African and European legal regimes for intra-continental migration: towards an Afro-European integration scheme

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Introduction

There are many international legal instruments regulating the intra-continental cross-border movement of persons. In Africa, the intra-continental cross-border movement of persons is mostly considered as an element of a Common Market, which the various African Regional Economic Communities (RECs) intend to achieve. In Europe, free movement is considered one of the fundamental freedoms within the EU. It is provided for in the EU's founding treaties and secondary law. Conversely, there is hardly any comprehensive legal framework establishing a migration regime between Europe and Africa. This type of migration has however been thematised in various policy declarations and it definitely plays a prominent role in the politics. It is also a part of the ongoing so-called post-Cotonou negotiations, which will be explored in the present chapter.

A decision to leave one's home country and take up residence in another is not an easy one (UNECA 2017: 5; Nita 2013: 10). If the relocation is not for a limited period of time (e.g. for studies), there will be number of factors militating against it: separation from the familiar, including friends and family, giving up of a job, house/home etc. In the new host country, a potential migrant might have initial difficulties while dealing with authorities, different cultural habits, navigating the job market or even the language. And there will be important questions to answer: Can I work there legally? How long it will take to regularise my stay? Are foreigners discriminated against? Do they have the same job security? What about the professional qualifications? Will they be recognised? What about the family? Can they come along? Can the kids attend school? At what fees? Can I join a medical scheme? What happens to the social security contributions already paid? The law and the reality of its implementation should provide answers to these questions. If the answers are not satisfactory, the person considering migration might decide against it. Given the multitude of reasons for staying in one's place of origin, the answers must help to overcome the doubts, the fears and the concerns that the existential decision to migrate necessarily entails. Therefore, if the law is to promote free

movement – and this is the assumption of the most regional integration schemes in Africa and in Europe –, its function is not just to facilitate it, but to provide tangible incentives to migrate.

This is not to say that the law is the only driver for migration. Obviously, numerous migrants decide to move to another country despite the prevailing hostile environment and oppressive labour and immigration laws. The empirical study for Africa suggests, that while migrants form the poorer, land-locked countries migrate to nearby African countries, the processes of development and social transformation increase not only young Africans' capabilities and aspirations to migrate, but also the geographical reach of migration (Flahaux and De Haas 2016: 23). However, as much as the level of social-economic development plays a significant role, state policies matter too (Ibid.: 22).

The present chapter compares the framework for intra-European and intra-African cross-border movement of persons focusing on four areas: First, it looks into the legal instruments used to regulate the cross-border movement, second, it briefly captures the actual content of the free movement rights, third, it discusses the historical evolution of both legal frameworks, and fourth, it compares the efficiency of the implementation mechanisms. This comparison serves as a basis for some lessons for the legal framework regarding migration between Africa and Europe, in particular against the background of the ongoing post-Cotonou negotiations, which are to shape the relationship between the ACP (Africa, Caribbean, Pacific) group of states and the European Union. Finally, the chapter outlines how racist narratives on European and African identity underpin the oppressive regulations governing the migration of Africans to the EU and how the EU's negotiating mandate fails to challenge those narratives. This forms a basis for some modest recommendations regarding an Afro-European integration scheme, which would be more adequate in an international legal order based on good faith and cooperation.

Legal instruments

Both in Europe and in Africa, the legal instruments regulating the cross-border movement are embedded in larger integration projects. Consequently, they reflect the approach to the regional integration. The approaches to regional integration were famously conceptualised by Ernst Haas. Accordingly, the "minimum common denominator approach" is characterised by negotiations between the equal bargaining partners – the States – and the outcome does not go

beyond what the least cooperative state is willing to accept. On the other end of the scale, there is the "upgrading of the common interest approach", whereby the decision-making procedures are approximated to legislative procedures in a political community. These procedures are handled by agencies and institutions which promote converging interests and give voice to interest groups that may differ from what the carefully instructed government negotiators are willing to agree on, thus generating new expectations and policies (Haas 1961: 373).

In order to provide incentives to migrate, the laws of the migrant's home state and the target state must have some degree of harmonisation. Looking at the questions asked in the introduction, the recognition of qualifications will require some equivalency of degrees and approximation of curricula. Transferability of social benefits will require that the social security systems are compatible. And the migrants' family's access to health care and education must not be discriminatory. This is where the legal guarantees become important.

The approaches to regional integration translate into the approaches to the harmonisation of laws. Their choice affects the progress (the speed) of harmonisation and its results. Accordingly, the "minimum common denominator approach" would mean harmonisation based on international treaties negotiated between participating states or even non-binding agreements (soft law), referred to as contractual approach (in its hard or soft version). Conversely, the "upgrading of the common interest approach" produces a regulatory approach to harmonisation characterised by enactment of uniform legislation by supranational institutions, that is institutions which are given powers to create law directly effective within the territories of the states under their jurisdiction (Devuyst 1999: 116; Milej 2018: 142).

The European Union stands for the latter approach. The Union is based on two founding treaties of equal legal rank – Treaty on European Union and the Treaty (TEU) and the Treaty on the Functioning of the European Union (TFEU) – as well as a body of secondary law enacted in the procedure laid down in those treaties. This procedure includes majority voting, parliamentary participation, and an effective monopoly to initiate legislation held by a strong European bureaucracy in charge of promoting the common interest of the EU (the European Commission). With regard to the fee movement rights, this approach kept producing various pieces of harmonising legislation. The 1968 Regulation on the free movement of workers that was in force until 2011 is one of the first examples; since 2004, the free movement rights are provided for in a comprehensive manner in the Directive on the right of citizens of the Union

and their family members to move and reside freely within the territory of the Member States. In 2005, the Union organs also came up with a systemic solution to recognition of qualifications adopting the Recognition of Professional Qualifications Directive.

The history of the common regulation of qualifications is, however, quite long. Various pieces of legislation have been adopted by the European organs throughout the years dating back to the 1960s (Kortese 2016: 46). The current Recognition of Professional Qualifications Directive is based on Article 53 of the TFEU which authorises the European Parliament and the Council (both are EU organs) to "acting in accordance with the ordinary legislative procedure, issue directives for the mutual recognition of diplomas, certificates and other evidence of formal qualifications and for the coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking-up and pursuit of activities as self-employed persons."

The regional integration in Africa is based on a script provided for in the Treaty for the Establishment of the African Economic Community (the Abuja Treaty) of 1991, adopted following the 1980 Lagos Plan of Action (Organisation of African Unity, 1980). According to the Abuja Treaty a strong consolidated Common Market is to be achieved in six stages and take effect in 2028; the Common Market shall involve per definition the free movement of people. The first stage of the plan's realisation was a formation of the Regional Economic Communities (RECs), which shall be gradually merged into one Pan-African organisation – the African Economic Community (AEC). Currently, eight RECs are recognised as building blocks of the AEC and each of those RECs has some more or less articulate regulations on the free movement of people within the given REC. It was only in 2018, that the Protocol to the Treaty Establishing the African Economic Community Relating to the Free Movement of Persons, Right of Residence and Right of Establishment (AU Free Movement Protocol) was adopted. It is technically a Protocol to the 1992 Abuja Treaty.

Within the African system, it is the contractual approaches to harmonisation of laws that prevail. Unlike in the EU, there is no division of powers between the Member States of a REC and the REC itself; no regulatory powers are conferred upon the latter. If a REC is authorised to make regulations, their enactments is conditional upon the unanimity of the Member States' governments. For example, according to Article 63 of the EAC-Treaty, an "Act of the Community" requires an assent of all Heads of States, who can give it or withhold it at their

own discretion, without any recourse for the interest groups which might have legitimately pushed for the adoption of the given Act.

Following the contractual approach, the free movement of persons is to be achieved through implementation of Treaties by concluding further Treaties. It is the Treaty establishing the given REC which provides for a broad integration framework. Its specific areas of cooperation – the movement of persons is one of them – are to operationalised by Protocols. Those protocols are technically also Treaties, concluded by the same State Parties that had concluded the founding Treaties. The protocols' scope of application is, however, reduced to a specific aspect of integration, e.g. the free movement of persons.

In line with scheme, the 1999 Treaty Establishing the East African Community (EAC-Treaty), which is one of the eight African RECs, provides for the operationalisation of an EAC Common Market through a Common Market Protocol. The same was indeed concluded in 2009. The Protocol, however, does not unconditionally open the labour markets of the EAC Partner States to the citizens of the other EAC Partner States. It retains the work permit regimes and does not comprehensively regulate many important aspects of the free movement, such as recognition of qualifications or portability of social security benefits, limiting itself to general harmonisation commitments. But most importantly, the Protocol's personal scope of application is restricted to higher-skilled professionals who make up only a small percentage of the labour force.

The Common Market Protocol is complimented by annexes and schedules, in which each EAC Partner States specifies the professional groups for which it commits itself to open its labour market. Accordingly, Kenya's commitments encompass the largest group of professions, while Burundi agreed to open its labour market to a much smaller group. This regulation is an expression of the principle of asymmetry, which mitigates one of the major flaws of the "minimum common denominator approach", which is agreeing only on what the least cooperative partner is ready to agree to. According to the principle of asymmetry, the least cooperative Partner State may simply take on less commitments than those who are more cooperative and at the same time staying in the integration process, rather than blocking it. Another similar device is the principle of variable geometry enabling some states to push forward with the integration agenda, while allowing other to join later. A good example in the area of free movement is the authorisation to cross the border with an ID card only, limited to

Kenya, Rwanda and Uganda. Of course, those devices come at a price, which is first and foremost the fragmentation of the common market. Also, those states which took on more obligations will be quite reluctant in implementing them towards the nationals of the states which took on fewer.

When compared to the other RECs, the EAC model may be regarded as advanced. For example, according to the SADC Protocol from 2005, the Member States agreed only to "develop policies aimed at the progressive elimination of obstacles to free movement". Quite tellingly, this Protocol is not even in force.

Finally, no REC has a central authority of the composition and with powers comparable to the European Commission, one that is capable of overseeing the enforcement of the obligations, proposing or even enacting regulations. There is thus no international institution within the RECs and in Africa which would have the effective power to make the free movement guarantees work on the ground. It is for the States to implement them by gradually amending their national laws. This is exemplified by a network of Mutual Recognition Agreements (not necessarily agreed upon by the states, but even by professional bodies) limited to certain professional groups. The 2018 Continental Free Movement Protocol largely replicates the regulatory approaches of the RECs.

Contents of the Free Movement Guarantee

Article 21 of the TFEU accords to every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect, in particular the 2004 Free Movement Directive mentioned earlier. As a matter of principle, the EU law provides for a comprehensive right to move "without being subject to any conditions and any formalities", as the 2004 Directive underscores in its preamble. This most notably means a prohibition of discrimination and abolishment of work permit requirements. But the guarantee goes even further. It has its source in the provisions on the citizenship of the Union which according to the Court of Justice of the European Union (CJEU) case law, determine the fundamental status of the EU member states nationals (Rudy Grzelczyk v. Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve [1999]). Consequently, the right to move freely across borders is detached from the economic activity of the citizen and the CJEU has taken a tough

stance on policing national rules which are liable to hamper or render less attractive its exercise scrutinising all national policy choices under the angle of smoothening the cross-border movement.

The 1998 CJEU's judgment in *Martinez Sala* case demonstrates the "humanisation" of the free movement rights: In declaring that it is contrary to the EU to deny a child benefits to a Spanish national lawfully residing in Germany otherwise available to the German nationals, the Court took into account the Union Citizens' life concerns which go beyond their economic activity (María Martínez Sala v. Freistaat Bayern [1998]). Hence, the people are clearly no longer regarded as factors of production only (See also Gerardo Ruiz Zambrano v Office national de l'emploi [2011]).

The balance between the free movement rights on one hand and the legitimate national policy concerns on the other is still assured. However, it is achieved not by the national laws that set up hurdles for the influx of foreign nationals, but on the supranational (EU) level, most notably by the 2004 Movement Directive, whose one of the main objectives is to assure that "persons exercising their right of residence [do not] become an unreasonable burden on the social assistance system of the host Member State during an initial period of residence".

This conception is not a one that was adopted in Africa, despite the Pan-Africanist roots of the regional integration process. The language of the free movement provisions across the African RECs is very cautious and, in many instances, falls short of establishing the individual rights to move, while only creating a broad obligation on the part of the state to gradually eliminate obstacles to cross-border movement. And even if individual rights are established, as it is arguably the case of the EAC, the exercise of those rights is dependent on professional skills. It can be thus concluded that the migrant is regarded only as an economic resource (a factor of production) and will be accepted only if he or she makes a contribution the economy of the target state. This attitude over-emphasises the short-term market needs of each and particular state, while frustrating the long-term gains (addressed further below), which the enhanced migration might generate for the Community (in this case the EAC) taken as whole. This is a consequence of the contractual approach harmonisation of laws, which allows too little space for the "upgrading of common interests". As a result, the intra-African migration is hampered by work permit regimes, red tape and high work permit fees (Milej 2019: 964, African Centre for Migration and Society, University of Witwatersrand, 2018).

The historical evolution

The historical evolution of the labour migration regimes in Africa and in Europe was shaped by an interplay between the political visions and economic necessities. It was the need for an efficient allocation of resources, in this case the labour factor, which made the free movement appear economically necessary.

The present-day studies posit that not only higher-skilled and lower-skilled labour movement increases welfare. While the EU framework does not distinguish between higher-skilled and lower-skilled migrants, the African frameworks do, reducing the migration's positive potential. According to the 2018 UNCTAD Report on Migration, in the destination states, "lower-skilled migrants fill occupations neglected by citizens, allowing the latter to move to higher-skilled jobs" (UNCTAD 2018: 29), while the home states benefit from remittances. The latter have a positive impact on development in terms of investment, transfer of skills, know-how or increased trade opportunities due to contact channels created by diaspora (UNCTAD 2018: 144). Despite the existing barriers to migration, the inflow of remittances is one of the key factors contributing to the economy of African states, e.g. in Ethiopia, remittances constituted 51 per cent of all capital inflows in 2016 (UNCTAD 2018: 136; Basnett 2013: 134).

In Africa, the early Pan-Africanist projects associated with Kwame Nkrumah, the Casablanca Group, the project of United States of Africa, of which the Ghana, Guinea and Mali Union was to be a nucleus, were much more of political visions than pragmatic answers to needs of economy; a political union was to come first (Nkrumah 1963: 149; Dirar 2014: 130). Consequently, not much attention was paid to migration at that time. The post-colonial infrastructure, with most of the communication routes pointed outwards did not encourage conceptualisations of intra-African migration. However, the realisation of the more ambitious political union projects would certainly produce some kind of a common market, in which a free movement of people would play a role. But ultimately, those projects did not materialise (Adi 2018: 151).

The second wave of regional integration is based on the 1980 Lagos Plan of Action which took a functionalist approach and was meant to address Africa's economic issues (D'Sa 1983: 5). In the plan, free movement was regarded as an economic factor in the context of resource

allocation and certainly not as an individual right or as a nucleus of political integration. Accordingly, the African States were urged to develop employment policies which would facilitate the absorption of "surplus trained manpower" in one country by other countries (Organisation of African Unity 1980: 111). The current policy documents are more outspoken, acknowledging the economic benefits of free movement and also linking them to broader political projects. A 2017 AU Peace and Security Council resolution for example acknowledged that the benefits of free movement "far outweigh" the risks. In 2016, the AU Summit composed of African Heads of States launched the African passport as a "symbolic Act of Pan-Africanism". The EAC Vision 2050, too, envisages the East African Community's political federation, enshrined in the EAC-Treaty as a final stage of integration, as a borderless room in which people can move freely.

Regarding the Europeans, they were first allowed to move freely as factors of production. The citizenship dimension of free movement came later, when the concept of the citizenship of the Union was introduced by the 1992 Treaty of Maastricht. This does not mean, however, that there were no political visions. One may think of Winston Churchill's idea of the United States of Europe, which, however, goes back to political projects of the nineteenth century (Bülck 1981: 809). But there were also more practical ideas, like the common European passport, on which the Council of Europe started working as early as 1949 (Turack 1967: 782). Those visions suffered a setback in view of the political disputes around the post-war European order in the 1940s and 1950s (Dedman 1996: 89). It was at that time that the European governments started thinking more in economic terms of the integration of markets rather than in terms of political visions (Dedman 1996: 91; Ward 2009: 11); but the visionary dimension of the European integration project did not disappear, as evidenced e.g. by the Declaration on the European Identity adopted by the European Summit in Copenhagen in 1973 and speaking of a "dynamic construction of a United Europe". Also, already in the 1970s, the free movement of workers was referred to as a nucleus of a European citizenship (Magiera 1987: 221).

Implementation of the free movement regulatory frameworks

Much has been said about the wanting record of African regional integration schemes' implementation (Dirar 2014: 152; Milej 2015: 615; Oppong 2018: 137) and the commitments to facilitate free movement are not an exception to it. Not only are the substantive commitments, but also the implementation strategies based on gradual abolishment of restrictions to free

movement and “appropriate actions” to be taken by national authorities, eventually subjecting the free movement rights to the latter’s good will.

As a consequence of the lack of self-executing effect and establishment of individual rights mentioned earlier, those obligations are hardly ever justiciable. This means that the cases in which an individual established in a court a violation of a right to move and take up employment in another African country are extremely rare. Even if the scope of the obligations is clear, which is rarely the case, there is not enough clarity regarding the powers of local courts with regard to the obligations arising from the regional integration treaties (Milej 2015: 596). Are the courts allowed to disapply domestic laws, if they are not in compliance with the treaties?

As there is no crystallised body of case-law on the free movement, there is also no judicial guidance on how the free movement obligations are to be implemented and enforced. Eventually, the progress on intra-African labour migration is impeded by vagueness of the free movement commitments, their limitation to higher-skilled workers, and weak implementation mechanisms.

The situation is very different in Europe. European integration is as a matter of principle integration through law, whose efficiency is ensured by the proximity of the judge to the individuals (Milej 2018: 147). Accordingly, every national judge is considered to be an EU judge at the same time. The principles of direct effect and supremacy of the EU law give him or her efficient instruments to ensure that EU law is followed. Should the judge come to the conclusion that a national regulation is not in in conformity with the European one, he or she is under the obligation not to apply it (Amministrazione delle Finanze dello Stato v Simmenthal SpA. [1978]). The right – or in some cases an obligation – to refer questions of law to the Court of Justice of the European Union in a preliminary reference procedure contributed to the emergence of a comprehensive case law providing important orientation points for national legislators and policy makers (Milej 2018: 152). A radical empowerment of regional and national court has been suggested as one of the means to improve the implementation record of the African integration agendas (Oppong 2018: 131).

Post-Cotonou negotiations: Lessons learned?

The Cotonou agreement (Partnership agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States) was concluded in 2000 for the period of 20 years. Due to its expiry in 2020, the parties entered into negotiations on a treaty framework aimed at governing their relationship past this date – the post-Cotonou negotiations. The treaty relationship dates back to Yaoundé and Lomé conventions concerning preferential trade regime and development assistance, concluded in the 1960s and 1970s concluded between the European Economic Community first with the former French colonies and then, after the establishment of the African, Caribbean and Pacific Group of States (ACP group) in 1975, with all ACP States. It is important to note that not all African states are members of the ACP group; this is particularly true for the states in the North of Africa, such as Morocco, Algeria and Egypt which play a significant role, when it comes to migration between Africa and Europe.

The current Cotonou agreement has a three-pillar structure: development assistance, trade and political dimension. Interestingly, the article addressing migration – Article 13 – is placed in the chapter on political dimension. Hence, being systematically separated from the trade dimension and, the question of movement of people does not form a part of a larger common market project unlike in the African RECs and the EU. Article 13 is also very far from opening doors to migration. It involves only two unequivocal legal obligations: One of them is a duty of the ACP States to "accept the return of and readmission of any of its nationals who are illegally present on the territory of a Member State of the European Union, at that Member State's request and without further formalities" with the corresponding commitment of the EU Member States to accept returns and readmissions of their nationals from ACP States.

The other legal obligation is the prohibition of discrimination of migrants who have already acquired a right of residency. Otherwise the language of the provision resembles the open-ended declarations typical of African RECs, yet without any hint to a commitment to open the borders, even to a limited extent. The cited provision is explicitly about "migration" and not "free movement" and the migration is portrayed rather as an issue and not as an opportunity. This is exemplified by the provision of Article 13(4), whereby "the Parties consider that strategies aiming at reducing poverty, improving living and working conditions, creating employment and developing training contribute in the long term to normalising migratory flows". Similarly, Article 13 (5) speaks of prevention strategies with regard to illegal migration.

In addition to the Cotonou agreement, the principles for Africa-Europe cooperation were outlined in the Joint Africa-EU Declaration on Migration and Development from 2006 (Tripoli Declaration) and the Joint Africa-EU Strategy (JAES), a declaration adopted by the African and EU heads of state and government in 2007. Even if those documents are not legally binding, they establish dialogue formats and set some standards, against which the quality of the treaty relationship can be measured. Those documents make two important statements: First, that migration is a positive phenomenon and, if well managed, makes a positive contribution to the development in the countries of origin and destination and, second, that migration should be a looked at in a context of a wider EU-Africa development partnership. These statements correspond with the regulatory approach to migration both within the Africa and within Europe.

The ACP negotiating mandate for the post-Cotonou negotiations converges with the emphasis on the benefits of migration, as it postulates that "more focus be placed on this in the successor agreement, creating the conditions to promote legal migration and the right of movement of persons, sharing skills and experiences which could be portrayed as the positive side of migration" (ACP 2018: 38). Regrettably, the mandate document does not seek to link migration to trade in goods. Yet, given the focus on free movement as an efficient allocation of resources, it is the least it could have done.

The EU's mandate is very different. It stresses the need to stem illegal migration, duty to unconditionally readmit migrants "irregularly present on the territory of another Party" and effective border management (EU 2018: 42). Although the mandate sets also the objective "to harness the benefits of regular migration", it offers little to facilitate it. The only commitments, the EU is ready to enter are enhanced "mobility schemes for students, researchers and professionals" as well as facilitation of "visits for business and investment purposes".

By virtue of this mandate, the EU seems to allow at the very most only what the most reluctant African mobility frameworks are ready to allow: Movement of highly-skilled professionals and researchers. Implicitly, however, the mandate acknowledges the benefits of the migration of lower-skilled migrants too. It does so through the pledge of reducing the transaction cost of remittances to less than 3 percent (EU 2018: 43). Nevertheless, the borders for the lower-skilled migrants are apparently to remain closed. The institutional and enforcement framework for the enhanced mobility schemes, especially the one for "professionals" is weak; the mandate hardly

goes beyond political consultations. There is also no road map, how and when those schemes are to be rolled out (EU 2018: 85).

In a nutshell, the EU's negotiating mandate replicates all the weaknesses of the African mobility schemes, while offering nothing of their visions. It does not show any signs that the efficient intra-EU free movement mechanism will be used to facilitate migration from African countries into the EU. Worse still, the EU's policy paradigm is to keep Africans out of the EU, as huge – and still increasing – investments in the border management infrastructure demonstrate (Laine 2020). The mandate reinforces the securitised discourse about migration, which African schemes seek to overcome. By delinking migration from trade, neither the Cotonou agreement currently in force nor the negotiating mandates take into account the existing experience of regional integration both in African and Europe, where the free movement of people forms a part of larger integration schemes. The contribution that enhanced migration would make to the increase in investment, trade volumes and development in general (UNCTAD 2018: 149) is not duly acknowledged.

Conclusion

What lessons from the experience with free movement schemes in Africa in Europe can be drawn for the migration between the two continents? Any solution would have to take into account the effectiveness and workability of the "upgrading common interest approach", placing migration within a broader integration scheme and having a political vision which the potential Afro-European integration project with a built-in increased cross-border movement component would serve.

Europe used to have bold visions throughout the integration process and at its inception but those visions seem to be fading away. What remains unshaken are the rules and bureaucratic efficiency. And given the recent uncoordinated reaction to Covid-19 pandemic, it is rather more of efficiency in the day-to-day administration than in imaginative tackling of new and complex challenges. Africa's integration schemes may be much weaker on efficiency, but they are strong on visions. One of the reasons why those visions are so hard to accomplish may be the fact that they are not internalised and ratified in a democratic debate. A debate is crucial for both, the visions and the efficiency. At least in East Africa, there is hardly any debate on migration. There are voices that Tanzanians steal jobs from Kenyans in Kenya and that Kenyans steal jobs from

Tanzanians in Tanzania (African Centre for Migration and Society 2018: 17). The lack of a broad debate which would underpin a common vision makes it attractive for populists to create and exaggerate anxiety towards strangers and offer protection against perceived threats. This kind of identity politics is very much present in Europe with regard to migrants from Africa. Sometimes it also applies to migrants within the EU. Was the immigration from the new member states not one of the crucial arguments of the Brexit proponents? According to Theresa May, it was one of the key issues; "Free movement will end" was therefore one of her key messages while negotiating the post-Brexit settlement with the EU (Adam and Booth 2018).

But the rejection of African migrants by the EU has much deeper roots. Over decades, if not centuries, the European identity has been constructed to a large extent in opposition to outsiders, and more specifically to Africans. European philosophers, anthropologists, missionaries and more recently also media outlets have been keen on constructing African "otherness" as a contrast idea of European self (Gathii 1998: 195; Janz 2007: 691). The "western" type of rational mentality was opposed to the African type, allegedly "prelogical, depending on the law of mystical participation" (Mudimbe 1988: 149). European anthropologists, such as Lucien Levy-Bruhl, reduced Africans to objects of science, depicting them as "primitives" who must evolve from the frozen state to catch-up with the Western civilization (Mudimbe 1988: 85-88; Janz 2007: 696). In a similar vein, a contemporary analysis of the mainstream media discourse reveals that "Africa is frequently presented as the object of Western gaze, and this gaze objectifies, exoticsises and lingers on traits that are different, noteworthy and 'other', by contrast to safety, prosperity and enlightenment of a Western 'home'" (Bunce 2105: 42). It is this nefarious discourse which helps to portray migrants as a threat to European culture, identity, values and conventional way of life (Laine 2020). And it is also a discourse which was deployed to justify the colonization of Africa and legitimise European domination (Gathii 1998: 194-198).

An Afro-European integration project which includes a free movement scheme could be a chance to limit the impact of the current power imbalance which reproduces itself in the migration policies. EU member states are still free to operate unilateral immigration schemes which aim at attracting high-skilled professionals only. Such approaches may be favourable for the European, but not necessarily for the African economies. A multilateral approach to migration would allow all partners to capitalise on the benefits of migration. However, it may not take form of the EU using its bargaining power to translate the long-standing European

obsessions into binding norms of international law, as the current EU-mandate suggests. This would go against the very idea of international law based on cooperation, which challenges sectarian interests and embraces the idea of pursuing common interests (Koskenniemi 2007: 20). Such an integration project is also a way to initiate and sustain a debate, a debate which is not limited to populists and specialists and which may be helpful to overcome historically entrenched, shameful and racist narratives about European and African identities, and in the long run also change the paradigm in the Africa-EU relations.

The free movement scheme may be limited by quotas, it may make use of the variable geometry and asymmetry principles applied in Africa, it may have transitional periods, but it must be universal, based on strong institutions, open to both higher-skilled and lower-skilled migrants and, most importantly, it must work. Even if it does not provide incentives to migrate, which an efficient migration scheme should do, it should at least eliminate the stumbling blocks and cater for the human and labour rights of migrants; a prohibition of discrimination in Article 13 of the Cotonou Agreement is a good step.

The Afro-European integration project must spell out its vision, but its foundational treaty must not be framed in a language of broad political declarations and left at the mercy of politicians' discretion. It must upgrade and upscale the dialogue formats of the 2006 Tripoli Declaration and the JAES. To this end, there must be directly effective individual free-movement rights enforceable through a proper mechanism offering effective remedies, ideally by a court with judges. It should ideally be concluded between the AU and the EU, so as to leverage the bargaining power of African states and to allow for a fine-tuning with the intra-African integration schemes. A success story thus created may have a potential to change the securitised paradigm towards migration and address it not only through the prism of security risks, but also through the opportunities that are created and, perhaps even more importantly, as an element of an individual freedom to move.

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