

Migration Governance and Migrant Rights in the Southern African Development Community (SADC)

Attempts at Harmonization in a Disharmonious Region

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Acronyms

APRM	African Union's Peer Review Mechanism
AU	African Union
DRC	Democratic Republic of Congo
ECOWAS	Economic Community Of West African States
EU	European Union
ILO	International Labour Organization
IOM	International Office for Migration
MIDSA	Migration Dialogue Southern Africa
RCPs	Regional Consultative Processes
RECs	Regional Economic Communities
SADC	Southern African Development Community
SADCC	Southern African Development Coordination Conference
SAMP	Southern African Migration Project (later Programme)
UN	United Nations
UNHCR	Office of the United Nations High Commissioner for Refugees
UNHRC	United Nations Human Rights Council
US-INS	United States Immigration and Naturalization Service
ZSP	Zimbabwean special dispensation permit

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Summary

This paper examines prospects for enhanced regional migration governance and protection of migrants' rights in the Southern African Development Community (SADC). Migration in this region is substantial in scale and diverse in nature, incorporating economic, political and mixed migration flows. In addition to movements between countries within the region, migrants also come from across the African continent and even further afield. At its foundation in 1992, SADC as an institution initially embraced a vision of intra-regional free movement, but this has not become a reality. If anything, there has been a hardening of anti-migrant attitudes, not least in the principal destination country of South Africa. There have also been serious violations of migrants' rights. Attempts at regional coordination and harmonization of migration governance have made limited progress and continue to face formidable challenges, although recent developments at national and regional levels show some promise. In conjunction with the 2003 SADC Charter of Fundamental Social Rights and 2008 Code on Social Security, incorporation of migrants into the SADC 2014 Employment and Labour Protocol could signal a shift towards more rights-based migration governance. The paper concludes by arguing that there can be no robust rights regime, either regionally or in individual countries, without extension of labour and certain other rights to non-citizens, nor a robust regional migration regime unless it is rights-based.

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Introduction

This paper considers the prospects for enhanced regional migration governance, along with the protection of migrant rights, in the Southern African Development Community (SADC). SADC consists of 15 member states (figure 1) and, as a regional institution, aims “to promote sustainable and equitable economic growth and socioeconomic development through efficient productive systems, deeper co-operation and integration, good governance and durable peace and security” (SADC 2015). Migration in the SADC region is substantial in scale and diverse in nature. In a context of highly uneven development within and between countries, there are powerful economic motives for both domestic and international migration, with South Africa the primary destination. Cross-border labour migration is a long tradition, originally but decreasingly tied to the region’s mining industry. Several SADC countries, most recently the Democratic Republic of Congo (DRC) and Zimbabwe, have experienced periods of severe political instability and repression, driving many people to leave their countries of origin. Regional migration thus incorporates economic, political and “mixed” migration flows. In addition to flows between countries within the region, migrants also come from across the African continent and even further afield. Despite official SADC commitments to harmonizing migration policy and facilitating intra-regional migration, state and public attitudes towards migration are at best ambivalent and at worst strongly hostile, including serious violations of migrants’ rights. Attempts at regional coordination and harmonization of migration governance have made limited progress and continue to face formidable challenges, although recent developments show some promise. To date, however, migration governance remains a patchwork of national laws and policies, along with bilateral agreements governing streams such as formalized migrant labour.

The paper is organized in three sections. The first section outlines the regional migration context and identifies some of the main challenges to regional migration governance in SADC. The second section sketches the legal and policy framework of migration and migrant rights, addressing the regional scale as well as continental and other international instruments and obligations. The third section describes some initiatives aimed at strengthening regional migration governance in SADC, focusing on Migration Dialogue Southern Africa (MIDSA) which, since its inception in 2000, has been attempting to advance the regional migration governance agenda. The paper concludes with an assessment of the prospects for rights-based regional migration governance in SADC.

Figure 1: Map of SADC



Source: www.sadc.int/about-sadc/overview/.

1. Regional Context and Challenges to Migration Governance

Migration within SADC, and from the rest of the African continent to SADC countries, has increased substantially over the past two decades, building on a long-established tradition of regional labour migration. Although there is some migration between other countries in the SADC region, South Africa is the primary destination for intra-SADC migrants, and is therefore the country of emphasis in this paper. Actual migrant numbers are difficult to determine. As an indication of the scale of general mobility, total legal entries into the single country of South Africa from all foreign sources increased from 1 million in 1990 to 5.1 million in 1996 and 8.5 million by 2011 (Crush 2014). These include people entering the country for tourism, business, trade, work, study and other purposes. The 2011 South African census puts the number of foreign-born people residing in South Africa at 2,199,871, or approximately 4 per cent of the population (Statistics South Africa

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