006, p. 70). Virtually all the RECs have not yet embarked on the six stages of the African Economic Community process provided for in the Abuja Treaty.²⁷ The fifth phase of the Abuja Treaty is due to be completed by 2023, but this has yet to become a reality.²⁸

In addition to all the efforts made at supra-state level, the reluctance of the states must be underlined to encourage these efforts at national level, which have not moved a single step.

THE INCONSISTENCY OF THE POLITICAL WILL TO ENCOURAGE LABOR MOBILITY AT STATE LEVEL

It is noticeable that the genuine will to promote labor mobility that has always characterized the activities of African regional and sub-regional institutions has not been matched by the same commitment on the national level (A). This reality should have been countered by an acceptable level of regulation of labor migration in host countries, which is clearly far from being the case (B).

A) Weak adherence by states to supra-state standards on labor mobility

It begins with an assessment of the internalization of labor mobility instruments in national legal orders in Africa, which is undoubtedly negative (1), before looking for reasons that may justify this negativity (2).

1) Several instruments governing labor mobility and protecting the rights of migrant workers have still not been ratified by the majority of African states. This means that the many appeals made to Heads of State in numerous regional political frameworks and at various gatherings have remained mere dead letters. If the various studies carried out on labor migration are to be believed, the state of implementation at national level of the elements of the trade policies adopted, although varying from country to country, still leave a lot of work to be done (UNECA; AU, May 2006, p. 83). To illustrate this, some key

²⁵ In October 2017, the six CEMAC member states proceeded to sign the circular instituting the free movement of people and goods within the CEMAC space for all community nationals. Indeed, they had reached an agreement on free movement in 2013, but the agreement was never implemented due to the refusal of Equatorial Guinea and Gabon, sparsely populated and relatively prosperous oil countries that feared mass immigration in particular. V. Additional Act N°01/13-CEMAC-070 U-CCE-SE abolishing the visa requirement for all CEMAC nationals travelling within the Community of June 25, 2013.

²⁶ We are referring here to the example of the European Union, which has reached a truly appreciable level of economic, political and even social integration, with the Schengen Passport, the Euro and so on.

²⁷ Art. 6 al. 1 and 2 of the Abuja Treaty on the African Economic Community of June 1991.

²⁸ See: African Migration Report, Challenging the Narrative, 2020, p. 83- 91.

examples can be examined. A study carried out by the African Economic Committee, with the support of the AU, shows that while significant progress has been made in abolishing entry and residence visa fees, little progress has been made in granting the right of residence to nationals of member countries of the Regional Economic Communities.

In fact, only 65% of countries have done so, and barely 55% have adopted a passport common to a Regional Economic Community that is also recognized at national level (Ibid. p. 85). In addition, some countries have adopted a selective and discriminatory approach at national level to the application of the right of establishment; a reality that can be observed in almost all CEMAC member countries apart from Equatorial Guinea and Gabon, where entry and residence rights remain rather compulsory (Loungou, 2010 p. 9). It is all this that has led the Economic Commission for Africa to assert that: "Until the countries concerned are able to assert, with confidence, that the benefits of integration outweigh the costs, commitment to integration will remain low" (ECA; AU, May 2006, p. 100).

This weakness can be seen in even more concrete terms at regional level. For example, while the FTAA²⁹ was massively adopted and ratified, the AU Protocol on the Free Movement of Persons, six years later, was ratified by only a handful of small African countries (Sao Tome and Principe and Mali, Rwanda, Niger have ratified the protocol), despite the fact that more than thirty (32) countries have signed it.³⁰ Furthermore, despite the existence of free movement protocols at both continental and REC level, not all free movement regimes on the continent are in force.³¹ For example, while COMESA's visa protocol is in force, its free movement protocol has yet to be ratified by the required number of countries before it can enter into force.³² The SADC protocol on the facilitation of the movement of persons is not in force either. In the ECOWAS Community, Gambia and Mauritania, along with countries such as Niger, Gabon, Benin and Cameroon in the CEMAC, stand out for their non-adherence to the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.³³ This means that in Africa, the rate of ratification of international standards specific to labor migration, notably ILO Conventions Nos. 97 and 143 and the 1990 United Nations International Convention on Migrant Workers and their Families, is remarkably low. Only 23 African countries have ratified at least one of these instruments.³⁴ Nevertheless, multilateral agreements illustrate an opposite picture.

Despite significant progress in visa liberalization (Warn; Abi, 2020, p. 83-91), the slow pace of ratification poses a serious problem for the implementation of EU labor migration policies. Experience has shown that few countries succeed in ratifying treaties and protocols

²⁹ ZLECAf, Africa's largest trading platform, has entered its fourth year of operation. The agreement establishing the AfCFTA was adopted on March 21, 2018. Actual trade under the ZLECAf began on January 1st 2021. By May 2022, there were 54 signatories (excluding Eritrea), of which 43 (80%) had deposited their instruments of ratification.

³⁰ The protocol requires the ratification of 15 states to enter into force. The implementation and enforcement of the FTAA is affected by the slow adoption and implementation of the AU Protocol on the Free Movement of Persons. In general, migration in Africa is largely informal and undocumented; See: ZLECAF et migration en Afrique : Enjeux et défis pour les travailleurs, 2023, available at: <https://www.tradeumonsinafcfta.org/fr/zlecaf-et-migration-en-afrique-enjeux-et-defis-pour-les-travailleurs/>. Consulted on January 17, 2024.

³¹ See: African Migration Report, Challenging the Narrative, 2020, op. cit, p. 86.

³² Article 164 of its founding treaty requires that the COMESA visa protocol be fully implemented before the free movement of people comes into force.

³³ It should be noted that Convention no. 17 on Workmen's Compensation, 1925, and Convention no. 19 on Equality of Foreign and National Workers in respect of Workmen's Compensation, 1925, have only been ratified by Cape Verde. Convention No. 97 and No. 143 (supplementary provisions, 1975) on migrant workers, 1949, have only been ratified by Burkina Faso, while Convention No. 102 on social security, 1965, has only been ratified by Senegal and Mauritania. Convention No. 118 concerning Equality of Treatment of Nationals and Non-Nationals in Social Security, 1962, has only been ratified by Cape Verde and Mauritania; Convention No. 155 concerning Occupational Safety and Health, 1981, has only been ratified by Cape Verde; and finally, Convention No. 157 concerning the Preservation of Rights in Social Security, 1982, has not been ratified by any ECOWAS state.

³⁴ See: Policy Note 10 on the governance of migration and labor mobility in Africa and elsewhere, op. cit, pp. 40-42.

in less than three months; in most countries, the process can take up to a year. In the end, one wonders what the outcome of this negative assessment of the internalization of legal standards relating to labor mobility in Africa might be.

2) There are several possible reasons for the obstacles to ratification and implementation of labor mobility protocols in Africa. The first reasons lie in the resurgence of exacerbated nationalism, manifested in the desire of states to maintain their sovereignty (ECA; AU, 2006, p. 74), by controlling who enters their territory and protecting the labor market within countries (Adepoju, 2009, p. 86). In Africa, however, there are still a number of obstacles to the free movement of people, including police, customs and administrative harassment, residence permits, insecurity at borders, extortion of funds and so on.

Some administrative practices also should be brought into light, which lead to the closure of borders and increasingly repeated expulsions. These various practices lead states to draw up migration laws that run counter to the spirit of community, regional and even international treaties. The reality of the discrepancy between national legislation and international conventions on labor migration and social protection has been observed in several African countries (Joint Labor Migration Program, 2017). As far as national and supranational bodies are concerned, this translates into a lack of coordination in migration management. This greatly slows down the implementation of regional labor migration policy frameworks in Africa.

As for Central Africa, Serges Loungou's analysis of the myths and realities of free movement in the CEMAC zone reveals that labor migration in this part of Africa is fraught with several pitfalls. Looking at the facts, the vast majority of CEMAC countries have ratified few international conventions on migrant workers (Sall, 2005, p. 22). For example, no state in the subregion has yet ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which expired in 2012. Serges Loungou (2010) demonstrates that the ineffectiveness of integration is due to a number of reasons. With regard to the first, which he describes as the subjective underpinnings of discriminatory national migration policies, the author evokes the idea of imaginary constructs revolving around the mythical conception of certain countries³⁵ that leaning in favor of free movement would risk leading to problems such as demography invasion, economies spoliation, social perversion and delinquency of foreign origin (Loungou, 2010).

To the credit of what he calls objective obstacles, the author notes as reasons, among others, the exclusive and rigid nature of intra-Community borders, the development of a notorious affairism linked to migratory income, and lastly, politico-diplomatic tensions between Community member states. In the same vein, Sall (2005, p. 22-24) speaks of the limiting effect of state interests on the protection of migrants' rights, and of state complicity in the ill-treatment of migrants by clandestine networks, to justify the obstacles to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families in Sub-Saharan Africa.

Another reason for the inconsistency of the political will to facilitate labor migration in Africa is the lack of clarity in some of the key instruments intended to achieve this objective. These include, for example, the conceptual ambiguities of most of the ZLECAF provisions. The more difficult it is for states to interpret these provisions, the more difficult it will be to implement them. The weak adherence of states to supranational texts on labor migration has had the immediate consequence of weak regulation of labor migration in host countries.

³⁵ It should be noted that in Central Africa, countries such as Equatorial Guinea and Gabon have always been opposed to the effective implementation of the free movement of people as desired by the CEMAC, of which these two countries are members. It was this situation that prompted an eminent Professor of Law at a Cameroonian university to say, in a verbal exchange, that the issue of visas and residence cards in the CEMAC zone could be compared to what he called "a sea serpent", which has been abolished in the texts but continues to be subject to controls in practice.

B) Weak regulation of labor migration in host countries in Africa

The vitality of labor fluidity in Africa depends on national and sub-regional capacities. If national institutions are not effective, cooperation on labor migration will suffer. National mechanisms for labor mobility therefore expected to be well structured and equipped to ensure that policy frameworks and supranational treaties are effectively implemented. Decision-makers' attention seems still not to be drawn to the inadequate legal status of migrant workers in host countries (1), and to their lack of social protection (2).

1) Inadequate legislative recognition of the legal status of migrant workers in host countries. It may be highly regrettable that, 75 years after the right to freedom of movement was enshrined in international law,³⁶ and despite all the interest that the free movement of labor can arouse in States, legal systems of several states demonstrate that the legal status of workers is insufficiently enshrined in host countries.

A survey carried out on the state of regional integration in Africa, specifically on the percentage of Regional Economic Communities that have taken measures in favor of the free movement of people, shows that most of the states representing these communities are lagging behind when it comes to regulating labor migration.³⁷ As far as the abolition of visas is concerned, there is a notable effort in almost all sub-regions. However, in the CEMAC zone, only Cameroon has ratified the two main conventions (those of 1949 and 1975, proposed by the ILO in favor of labor migration), without actually providing the means to implement them. Consequently, there is a serious problem of effective harmonization and coordination of legislation, to which must be added the dispersal of legislative and regulatory texts to define effective policies to promote labor migration between African states (Sall, 2007, p. 48).³⁸

It is also worth noting the absence of structured programs to promote labor migration, as well as the ineffectiveness of certain migration governance structures, such as the Observatoire de la Migration en Afrique Centrale (Migration Observatory for Central Africa), which may have been set up in law, but remains ineffective in practice.³⁹ This absence of migration policies in the States can also be observed in most West African countries. For, even when some form of migration regulation does exist in these countries, it is often so meticulously tailored to the aspirations of domestic politics that it leaves foreign workers no chance of asserting any rights whatsoever.⁴⁰ The weakness of the legislative consecration of the status of migrant workers on the national level is unfortunately completed by that of the social protection of the latter in the countries of origin and destination.

2) Inadequate social protection for migrant workers in countries of origin and destination. It should be recognized that social protection for migrant workers in host countries is a key element in promoting labor mobility (Lola, 2016, p. 106-116). It is envisaged on the one hand as a set of guaranteed rights enabling access to social security (Sabates-Wheeler; Koettls, 2010, p. 125). in countries of origin and destination, and on the other as the transferability of said rights between the countries concerned.⁴¹ The international normative framework relating to social protection has truly evolved over the course of history (Fornalé, 2017, p. 24).

³⁶ Art. 13 UDHR right to freedom of movement, and Art. 6 of the International Covenant on Economic, Social and Cultural Rights enshrining the right to freely chosen work.

³⁷ These include the free movement of persons, the right of residence and, above all, common labor legislation.

³⁸ See also. Policy Brief 10 on the governance of migration and labor mobility in Africa and elsewhere, op. cit. pp. 4647.

³⁹ On March 11, 2003, the first international meeting on migration in Central Africa was held in Douala, leading to the creation of the Migration Observatory.

⁴⁰ Policy Note 10 on the governance of migration and labor mobility in Africa and elsewhere, op. cit. p. 46.

⁴¹ According to CRUZ (2004), portability "is the ability to preserve, maintain and transfer acquired social security rights or rights in the process of being acquired, regardless of nationality or country of residence".

Originally enshrined in the UDHR,⁴² migrants' right to social security was endorsed by the 1966 Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights.⁴³ In addition to these efforts, the ILO has also played an important role in the development of social security standards through its various conventions, notably Convention 102 on Social Security, 1982, and Convention 157 on the Maintenance of Social Security Rights, not forgetting Convention 87 on Freedom of Association and Protection of the Right to Organize, 1948. Even more recently, in 2012, the ILO adopted Recommendation no. 202, on national social protection floors to guarantee coverage for all residents, not just citizens (Fornalé, 2017, p. 26).

Indeed, one of a state's primary obligations is to protect its citizens and all individuals living on its territory, by safeguarding the physical integrity, security and social protection of everyone, and guaranteeing the right to health care, education and means of subsistence. Social protection should therefore be a right recognized for all individuals without distinction of any kind, as enshrined in the UDHR, which sets out the principle of equality in article 1. However, according to numerous studies on social protection, many migrants are unfortunately not covered by social security or any other social protection program, either in their country of origin or in their host country (Cholewinski, 2005). Moreover, access to social protection is generally mediocre, limited or non-existent, and is often a blind spot in bilateral labor agreements.⁴⁴ It is with this in mind that the ILO has stated that "while the need for social protection is widely recognized, the fundamental right of everyone to social security is far from being a reality for most of the world's population". This statement is borne out by the practice of states in Africa and elsewhere, the vast majority of which are not only reluctant to ratify international treaties on the social protection of migrant workers, but even less willing to implement national social protection regulations.⁴⁵

This situation can also be observed today with ECOWAS, where most of the countries in this sub-region have not yet ratified almost all the treaties relating to social protection. This situation is similar to that in France, for example, where access to social rights is increasingly restricted (Cholewinski, 2005, p. 42). Restrictions are both legislative and regulatory. The combination of tougher legislation on foreigners' residence and work, and stricter conditions for access to social rights, means that many foreigners are excluded from the fundamental rights normally guaranteed by social protection.⁴⁶

In some cases, bilateral agreements play a very important role in offsetting the social protection problems of migrants caused by non-ratification. This is confirmed by the position of the Senegalese legislator, which is nonetheless appreciable with regard to the payment of retirement pensions, when it places no restrictions on the migrant worker's place of residence (Ba; Fall, 2006, p. 36). This means that they can choose to collect them in Senegal, in their country of origin or in any other place of their choice. In all cases, the cost of making the pension available remains the responsibility of the pension institution.

⁴² Article 22 of the UDHR recognizes "the right to social security", while Article 25 specifies "the right to security in the event of unemployment, sickness, disability, widowhood, old age or any other lack of livelihood in circumstances beyond his control".

⁴³ Article 2 of the Covenant on Civil and Political Rights, which prohibits all forms of discrimination, and article 9 of the Covenant on Economic, Social and Cultural Rights, which provides for "the right of everyone to social security, including social insurance", while article 8 refers to the right to freedom of association. V Also Art. 23 of the UDHR: right to work, to fair wages, right to freedom of association.

⁴⁴ African Labour Migration Conference, ALMC23, op. cit.

⁴⁵ Until 2006, none of the countries between Cape Verde, Burkina Faso, Mali, Gambia, Senegal and Mauritania had yet ratified Convention No. 157 on the Preservation of Social Security Rights, 1982.

⁴⁶ V. Chapter 2, "Foreigners and social protection" in Guide de la protection sociale des étrangers en France, consulted online February 05, 2024, <https://www.gisti.org/doc/publications/1997/social/chapitre-2.html>.

CONCLUSION

Ultimately, the articulation of migration policies with the issue of labor mobility has revealed that this is not an easy undertaking, given the stranglehold of states on an issue as sensitive as the liberalization of access to the right to work. The various analyses carried out show that, while there is a real interest in promoting access to employment for foreigners in Africa by virtue of its ability to boost socio-economic development, there are nevertheless doubts about the decision to take the foot off the brake altogether. This is why it has been observed that regional efforts to ensure the fluidity of labor mobility have not at all met with the support of all states at national level. For Africa to grasp the full significance and role of labor mobility on the continent, states are not only expected to realize the advantages of migration, but also participate in making it a reality, by implementing regional labor migration policy frameworks at national level.

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