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Research Report

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Regional Migration Governance: Contributions to a Sustainable International Migration Architecture

Summary

The global migration governance is in a period of transition. There are two main reasons for this: First, the division between an international refugee regime based on the 1951 Geneva Convention on Refugees and a (labour) migration regime is problematic in light of 'mixed' migratory flows. Second, the current global migration architecture is characterised by institutional fragmentation and a lack of normative standards. The Global Compact for Migration and the Global Compact on Refugees currently being negotiated are intended to address these shortcomings.

Among the crucial questions to be addressed is the role of regional cooperation in a future global migration architecture. This is because the majority of cross-border migration and displacement takes place within regional spaces. Regional cooperation on migration currently occurs in three formats, all of which focus on different issue areas: 1) Migration-related activities of regional organisations (ECOWAS, IGAD, for instance); 2) regional consultative processes (RCPs) and 3) inter-regional cooperation processes (such as Khartoum and Rabat Processes).

Experiences from Africa suggest: Groundbreaking norms, for example for the free movement of persons or on refugee rights have been developed on the regional level. This is not least due to some advantages of regional migration governance over global formats. Joint interests tend to be identified more easily, distinct regional features can be better addressed and forging common ground in the formulation of a coherent and developmental migration policy is generally not as difficult.

However, in Africa as yet the implementation of regional norms has been deficient. Moreover, the agendas of inter-regional cooperation formats are often strongly influenced by economic and security- interests of Western donors. In this context, the promotion of the protection of refugees' and migrants' rights tends to be neglected. Also regional migration interests risk to be undermined.

Therefore, additional to regional migration policies, it is necessary to establish binding, universal standards under international law as regards the rights and protection of refugees and migrants. At the same time, the regional level ought to be strengthened. It can provide important impulses for expanding standards of protection and implementing orderly, safe, regular and responsible migration.

The international community has to take this into account in the negotiation of the two global Compacts. The contributions of German and European development policy ought to focus on the following:

- Building capacities: Regional organisations ought to be supported financially and technically in all areas of migration, not only in security-relevant aspects.
- Fostering interaction: Regular exchange among regional organisations and global actors as well as civil society actors should be strengthened.
- Increasing influence: The weight of regional organisations in global policy processes and in the review and follow-up of the Compacts must be enhanced.

Introduction

The global migration architecture is in crisis. Its core characteristic – the historical division into an international protection regime and a labour migration regime – no longer adequately responds to the realities of global mobility. First, the strict distinction between refugees and labour migrants in international law is problematic in light of the reality of ‘mixed movements’ across the world and the significant implications of such political categorisations. Second, a normative and institutional reference framework that protects the rights of migrants worldwide is still missing. While the United Nations have set the goal of an “orderly, safe, regular and responsible migration and mobility of people” in its Agenda 2030, it only slowly becomes clear what a global migration regime that does justice to this claim could look like.

At the UN Summit for Refugees and Migrants in September 2016, it was agreed to develop two new global agreements: The Global Compact for Safe, Orderly and Regular Migration and the Global Compact on Refugees, to be adopted in late 2018. It is expected that both agreements will significantly influence the future structure of and mandates in global migration governance. Regional consultations, intended to first and foremost provide country representatives with a platform for voicing their migration policy demands, are also part of the negotiation processes of the compacts. However, to date, the experiences and capacities of regional organisations in addressing and coping with refugee movements and in harnessing the potential of migration have not been sufficiently taken into account. Furthermore, a vision for an effective and productive future relationship between global and regional migration governance is still lacking at this stage.

Forms of regional cooperation on migration

Displacement and migration are often regional phenomena that first and foremost take place and affect countries of the Global South. According to data from the United Nations High Commissioner for Refugees (UNHCR), 87 per cent of all refugees do not find refuge in Europe, North America or Australia but in the immediate vicinity of their countries of origin – and hence mostly in developing or emerging countries. If other forms of migration are included, such as

labour or educational mobility, the figure remains high. In Africa, for instance, 52 per cent of migratory movements take place within the continent; in West Africa, this share even stands at 87 per cent (see Table 1).

Migration policy cooperation at the regional level takes place within three different formats, each fulfilling a different function in the “patchwork” of international migration governance.

Migration-related activities of regional organisations:

Regional organisations have often established norms and standards for the freedom of movement and labour migration. In so doing, they work towards the abolition of border controls and other obstacles to migration within their territory. In Africa, the Economic Community of West African States (ECOWAS) can be considered a forerunner in the introduction of norms for the free movement of persons, even if the component on free establishment envisaged more than three decades ago has not been fully implemented at the time of writing. Another field of activity for regional organisations is refugee law. The Kampala Convention, adopted in 2012 by the African Union, is the first legally - binding instrument in international law for the protection of internally displaced people. Although it is groundbreaking in terms of established legal norms, it has deficiencies regarding implementation. Regional organisations do differ in their abilities to define and implement migration-related standards and policies. The reasons for this can not only be found in their varying institutional make-up such as a dissimilar strength of their migration-policy mandate or different levels of legal autonomy from their member states, but also in the scope of concrete migration-related challenges in the respective region.

Consultative processes in Migration Policy: So-called regional consultative processes (RCPs), which are often steered by the International Organisation for Migration (IOM), bring together representatives from migrants’ countries of origin, transit and destination within one region. In contrast to the efforts of regional organisations as regards freedom of movement and smooth labour mobility, these processes tend to focus on aspects of migration control and security-related cooperation. Their informal character and the fact that these meetings are closed to the public allows

Table 1: Share of intra-regional migrants as share of all international migrants in selected African regions

| | |
|--|------|
| Economic Community of West African States (ECOWAS) | 87 % |
| Intergovernmental Authority on Development (IGAD)* | 65 % |
| Economic Community of Central African States (ECCAS) | 60 % |
| South African Development Community (SADC) | 55 % |
| East African Community (EAC) | 34 % |
| Arab Maghreb Union (AMU)** | 5 % |
| * without Eritrea | |
| ** without Western Sahara | |
| Source: UN DESA, 2015 (own calculations) | |

the participating representatives of states to also discuss politically sensitive issues. Civil society and human rights organisations criticize the resulting opaque nature of these meetings. Nonetheless, the RCPs have proven to be important formats of regional interaction. In the African context, in particular, one can see a positive development towards more regionally anchored and networked RCPs that also develop a broader thematic orientation. In four of five existing African RCPs, regional organisations hold the secretariat, also pointing to their growing commitment to migration policy.

Inter-regional cooperation processes: These processes bring together countries or regional organisations that are connected by inter-regional migration movements. They are often characterised by an imbalance of power in favour of Western donor countries. Many of these inter-regional cooperation processes are controversial. The 2014 EU–AU Migration Route Initiative (Khartoum Process), which focusses on mobility from and through the Horn of Africa to Europe, is regarded by many as a European attempt to superimpose development-policy goals with a security policy agenda. A similar view is taken with regard to the 2006 Rabat Process, which brought together representatives of North, West and Central African countries and the European Commission, and which focuses on issues of migration control, border management and the repatriation of migrants in irregular situations.

Strengths and weaknesses of regional migration governance

There are three broad areas of activity in migration policy that require international cooperation and norm-setting: Mobility and freedom of movement, migration control, and the protection of migrants' and refugees' rights. Regional and global actors are involved in all three areas. Advantages and limitations of regional migration governance and inter-regional formats become clear in this context.

Regional governance structures show various practical advantages. Usually, the political interests of neighbouring countries are not that different as in the case of the global sphere. On the contrary, a coherent migration policy that fosters development can be implemented more easily if migration policy goals are linked with overarching regional concerns. Indeed, in many regions, agreements on the freedom of movement were adopted as part of economic integration processes. The Intergovernmental Authority on Development (IGAD) founded by countries in the Horn of Africa, for instance, built its migration-related cooperation on an already functioning security-policy dialogue. A small number of negotiation partners in regional contexts is also a favourable precondition for formulating a joint migration policy. This is also confirmed by the current consultation process for the Global Compact for Migration, in which regional organisations have presented their own position papers. Furthermore, regional peculiarities that may be overlooked in the global discourse can be addressed much

better at the regional level. The Nairobi Plan of Action for Durable Solutions for Somali Refugees as of March 2017, for instance, constitutes a regional application of the Comprehensive Refugee Response Framework. Current concept papers for the Global Compact on Refugees also stress the important role of regional organisations as mediators in such processes. Yet another example is the consideration of pastoralism, the practice of mobile livestock holding, in the planned-for IGAD Protocol on Free Movement of Persons and Transhumance. Last not least, regional organisations are potentially more accessible for civil society organisations than institutions at the global level. They also allow migrants' associations, for instance, to give direct inputs on relevant policy decision processes and enable some of them to become included in the monitoring of policy implementation.

However, regional debates between countries, regional organisations and civil society do not include the much needed dialogue between countries of origin and destination that are connected through supra-regional mixed flows. This dialogue is covered by the interregional formats discussed above. These, however, are often biased and geared towards the security policy interests of the economically more powerful destination countries. Moreover, the influence of regional organisations in these processes is limited as measures are mostly agreed upon and implemented directly with the countries of origin and transit countries respectively. African participants for instance criticize that the inter-regional Rabat and Khartoum Processes initiated by the European Union contribute to intra-regional initiatives being undermined and regional organisations being weakened. When negotiating global agreements on displacement and migration, there is, therefore, the danger that the primary focus on security and migration control within interregional cooperation formats is transferred onto the global level. Also, there is a risk that the protection of the rights of refugees and migrants as well as other affected population groups is sidelined.

Summary and Recommendations: Strengthening regional organisations

The negotiation of the planned global compacts on refugees and for migration offer the chance to close existing normative, regulatory and institutional gaps in international migration governance. In this context, also a conscious reconsideration of the future division of labour between regional and global migration governance is needed.

To better address migration related challenges and to effectively work towards harnessing the development potential of migration as aspired to in the Agenda 2030, it is necessary to first agree on legally binding rights and protection standards for refugees and migrants in international law. These may be complemented at the regional level, but should by no means be limited or undermined by security interests. Concurrently, regional organisations ought to be strengthened. For they have the

potential to initiate the expansion of protection standards and the implementation of safer and more orderly migration conditions. To embed best practices in migration policy at the global level and to achieve a sustainable international migration architecture, the role of regional organisations of the Global South, in particular, ought to be strengthened in inter-regional exchange formats. German and European development policy can support this by contributing to the following:

Building up and expanding capacities

To effectively tackle regional migratory challenges in line with the regulatory requirements at the global level, technical and financial capacities of regional organisations ought to be enhanced. This does not only hold true for security-relevant areas such as the protection of borders or migration control but also for the implementation of regional standards for the freedom of movement and, in particular, for the protection of refugees and vulnerable migrants. It also applies to promoting the positive effect migration has on human development.

Fostering interaction between the national, regional and global level

Regional and inter-regional dialogue forums help to mediate conflicts between different national interests and can strengthen the overall coherence of international migration policies. Building up these forums ought to be promoted, the exchange between national, regional and global actors intensified and the inclusion of civil society actors in regional cooperation formats improved.

Increasing regional influence in global migration architecture

Regional organisations have developed groundbreaking norms on different refugee and migration policy areas. In the preparation of the global compacts for migration and on refugees, they have so far primarily been able to provide their inputs in the consultation phase. To give their positions more weight, they should be granted the right to propose their own texts in the negotiation phase. It is also important to grant them an active role in the review and follow-up process of the two global compacts.

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