

ANALYSIS OF THE MIGRATION AND REFUGEE SITUATION IN AFRICA, WITH AN EMPHASIS ON SOUTHERN AFRICA.

1. Facts

- Migration is a global phenomenon. In 2013, the number of international migrants moving between developing countries or between high-income countries was equal to South North movements;
- International migration is today bound up with employment and thus with economic and social development;
- Migration has long contributed to economic development and social well-being in both destination and origin countries;
- In the globalisation age, migration brings important benefit to both origin and destination countries, and to migrants themselves, when it occurs under proper and regulated conditions;
- Migration carries costs, particularly for origin countries and for the migrants and their families;

AFRICA

- Africa has 18.6 million migrants, including 3.7 million refugees (forced migrants) and 11.8 million internally displaced persons out a total population of 1.1 billion people. Only 11.4 million African migrants live outside the continent.
- Africa has the lowest rate in the world of migrants in the total population of State (2%) and only 9% of the world migrants are Africans
- 86% of the migration in Africa is a cross-border migration, 70% of intra-African emigration in West Africa and 66% in Southern Africa are within the sub-regions, while 90% of North Africa emigration is outside the continent.
- **Intra-regional emigration in Sub-Saharan Africa is the largest south-south movement of people in the world**
- The intra-African emigration is driven by a search of job opportunities and influenced by conflicts, coups, insurgencies, dictatorships, war,

natural disasters, etc. and colonial ties continue to exert an influence on the choice of destination countries.

- The following countries are the leading destinations for emigration in Africa: Cote d'Ivoire [2,400,000 (11%)], South Africa [2,400,000 (3.7%)], Nigeria [1,200,000 (0.7%) and Burkina Faso [1,100,000 (6.4%)]
- Remittance inflows in the continent was estimated to US\$60 Billion in 2016 (3% of the continent GDP)

SOUTHERN AFRICA

- Southern Africa has a long history of intra-regional migration because it's through that movement a regional labour market was created during the 20th century.
- Cross-border migration for employment was prevalent in the region even before the drawing of colonial boundaries (Kimberley Diamond mines, the discovery of gold, etc.)
- Male labour migration to the mines (South Africa, Zambia, Zimbabwe) and commercial farms and plantations (South Africa, Swaziland and Zimbabwe)
- **Legal labour migration across international boundaries for employment is a longstanding feature of the Southern Africa labour market**
- **The industrial development of some countries in the region was possible by the use of labour from other countries;**
- **During the colonial period, migrants were subject to poor working and living conditions and their families could not accompany them to work.**
- As far as migration is concerned, there 4 categories of States in Southern Africa:
 - Migrant-sending countries (Lesotho, Malawi, Mozambique);
 - Migrant-receiving countries (South Africa, Namibia)
 - Countries falling in both categories (Botswana, Swaziland)
 - Countries of major refugees influxes (Zambia, Tanzania)
- 4 million of migrants in the region, excluding irregular migrants (44% are women and 20% children)

- South Africa, the 1st destination with 2.4 million followed by the Democratic Republic of Congo (450,000) and Zimbabwe (360,000).
- The migrants include 200,000 refugees mainly coming from Ethiopia and Somalia and including 20,000 from the Great Lake and the SADC region.
- Why people migrate in the region
 - Migration is part of the African history and southern Africa cultural experience of social survival;
 - Governance deficit, growing inequality and poverty, historical legacy and consequences in the nature of state-formation and social pluralism, including Apartheid, continue to generate conflicts in the region
 - Gender inequality exacerbated by gender based violence remains part of the lived experience in Southern Africa;
 - The institutional mechanisms and capacity for conflict resolution and management at the regional level, particularly in SADC, remains inadequate and poorly-funded.

2. INTERNATIONAL AND REGIONAL NORMS ON MIGRATION

- State sovereignty remains the overarching principle when it comes to migration: international law recognizes the right of everyone to leave any country, including his/her own, and to return to it. It doesn't establish a right to entry to another country. States retain their sovereign prerogative to decide on the criteria for admission and expulsion of non-nationals, including those in irregular status.
- They must do so in full compliance with their obligations as parties to human rights treaties they've ratified.
- **States are prohibited under international law from returning anyone to countries where they would face torture, other serious human rights violations or persecution on grounds set out by 1951 Convention on Refugees and 1969 AU Convention. They're also expected to provide due process in removal or deportation proceedings and to avoid collective expulsions ;**
- **There are certain unacceptable grounds on discrimination, particularly in migrants selection procedures or quotas;**

- While there are limitations on some rights that migrants and their families are accorded in international law (right to residence, right to political participation, etc.), there are no limitation on their human rights, such as the right to life, the right to dignity, the right to freedom from slavery, forced or compulsory labour, the right to liberty and security of the person, and human rights to education, health and cultural identity.
- Well governed migratory processes make far more beneficial contributions to the economic and social development of both migrants and nationals, and that they also contribute to social cohesion;
- Viable and sustainable migration system includes recognition of migrants' human rights and attention to ensuring decent working conditions for migrants.

UN Instruments and Declarations:

- 1951 Convention on Refugees
- International Convention on the protection of the rights of all migrants workers and members of their families 1990 [15 countries in Africa have acceded the treaty]

ILO Conventions:

- Revised ILO Migration For Employment Convention 1949 (No 97) ;
- ILO Migrants Workers (Supplementary provisions) Convention 1975 (N 143)

African instruments:

- African Charter on Human and Peoples' Rights 1981 (universal ratification by African States)
- OAU Convention governing the specific aspects of refugees problems in Africa 1969 (ratified by 46 African states) ;
- The African Charter on Democracy, Elections and Governance, 2007

- **African Union Convention for the Protection and Assistance of Internally Displaced Persons 2009;**
- **Proposed Protocol on the Free Movement of persons in Africa, 2017.**

3. The reality of the SADC region:

- (a) **GROWTH IN AND COMPLEXITY OF CROSS-BORDER MOVEMENTS:** 66% of Southern Africa population visit the region. Example SA where the number of visitors from other SADC countries has increased from 1 million in 1990 to 5 million in 2013: Mozambican (45%) for work, Botswana (24%) for shopping, Namibia (19%) for holidays and Zimbabwe (39%) for visit family. In general, the primary stated reason for inter-country movement is not to work but for visiting, tourism, trade and business. The pressure on limited border control resources and been enormous and corruption has become endemic.
- (b) **CONTRACT MIGRATION:** In SA only the gold and platinum mines continued to employ large number of domestic and foreign migrants. In SA, the recruitment of foreigners in the mine labour rose from 47% in 1990 to 57% in 2000. In Zambia and Zimbabwe, there is a move to local and stabilized workforces. Remittance levels have remained stable in Mozambique, Lesotho and Swaziland in the 90s but fell after. Consequently, poverty levels have increased as have domestic and family tensions. Family members began to migrate in response.
- (c) **LEGAL MIGRATION:** the majority of non-citizen work in the private and parastatal sector [wholesale, retail trade, construction, manufacturing and education (80%)], the rest is with central and local government, including education]. Most countries tend to see in-migration more as a threat than an opportunity. Migrants are viewed as carriers of diseases, takers of jobs and perpetrators of crime. **POLICIES TEND, AS A RESULT, TO FOCUS ON CONTROL AND EXCLUSION.** Rights of permanent residence and settlement are extremely difficult to obtain in most countries. Botswana has adopted the most open skills migration policy by facilitating the temporary employment of skilled personnel from other countries: African population grew from 8,733 in 1981 to 18,339 in 1991 and Asian population increased from 946 to 4,193 between 1981

and 1991. The number of work permits issued increased by 50% in 4 years [9,348 to 14,137 between 1995 to 1999]. **PERVASITIVE ANTI-IMMIGRATIONIST POLICIES IN SADC ARE AT ODDS WITH THE REALITY OF GLOBALIZATION.**

- (d) **UNDOCUMENTED MIGRATION:** this phenomenon is well known in the region and is driven today by economic circumstances and desperation. The periodic deportation of undocumented migrants creates tension between the receiving and sending countries. South Africans believe that 25% of the population is foreign but this is false. **THE PRESENCE OF UNDOCUMENTED MIGRANTS HAS REVEALED CONSISTENT VIOLATION OF LABOUR STANDARDS [IN COMMERCIAL AGRICULTURE, CONSTRUCTION AND SECONDARY INDUSTRY], SUB-MINIMUM WAGES, RAMPANT ECONOMIC AND SEXUAL EXPLOITATION AND GREAT INSTABILITY AND FEAR AMONGST MIGRANTS.** A result of this is a massive trade in forged documentation, police corruption as migrants buy the right to stay, an increase in trafficking and the disintegration of sound and professional management practices.
- (e) **FORCED MIGRATION (IDPs/REFUGEES):** civil wars in Mozambique and Angola, political crisis in Madagascar. In the 90, SA is becoming the big hub for refugees: between 1994 and 2001, 67,000 application for refugee status DRC (7,700), Angola (6,900), Somalia (5,900), Nigeria (5,300), Senegal (4,500), Ethiopia (3,200) and Burundi (2,000) from AFRICA and India (6,400), Pakistan (5,300) and Bangladesh (1,300) from ASIA. **SADC DOESN'T HAVE A COORDINATED REGIONAL RESPONSE TO THE CHALLENGE OF INTERNAL AND EXPERTNAL REFUGEE MOVEMENT.**
- (f) **FEMINIZATION OF MIGRATION:** in the colonial period, women were generally prohibited from migrating. Today women and men are differently involved in and affected by migration. Women visits to SA [visit family 38%, shopping 23%, work 16%, buy and sell 10%], Men [work in SA 63%, work in general 33%, visit 17%, shopping 13%]

(g) **SKILL LOSS AND THE BRAIN DRAIN:** Absence of reliable statistics. The one in health sector is clearly the most problematical for countries within the region

4. National migration policies

- No country, with the possible exception of Botswana, has migrant or immigrant-friendly legislation. Most of the policies were devised in the immediate post-colonial period;
- Only the immigration legislation of SA and Mozambique makes any reference to complying with international conventions;
- Arrests, detention and repatriation procedures don't protect irregular/regular migrants from abuse;
- Bi-lateral agreements continue to allow the SA mining and agricultural sectors to employ contract migrant workers from neighbouring countries.
- Refugees are not well protected in the region: Botswana restricts the definition and rejects asylum claims from people from outside the region, Swaziland and Zambia's legislation gives the minister the power to define a refugee, etc. with the exception of SA, laws and practices of the countries require refugees and asylum seekers to live in designated areas and refugees are required to apply for work permit before they can work.

5. Regional migration policies

- The principle of free movement within SADC region is critically important;
- Formal protocol is necessary for the regional dialogue on the issue;
- Assistance with harmonising migration legislation and data collection could promote more effective management of migration in the region.
- Necessary access for migrants to services to which they may be entitled.

6. Recommendations

- Implementation of the AU Migration policy:

- Respect for human rights of migrants (only 3 countries namely Lesotho, Madagascar and Mozambique have ratified the UN convention, Lesotho, Malawi, Namibia, South Africa and Zambia have ratified the African Charter on democracy, Angola, Lesotho, Malawi, Swaziland, Zambia and Zimbabwe have ratified the Kampala Convention on IDPs): Adoption of the proposed AU Protocol on the free movement of persons in Africa and Protocol to the African Charter on Human and Peoples' Rights on the right to a nationality in Africa.

- Harmonized labour migration policy and legal framework