

IRREGULAR MIGRATION GOVERNANCE IN THE EAST AFRICAN COMMUNITY: ASSESSING THE LEGAL AND INSTITUTIONAL RESPONSE

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Abstract

Governance of irregular migration has recently occupied the agenda of most Regional Economic Communities. The agenda is being sparked by the existing intersect between irregular migration and national security of partner states as well as its implications to the economy and development broadly. These initiatives also find justification in the fact that migration governance is increasingly cross-cutting and requires cooperation between States and regions. One of the major tools used to achieve regional cooperation in migration governance is adoption of coherent policies and measures. This article surveys the East African Community (EAC)'s legal and institutional frameworks designed to address irregular migration in the region with a view to depicting the existing gaps and their implications to irregular migration governance. To achieve this objective, desk research and key informant interviews were the resorted methodologies. The article finds that, the key challenges facing irregular migration governance in the EAC are incomprehensive frameworks, implementation challenges, contradicting provisions in the EAC laws, incoherent institutional framework and security challenges. It is recommended that the identified challenges

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should be addressed through incorporation in the legislative and institutional framework.

Keywords: *East African Community, Legal Framework, Migration, Regional Integration.*

1. INTRODUCTION

The history underpinning regionalism in East Africa and Africa at large is widely covered in literature.¹ The creation of the East African Community (hereinafter called “EAC” or “the Community”) was influenced by the desire to widen cooperation in political, economic and social spheres for mutual benefit of partner states.² Re-established in 2000, the EAC is composed of six Partner States namely Burundi, Kenya, Rwanda, South Sudan, Uganda and the United Republic of Tanzania. Historically, the establishment of EAC can be traced from initiatives for the establishment of inter-state cooperation in the area of postal communication, banking and financial sector, legislative and judicial organs.³ There was formation of the East African High Commission in 1948, the East African Common Services Organisation in 1961 and the defunct East African Cooperation in 1967.⁴ These precursors of the current EAC somewhat shaped migration governance in the region.

¹ See Mangachi, M.W., *Regional Integration in Africa: East African Experience*, Safari Book Limited, Abadan, 2011; Mshomba, R.E., *Economic Integration in Africa: The East African community in Comparative Perspective*, Cambridge University Press, New York, 2017; and Daniel, C.B., *Regionalism in Africa: Genealogies, Institutions and Trans-States Networks*, London: Routledge, 2016.

² East African Community (EAC), *Home: About EAC*, available at <<https://www.eac.int/overview-of-eac>> (accessed 28/12/2018). Also see the 15th Para. of the Preamble to and Art. 5 of the Treaty for the Establishment of the East African Community (EAC Treaty).

³ Wanyama, M & Christopher, O.O., “The Road to East African integration” in Ugirashebuja, E. et al (eds.), *East African Community Law: Institutional, Substantive and Comparative EU Aspects*, Leiden: Brill Nijhoff, 2017, p. 15.

⁴ *Ibid.*

In fact, these arrangements predating EAC have relatively enhanced the long existing cultural, economic and social ties among communities in the region.

Irregular migration may be defined as movement of a person(s) from one country to another outside the legal and regulatory laws and/or norms of the sending, transit and receiving country(s).⁵ In almost similar wording, the International organization for Migration (IOM) defines irregular migration to mean the movement that takes place outside the regulatory norms of the sending, transit and receiving countries.⁶ Conversely, governance of migration denotes a system of institutions, legal frameworks, mechanisms and practices aimed at regulating migration (both regular and irregular) and protecting migrants.⁷

Governance of migration, whether regular or irregular, is increasingly becoming one of the top agenda of most RECs.⁸ This is due to the transnational nature of contemporary irregular migration which necessitates cooperation between states, subregions and regions. States can better enhance their capacity to address irregular migration challenges including insecurity and harness migration-development potentials through regional economic and political blocks than individually. Therefore, it follows that governance of irregular migration becomes a necessary means to achieve REC's security, political and economic integration objectives. EAC is not exceptional in this regard whereby governance of irregular migration is viewed under the Treaty and Protocols as a necessary measure towards

⁵ CARFMS, “Irregular Migration” available at <http://rfmsot.apps01.yorku.ca/glossary-of-terms/irregular-migration/> (accessed 18 July 2021).

⁶ Perruchoud, R & Redpath-Cross, J (eds.) *International Migration Law: Glossary on Migration*, Geneva: IOM, 2011, p. 54.

⁷ *Ibid.* p. 43.

⁸ Betts, A., “The Global Governance of Migration and the Role of Trans-regionalism” in Rahel, K. et al (eds.) *Multilayered Migration Governance: The Promise of Partnership*, London: Routledge, 2011, p. 30.

achieving a political and economic integration and strengthening regional security.

Most RECs are interested in regulation of movements of citizens of Partner States and those coming from outside the community by adopting common policies, programs and institutions. In this regard, regional and sub-regional policies and formal or informal institutional mechanisms in Europe under the European Union (EU), West Africa (ECOWAS), South-East Asia (ASEAN), Northern America (NAFTA), Americas (MERCOSUR, SICA and CARICOM) and the Horn of Africa (IGAD) exemplify the point.⁹

This paper examines relevant instruments constituting the legal and institutional frameworks of the EAC with a view of probing the effectiveness in governance of irregular migration in the bloc. While doing so, the paper identifies existing gaps and their implications to irregular migration governance in the bloc. The paper as well, draws lessons that the EAC bloc can learn from other Regional Economic Communities (RECs). Finally, the paper gives a general conclusion featured with recommendations.

2. EAC LEGAL AND POLICY FRAMEWORKS ON IRREGULAR MIGRATION GOVERNANCE

The EAC legal framework is contained in the Treaty for the Establishment of the East African Community (“the EAC Treaty” or “the Treaty”), Protocols made thereunder, various Acts passed by the East African Legislative Assembly (EALA), decisions of the East African Court of Justice

⁹ See generally, Harns, C., *Regional Inter-State Consultation Mechanisms on Migration: Approaches, Recent Activities and Implications for Global Governance of Migration*, Geneva: IOM, 2013; and Karoline, P., “Regional Processes, Law and Institutional Developments on Migration” in Opeskin, B. et al. (eds.), *Foundations of International Migration Law*, New York: Cambridge University Press, 2012.

(EACJ) and formal decisions and directives issued by the Summit of Heads of State and the Council of Ministers.¹⁰

2.1 The EAC Treaty

This is the parent instrument establishing the EAC.¹¹ In accordance with the international rules regarding interpretation of treaties, the process of ascertaining the meaning of provisions of any treaty shall be in the light of the object and purposes as contained in the objective clauses.¹² In light of this authority, it is prudent to first examine the wording of the Treaty objective clause and find out if or not irregular migration governance features in the priorities of the Community. According to Article 5(1) of the Treaty, the objectives of the Community shall be:

...to develop policies and programmes aimed at widening and deepening cooperation among the Partner States in political, economic, social and cultural fields, research and technology, defence, security and legal and judicial affairs, for their mutual benefit.

This provision presents a wider spectrum of areas of cooperation. An implied connection between these objectives and the question of irregular migration governance can be established in at least two ways: firstly, irregular migration is closely associated with social, political, economic and cultural fields as both cause and effect. Some of the measures proposed for irregular migration governance under the Global Compact are indirectly reflected under the

¹⁰ Ruhangisa, J.E., “The Scope, Nature and Effect of EAC Law” in Ugrirashebuja, E. et al (eds.), *East African Community Law: Institutional, Substantive and Comparative EU Aspects*, Leiden: Brill Nijhoff, 2017, p. 140.

¹¹ Article 2(1).

¹² See, Article 31(1) of the Vienna Convention on the Law of Treaties, May 23 1969, 1155 U.N.T.S 331.

objectives of the Treaty.¹³ Secondly, the Treaty commits the Community to developing policies and programmes aimed at strengthening cooperation among Partner States in, *inter alia*, social, economic, political and cultural fields.¹⁴ This can be interpreted as an enabling provision under which Community policies and programmes on irregular migration governance can be developed. The Treaty lists migration-related aspects like free movement of persons, labour, right of establishment and residence and cooperation with regional and international organisations as important goals to be achieved by the EAC.¹⁵

Another priority area of the Community with a bearing on irregular migration is maintenance of regional peace and security. In a bid to address security challenges, the Treaty lists terrorism, drug trafficking, disputes and conflicts, refugee problem, disasters, and cross border crimes as serious threats to regional peace and security.¹⁶ Though the Treaty uses a general term “cross border crime”¹⁷ the same is not defined by the Treaty. The definition of this term which is provided for under the Peace and Security Protocol includes irregular migration.¹⁸ As observed in this study, most of the present classification of irregular migration including smuggling and trafficking are being classified by international and national laws as cross border organised crimes.

The Treaty proposed mechanisms for enhancing border security and handling cross border crimes. The mechanisms include exchange of criminal intelligence and other security information, enhancing joint operation and patrol, establishing common communication facilities and running training

¹³ Art. 5(3) (a) of the EAC Treaty.

¹⁴ Article 5(1).

¹⁵ Article 104. Also see James. O.O., above. p. 24.

¹⁶ Article 124.

¹⁷ Article 124(5).

¹⁸ See Article 12(1) (d) and (e).

programmes for security personnel.¹⁹ In Article 123(1), the Treaty states that “Partner States shall establish common foreign and security policies.” It further clarifies that the objectives of those policies shall be, *inter alia*, to “strengthen the security of the Community and its Partner States in all ways”.²⁰ This is a wide-ranging provision on security matters. As such, irregular migration which is referred to in EAC instruments as “illegal migration” is one of the issues covered under security and foreign policies of the Community.

2.2 EAC Protocols

Protocols are among the primary sources of the Community law. In fact, according to Article 151(4) of the Treaty, protocols are an integral part of the Treaty. It is expressed in the Treaty that, for smooth execution of the Community objectives, Protocols be concluded with respect to each area of cooperation.²¹ On the basis of this Treaty provision, the Community has, so far, concluded a number of Protocols in many areas of cooperation including custom union, common market, environmental and natural resources, health, science and technology, drug trafficking and peace and security.

Significant to this paper are the Protocols on the Establishment of the East African Community Common Market (Common Market Protocol or CMP),²² the EAC Protocol on Peace and Security (Peace and Security Protocol),²³ and the EAC Protocol on Foreign Policy Coordination (Foreign Policy Coordination Protocol).²⁴ The selected Protocols contain provisions which have direct and indirect impact on migration governance particularly irregular migration. For instance, Partner States agreed to cooperate in combating transnational and cross border crimes including human trafficking

¹⁹ Article 124(5) (a),(b),(c) and (g).

²⁰ Article 123(3) (b) of the Treaty.

²¹ Article 151(1) of the Treaty.

²² Entered into force in 2010.

²³ Signed in 2013.

²⁴ Of 2010.

and illegal migration.²⁵ Further, the Protocol outlines measures to be taken by Partner States in controlling and preventing ‘illegal’ migration and human trafficking. Such measures include undertaking joint operations; developing appropriate mechanisms, policies, measures, strategies and programs; establishment of a regional database on cross border crimes; enhancement of technical capacity for criminal intelligence; exchange of security information; strengthening of cross border security; and training of personnel.²⁶

The Peace and Security Protocol provides differentiated governance procedures for refugees.²⁷ It further demands incorporation into their national legislation the 1951 UN Convention on Refugees and 1969 OAU Convention Governing Specific Aspect of Refugee Problems in Africa.²⁸

The specific Protocol regulating movements of citizens of Partner States (intra-regional movements) is the Common Market Protocol. The Protocol aims at ensuring free movement of persons and labour and it provides for related rights of establishment and residence.²⁹ Migration-related aspects covered under this Protocol are for the purpose of achieving the economic growth and development objectives of the Community. It is categorically stated under the Protocol that the objective of the Common Market is to “accelerate economic growth and development of the Partner States through the attainment of free movement of goods, persons and labour; and the rights of establishment and residence...”³⁰ Accordingly, Partner States agreed to make cross-border movement of persons easy; adopt an integrated border management system; remove restrictions on movement of labour; and harmonise labour policies, programs and legislation.³¹

²⁵ Article 2(3) (i) of the EAC Peace and Security Protocol

²⁶ See Article 12(1) and (2).

²⁷ See Article 10.

²⁸ Article 10(2).

²⁹ Article 2(4) (b)-(e) of the Common Market Protocol.

³⁰ Article 4(2) (a) of the Common Market Protocol.

³¹ Article 5(2) (b) and (c) of the Common Market Protocol.

The Common Market Protocol guarantees free movement of persons who are citizens of other Partner States and removes visa requirements.³² However, this does not mean that intra-regional movement of citizens of EAC Partner States is free of conditions. For instance, the Protocol subjects the enjoyment of the freedom of movement to conditions imposed by national laws on grounds of public policy, security or public health.³³ Furthermore, Article 9(1) introduces the requirement of possessing a valid common standard travel document for citizens in the EAC.

Moreover, the Foreign Policy Coordination Protocol is relevant to the matter. Through this Protocol, the Community commits itself to preserving peace and strengthening security, including fighting against international crimes, among the Partner States and with foreign countries.³⁴ As part of its objective, the Protocol aims at strengthening security with foreign countries. This can broadly be construed to include safeguarding EAC territory against illegal border crossing by persons from neighbouring countries. The assumption is corroborated by reference made by the Protocol to Treaty provisions on ensuring security and fighting cross-border crimes, particularly irregular migration.³⁵ Generally, this Protocol reference to ensuring peace and security and preventing cross border crimes entails within it an aspect of irregular migration governance as such movements contravene legal and policy frameworks of the EAC Partner States.

2.3 EAC Acts, Regulations, Directives and Decisions

Apart from the Treaty, Protocols and Annexes made thereunder, the Community legal order can further be derived from rules made by the

³² Article 7(1) and (2) (a) of the Common Market Protocol.

³³ Article 7(3) and (5). Similar conditions are imposed to migrant workers under Article 10(11).

³⁴ Article 4(1) (d) and (h).

³⁵ Article 3(1) of the Foreign Policy Coordination Protocol which refers to Articles 5-7 and 123-26 of the EAC Treaty.

Community organs. According to Article 11(1) of the Treaty, it is the Summit which is bestowed with general legislative powers – including powers to issue directives aimed at achieving the objectives of the Community. However, cognizant of the importance of delegating some powers principally enjoyed by the Summit, the Treaty confers some powers to other Community organs.³⁶ The secondary sources of rules of the Community are Acts passed by the EALA, Regulations, Directives and Decisions made by the policy organs of the Community. A survey of these secondary sources indicates that issues of irregular migration governance have generally attracted less attention of legislative, judicial and policy organs of the Community. However, with regard to a few aspects of irregular migration like trafficking in persons, border management and movement of persons and labour as demonstrated below some legislative, judicial and policy steps have been taken.

The EAC One Stop Border Posts Act³⁷ is, so far, the only legislation passed by the EALA which, albeit distantly, addresses some aspects of irregular migration. It is stated under section 3 of the Act that among the purposes for the establishment of one stop border posts is to enhance trade through efficient movement of persons. In order to achieve efficiency in movement of persons, and perhaps curb irregular migration, the law puts forward some measures to be taken by Partner States. Firstly, the border control laws of Partner States must allow extra-territorial application of law in exercise of reciprocal powers to arrest, search and detain persons.³⁸ Secondly, the law calls for Partner States to develop and use comprehensive ICT facilities in their common borders. The use of ICT is aimed at facilitating, among others,

³⁶ Article 11(5) and (6). However, pursuant to Article 11(9), delegation of powers by the Summit does not extend to giving general directions and impetus, appointment of judges, admission of new members and granting observer status, and assent to Bills.

³⁷ Act No. 2, 2016.

³⁸ Section 11(2) and (3).

collection and exchange of data within and between various agencies of the Partner States.³⁹ Thirdly, the Act calls upon adjoining Partner States to arrange for modalities for carrying out security related joint border patrols beyond the control zones for the purpose of combating cross-border crimes.⁴⁰

The strength of the EAC One Stop Border Posts Act in governing irregular migration can still be challenged on two major grounds: firstly, its implementation solely depends on bilateral arrangements to be entered between Partner States.⁴¹ The dependence on bilateral agreements between Partner States, which mostly are non-binding and temporary in nature, implies the inclination by the Assembly, as do other Community organs, to the thinking that border governance is entirely within mandates of the sovereign states. Secondly, irregular migrants do not use designated common border posts due to the increased risk of being apprehended. Instead, they opt for circuitous and less visible routes. Reports indicate that designated common border posts among EAC Partner States are less preferred as entry or exit points by irregular migrants.⁴²

Another legislation providing for border management and movement of persons is the Common Market (Free Movement of Persons) Regulations.⁴³ The Regulations maintain the spirit of the Common Market Protocol by providing that intra-regional movement of Community citizens shall continue to be governed by the migration laws and procedures of the Partner

³⁹ Section 22.

⁴⁰ Section 26(2).

⁴¹ Section 4; and 26(2).

⁴² URT, “Report on the Situation of Irregular Migration in Tanzania”, Ministerial Task Force on Irregular Migration (MTF), Dar es Salaam: 2008 Pp.11-2; and UNHCR & IOM. “A Long and Winding Road” 2008, p. 12.

⁴³ The East African Community Common Market (Free Movement of Persons) Regulations, 2009.

States.⁴⁴ Contrary to the title, the Regulations do not guarantee “free” movement of persons. As discussed under the Common Market Protocol, movements of persons in the Community are subjected to a number of conditions including legal framework of respective Partner States.⁴⁵

With respect to border management, regulation 8 of the Regulations provides:

For the purpose of effective border management, the Partner States shall consult and advise the Council on...easing of border crossing for citizens of the Partner States; reciprocal opening of border posts; operational hours for the border posts; manning of border posts for twenty four hours; the necessary infrastructure and standards for border management; harmonisation of immigration procedures....⁴⁶

The first line of the regulation appears to be contradictory. One could question the intention of drafters saying ‘Partner States shall consult and advise the Council’. This is because a survey of the EAC legal framework has indicated categorically that implementation of border management programs rests with Partner States. So instead, it is the Council which is supposed to consult and advise Partner States. In this case, we find the provision contradictory since, being a policy organ, it is the Council which is tasked to issue directives, take decisions, make recommendations and give opinions to Partner States on effective implementation of Community objectives.⁴⁷ Therefore, measures listed under Regulation 8 are supposed to

⁴⁴ See Reg. 5(1).

⁴⁵ Reg. 5(2). The conditions include possession of a valid common standard travel document or national identity card and be issued a Pass for entry.

⁴⁶ Reg. 8.

⁴⁷ Article 14(3) (c) and (d) of the Treaty.

be organised by the Council and proposed to Partner States for implementation as provided for under Article 14(3) (f) of the Treaty.

Mindful of the increase in trafficking in persons in the region, the EALA in 2015 passed a resolution calling for urgent legislative intervention, at EAC and Partner States' levels, to prevent trafficking in persons, protect victims and prosecute perpetrators of trafficking in persons in the region.⁴⁸

Issues of irregular migration have, at least in two instances, engaged the EACJ. The findings on practice indicate that most of the complaints against breach of established EAC standards by the Partner States, especially in areas of common market and custom union, are resolved administratively. The records indicate that for the first time the Court had an opportunity in the case of *Samvel Mukira Mohochi v. The Attorney General of the Republic of Uganda*⁴⁹ to interpret and give effect to provisions of the Community law pertaining to irregular migration.

Mr. Mohochi, a Kenyan citizen, travelled to Uganda from Kenya on 13th April, 2011 on a Kenya Airways flight. On arrival at Entebbe International Airport, he was denied entry into the country, restrained, confined and detained at the immigration offices at the airport and subsequently deported to Kenya. The authorities in Uganda claimed that Mr. Mohochi was denied entry and deported to Kenya because he was a “prohibited immigrant” within the wording of section 52 of the Ugandan National Citizenship and Immigration Control Act.⁵⁰ Mr. Mohochi contended before the EACJ that the actions by the Ugandan authorities were in violation of Articles 104 and 7 of the Treaty and the Common Market Protocol respectively, which oblige Partner States to ensure free movement and non-discrimination treatment to EAC citizens. He further contended that Uganda violated Articles 6(d) and

⁴⁸ EALA/RES/3/5/2015.

⁴⁹ EACJ, Reference No. 5 of 2011.

⁵⁰ Cap. 66 (Act No. 5 of 2009) of the Laws of Uganda.

7(2) of the Treaty which guarantee EAC citizens the right to due process of law or fair administrative process.

The EACJ had an opportunity to deal with this matter and grant orders to the Petitioner. First, the Court concluded that by importing the provisions of the Treaty and Protocol into their legal systems without reservations, Partner States accept to be bound by them and cannot justify their actions based on national pieces of legislation which are inconsistent with the Community laws. Further, the Court made it clear that while Partner States retain their sovereign right to determine admission or exclusion of EAC citizens from their territories using their national laws, including declaring one “prohibited immigrant”, this will be valid if it complies with the Community provisions.⁵¹

The EACJ was persuaded by the decision of the European Court of Justice (ECJ) in *Costa v. Enel*,⁵² and quoted *verbatim* the ECJ position:

The transfer by the States from their domestic legal system to the Community legal system, of the rights and obligations arising under the Treaty carries with it a permanent limitation of their sovereign rights, against which a subsequent unilateral act incompatible with the concept of the Community cannot prevail....⁵³

Second, the Court was of the view that Partner States cannot shield themselves behind sovereignty and act in a manner that disrespects their obligations as contained under Articles 104, 6(d) and 7(2) of the Treaty and Articles 7 and 54(2) of the Common Market Protocol. The Court remarked:

⁵¹ Paras. 52 and 54 of the Judgement.

⁵² Case 6/64 of 15 July 1964.

⁵³ See para. 55 of the Judgement.

The Sovereignty of the Republic of Uganda to deny entry to unwanted persons who are citizens of the Partner States is not taken away by the Treaty and the Protocol but, in denying entry to such persons, the Republic of Uganda is legally bound to ensure compliance with the requirements of the relevant provisions of the Treaty and the Protocol. Sovereignty cannot act as a defence or justification for non-compliance, and neither can it be a restraint or impediment to compliance.⁵⁴

The case is relevant in explaining the implications brought by the Community law to national systems governing intra-regional movement of EAC citizens. The Court decisively interpreted and gave its position on the effects and extent of concurrent application of the Community and Partner States' laws.

In 2013, Tanzania expelled thousands of alleged irregular immigrants from Rwanda, Burundi and Uganda. Following the incident, the EACJ was moved in the case of *East African Law Society v. The Secretary General of the East African Community*⁵⁵ to determine whether the EAC Secretariat discharged its Treaty obligation to take effective and proactive measures as provided for under Articles 29 and 71(1) (d) and (e). The Court was of the view that governance of irregular migration, including expulsion by a Partner State of immigrants from other Partner States, is of interest to the Community since the mishandling of the same violates the fundamental principles and the spirit of regional integration. Consequently, the Court concluded that EAC has an obligation, through its executive organs, to take vigilant measures to mitigate the problem.

⁵⁴ See para. 130(ii) of the Judgement.

⁵⁵ Reference No. 07 of 2014.

From these precedents it is argued that implementation of the Community provisions governing intra-regional movement of persons is not free of challenges. It is clear from the arguments raised by defendants in both cases that authorities in Partner States still regard governance of migration to be exclusively under domestic legal systems. Similarly, it is clear in the latter case that sometimes there is poor coordination between the Community organs and Partner States. This raises the question of non-compliance with the Community rules. The hesitation by the Secretariat to take immediate actions pursuant to the Treaty at the excuse of leaving the matter to be attended by involved Partner States serves as the best example.

2.4 Policy and Strategic Documents

In addition to the Community legislative instruments and Court decisions are policies and other strategic documents which outline policy statements, strategic intentions and vision which should be applied by implementing organs and institutions of the EAC. Out of the existing policy documents, the EAC Development Strategy 2016/17-2020/21, the EAC Vision 2050, the EAC Gender Policy, the EAC Communication Policy and Strategy, and the EAC Child Rights Policy have had an impact on irregular migration governance in the region.

The EAC Child Rights and Gender Policies recognize the need to protect the rights of most vulnerable categories of migrants, especially women and children. According to these policies, the rationale behind migrant women and children special protection is due to risks posed to them. Women and children are vulnerable to trafficking, exploitation, poor and hazardous working conditions, denial of labour rights, sexual harassment, intimidation and extortion at borders.⁵⁶

⁵⁶ See *EAC Child Rights Policy*, 2016, item 4.4 at p. 22 and *EAC Gender Policy*, 2018, item 2.9 at p. 20.

Lack of disaggregated data, delayed harmonisation of migration and labour laws and policies, and inadequate funding of migration governance activities at the regional and Partner States levels are among the critical challenges identified by EAC Gender Policy and the EAC Development Strategy.⁵⁷ Consequently, the trend has affected the achievement of the Community objectives and rendered realisation of free movement of persons and governance of irregular migration by Partner States difficult.⁵⁸

Another area covered by policy and strategic documents of the Community is the push-pull factors for movements of persons in the region. Generally, development disparities between rural and urban areas, and population growth and opportunities created by the EAC regime especially in areas of common market and custom union are singled out.⁵⁹ The EAC through its vision document considers rural-urban migration as a catalyst of development.⁶⁰ This is partly in line with current dynamics underpinning migration-development nexus.

Lastly, the EAC Vision 2050 and the Communication Policy and Strategy propose some goals and interventions towards realizing free movement for citizens in the EAC while promoting regional peace and security by preventing human trafficking and other cross border crimes. To this end, the Community commits itself to enhancing cooperation among Partner States; strengthening and building capacities of immigration and law enforcement agencies; easing border restrictions and harmonising laws, policies and practices. The policies consider exchange and centralization of information between responsible sector players across Partner States, use of

⁵⁷ See *EAC Gender Policy*, p. 21; and *5th EAC Development Strategy 2016/17-2020/21*, p. 46.

⁵⁸ *Ibid.*

⁵⁹ *5th EAC Development Strategy 2016/17-2020/21*, p.23; and the *EAC Vision 2050: Regional Vision for Socio-Economic Transformation and Development*, 2016, p. 60.

⁶⁰ See *EAC Vision 2050*, p. 60.

INTERPOL/24-7 system and informing EAC citizens of the existing legal and administrative migration requirement central tools towards migration management.⁶¹

3. EAC INSTITUTIONAL FRAMEWORK ON IRREGULAR MIGRATION GOVERNANCE

The term “institutional framework” is used in this study to connote formal organisational set-up established by and for the purposes stated in the Treaty and other enabling instruments.⁶² The term is used in its broader context unlike the Treaty which treats organs and institutions separately. The Treaty establishes and lists seven governing organs entrusted to perform various functions of the Community.⁶³ They are, the Summit, the Council of Ministers, the Coordination Committee, the Sectoral Committees, the East African Court of Justice (EACJ), the East African Legislative Assembly (EALA) and the Secretariat.⁶⁴

In addition to these organs of the Community, the Treaty also establishes and empowers the Summit to establish various specialised institutions.⁶⁵ So far, nine semi-autonomous institutions have been established. These are Civil Aviation Safety and Security Oversight Agency (CASSOA); the East African Competition Authority (EACA); the East African Development Bank (EADB); the East African Health Research Commission (EAHRC); the East African Kiswahili Commission (EAKC); the East African Science and Technology Commission (EASTECO); the Inter-University Council for East

⁶¹ See *EAC Vision 2050*, p. 78; and *EAC Communication Policy and Strategy*, 2014, p. 31.

⁶² Kaahwa, W.T.K., “The Institutional Framework of the EAC” in Ugirashebuja, E. et al (eds.), *East African Community Law: Institutional, Substantive and Comparative EU Aspects*, Leiden: Brill Nijhoff, 2017, p. 43.

⁶³ Article 9(1) of the Treaty.

⁶⁴ Article 9(1) (a)-(g).

⁶⁵ Art. 9(2) and (3).

Africa (IUCEA); the Lake Victoria Basin Commission (LVBC); and the Lake Victoria Fisheries Organisation (LVFO).⁶⁶

Generally, there is no designated formal institution or organ of the Community with specific mandate on irregular migration. Instead, throughout their general mandates some institutions and organs are, in one way or another, fitted to address some aspects related to irregular migration or migration in general.

4. EXISTING GAPS AND THEIR IMPLICATIONS TO IRREGULAR MIGRATION GOVERNANCE

In spite of some administrative, legislative and policy measures aimed at addressing irregular migration in the EAC, a number of substantive and operational issues remain. These range from adequacy of these measures in light of international governance framework to implementation challenges. In fact, an evaluation of the existing migration governance challenges in the EAC frameworks is made in line with guidelines on irregular migration governance from UN and AU instruments.⁶⁷

4.1 Limited and Incomprehensive Frameworks

As noted earlier, a comprehensive irregular migration governance system that seeks to address the phenomenon in all its dimensions is important. This includes addressing root causes; recognizing different categories of irregular migrants and treating them accordingly, outlining a framework under which different stakeholders can cooperate and endeavouring to propose sustainable solutions. However, the EAC framework on irregular migration

⁶⁶ East African Community (EAC), *About EAC: EAC Institutions*, available at <<https://www.eac.int/eac-institutions>> (accessed 18/02/2019).

⁶⁷ They include the Global Compact for Safe, Orderly and Regular Migration, 2018 and the AU Migration Policy Framework for Africa and Plan of Action 2018-2027. Also a resort is made to IOM and UNHCR specific guidelines on regional migration governance.

does not address some pertinent issues including transit migration, inter-regional migration, and return and readmission procedures. Moreover, the EAC framework on migration governance does not address important issues like migrant rights, gender and age dimensions, demographic data and research as well as the socio-economic impact of remittance and brain drain. Besides, where an attempt is made, they are only implied under ‘soft instruments’ like strategic and policy documents with neither binding effect nor implementation strategy.

The silence of the EAC legal and policy frameworks on governance of transit migration, a common form of irregular migration in the region, could be construed as a serious omission. This has been the trend despite the EU and IOM strongly encouraging the EAC Secretariat to develop a set of policies to address transit migration particularly from the Horn to Southern Africa and beyond.⁶⁸ A similar omission is observed in the Common Market Protocol in relation to irregular migrant workers and residence, another critical category of irregular migration in the region. In this regard, Masabo is of the view that the Protocol ‘is likely to increase the rate of irregular employment and residence because it favours professionals’.⁶⁹ Lack of standard procedure on return and readmission of irregular migrants has caused Partner States to act contrary to EAC law.⁷⁰ Understanding this point, this study has observed that governance of irregular migration becomes more complex and burdensome because the tendency has been to push-back irregular migrants to the nearest place of the adjoining state where they sought entry from. It was claimed further that sometimes irregular migrants

⁶⁸ Betts, A., “The Global Governance of Migration and the Role of Trans-regionalism” in Rahel, K. et al (eds.) *Multilayered Migration Governance: The Promise of Partnership*, London: Routledge, 2011, p. 38.

⁶⁹ Masabo, J., “The Protection of the Rights of Migrant Workers in Tanzania”, *PhD Thesis*, University of Cape Town, 2012, p. 103.

⁷⁰ *East African Law Society v. The Secretary General of the East African Community*, Reference No. 07 of 2014.

from Ethiopia and Somalia who often get arrested in Tanzania were once interdicted by Kenyan Authorities while transiting Kenya but left to advance into Tanzania.⁷¹

The existing policies are restricted to intra-regional mobility of nationals of Partner States. The only exception is accorded to the introduction of a common EAC passport to facilitate emigration of EAC citizens. Since irregular migration in the region is notoriously featured by migrants coming outside the EAC block, a common approach aimed at influencing third countries would be desirable. On the contrary, as Reith and Boltz argue, “[t]he Community is still far from presenting a unified front.”⁷²

Further, it is clear from the preceding discussion that the EAC legal and policy frameworks place much attention to regulation of ‘regular’ movements of labour, business persons, students and classified categories of professionals. With irregular migration, little is found around smuggling and trafficking, and nothing is found with respect to other numerous categories of irregular migration.

Further, since governance of irregular migration in today's complex situations of human mobility requires collective efforts, entrusting individual states to govern migration through bilateral agreements and inter-state joint patrols present a fragile and ineffective approach. The dependency on bilateral measures taken by individual states in fighting regional cross-cutting issues diminishes the potential of acting collectively as a block. The inter-state approach is being criticised for lacking wider geographic focus and sustainability as it normally involves only the adjoining states and is *ad hoc* in nature. The ineffectiveness of this approach rests on the fact that it fails to

⁷¹ Interview with Tanzania Immigration Department officer at HQ Dar es Salaam, (6th September 2018).

⁷² Reith, S & Boltz, M., “The East African Community: Regional Integration between Aspiration and Reality”, *KAS International Report*, KAS, 2011, p. 104.

reflect the reality that irregular migrants exploit the vastness of EAC region borders and they alternatively change routes depending on security and other risks. It is also argued that tight border control by states is not an efficient means of governing irregular migration as it spurs demand for smugglers, causing the process to become increasingly organised and more dangerous for migrants.⁷³

Joint border patrols and exchange of criminal information are some of the counter-irregular migration measures listed in the EAC instruments whose implementation is dependent on the existing bilateral agreements between states. Up to now the region lacks an official mechanism for exchange and management of migration data and information including those on irregular migration.⁷⁴ With regard to joint border patrol, data from the field indicated the existence of a few occasions of security operations organised under the EAC umbrella. Also, there are bilateral joint patrols often arranged under the *ujirani mwema* ‘good neighbourhood-ness’ context.⁷⁵ However, the joint border patrols and security operations are *ad hoc* in nature and covers small areas out of extensive EAC borders.

The scope of ‘free movement of persons’ provisions, one among the mechanisms devised to govern migration in the region, is limited and unrealistic. Unlike the first impression one gets from the phrase, provisions on free movement of persons affect a small fraction of the population by targeting only specified categories of citizens like students, visitors, persons

⁷³ UNODC, *Global Study on Smuggling of Migrants 2018*, United Nations Publications, Vienna, 2018, p. 16.

⁷⁴ *Report of the Meeting of Chiefs of Immigration to Validate the Draft EAC Regional e-Immigration Policy*, 30th – 31st May 2019 (Ref: EAC/IMM/1/19), p. 6.

⁷⁵ This was pointed out during interview with Mr. Aziz Kilondomola, an officer at Tanzania Immigration Department (HQ), (6th September 2018); Interview with Ugandan Immigration Officer at Mutukula Border Post, (26th July 2019); and written interview with Mr. Steven Niyonzima, EAC (HQ), (September 2018).

seeking medical treatment and the selected professionals.⁷⁶ Consequently, the framework on free movement of persons does not seek to capture persons who are likely to engage in irregular migration. For instance, according to the UNODC report, people who seek employment in the domestic service and hospitality sectors constitute an important category of irregular migrants in the EAC.⁷⁷ On this note, Mshomba has argued that if really the CMP was meant to address irregular migration through easing cross-border movement of labour, it should have targeted semi-skilled workers and not highly qualified workers.⁷⁸

Along similar lines, a comprehensive framework on governance of irregular migration must address itself to sustainable solutions aimed at addressing root causes. Throughout the EAC documents, nothing can directly be inferred to be sustainable ways of governing irregular migration in the region. In other words, the proposed measures on irregular migration are reactive as opposed to proactive. They are purposely tailored to combat or control rather than governing irregular migration.⁷⁹ Since EAC instruments generally regard irregular migration as one of the serious cross border crimes, the words used to explain the phenomenon are similar to those which proscribe terrorism, piracy and genocide.

4.2 Coordination and Implementation Challenges

An intensive examination of Community policy and legislative instruments leads to one getting an impression that governance of irregular migration requires multi-dimensional mechanisms. In this regard, the instruments list the need for the establishment of a regional database, enhancement of

⁷⁶ See Reg. 4 of the EAC Common Market (Free Movement of Persons) Regulations.

⁷⁷ UNODC, above (n. 73), p. 17.

⁷⁸ Mshomba, R.E., *Economic Integration in Africa: The East African community in Comparative Perspective*, New York: Cambridge University Press, 2017; p. 119.

⁷⁹ See for example article 2(3) (i) of the Peace and Security Protocol.

training, sharing of information, carrying out joint border operations and patrols, easing cross border movements and harmonisation of laws, policies and practices as instrumental mechanisms. To this end, cooperation, coordination and consultation among Partner States are repeatedly named as important tools towards implementation of the proposed mechanisms.⁸⁰

Realisation of this commitment is far from being a reality. Listing in the normative and policy documents of activities aimed at governing irregular migration is one thing, and implementation of the same is completely a different thing.⁸¹ Zoomers and Adepoju observed that implementation of regional instruments on migration governance in most of the African RECs is faced by various limitations.⁸² Implementation of EAC provisions on migration governance is not immune from these challenges. In this respect, the EALA Committee on Legal, Rules and Privileges summarised the challenges facing implementation by Partner States of EAC provisions affecting migration to include slow pace in harmonising and approximating national laws.⁸³ Further, it was observed that the process is challenged by budget constraints, limited awareness, poor coordination and

⁸⁰ See for example article 124 (1) and (5) of the Treaty; article 3(2) (b) and article 12(1) of the EAC Peace and Security Protocol; and section 26(1) of the OSBP Act. Also read EAC Vision 2050, p.78 and EAC Communication Policy and Strategy, p. 31.

⁸¹ It is claimed that there is a great gap between what was agreed upon and what has actually been done. See Mshomba, R., *Economic Integration in Africa: The East African Community in Comparative Perspective*, New York: Cambridge University Press, 2017, p. 208.

⁸² Zoomers, A & Adepoju, A., "Searching for Appropriate Migration Policies", in Adepoju, A et al (eds.), *International Migration and National development in Sub-Saharan Africa: Viewpoints and Policy Initiatives in the Countries of Origin*, Leiden: Brill, 2007, p. 285.

⁸³ EALA, *Report of the Committee on Legal, Rules and Privileges on the Oversight Activity on the Approximation and Harmonisation of National Laws in the EAC Context*, November 2016, p. 3.

poor communication and information sharing among various stakeholders at the national and EAC levels.⁸⁴

Implementation of various programs on irregular migration governance is premised chiefly on availability of accurate, reliable and comparable data. This calls for the establishment of a regional mechanism for data collection, storage and sharing. To date, there is no established (irregular) migration data management system at the EAC level.⁸⁵ There is no formal common communication and information sharing facility among key migration stakeholders in the region. Instead, all border-related matters are coordinated and communicated through official channels of the governments.⁸⁶ Studies have confirmed the existence of a causal connection between lack of awareness on the part of the population and authorities due to poor communication and information sharing on the one hand, and proliferation of irregular migration in the region on the other hand.⁸⁷

Multiple and overlapping REC memberships by EAC Partner States is another factor impeding implementation of regional rules on migration governance. Kenya, Tanzania and Uganda belong to at least two RECs. Besides being a member of EAC, Tanzania is a member of SADC; and Kenya and Uganda are members of COMESA and IGAD. All these RECs have policies on migration with either duplicated objectives or different mechanisms of implementation. It is claimed that this condition creates conflict of interest and sometimes slows down implementation of

⁸⁴ *Ibid*, p. 6-7.

⁸⁵ An interview with Mr. Stephen Niyonzima, Principal Immigration and Labour Officer at the EAC Secretariat, September 2018, EAC Headquarters Arusha-Tanzania.

⁸⁶ *Ibid*.

⁸⁷ UNODC, above (n.73), p. 3 & 20.

commitments contained in those instruments.⁸⁸ Also, this has led to disparities in policy reforms and priorities. For instance, while Uganda and Kenya have initiated the process of drafting comprehensive migration policies under the IGAD agenda, there are no similar initiatives on the part of Tanzania.

Similar findings were reported by the Economic Commission for Africa (ECA) which clearly pointed out that multiple membership has caused low programme implementation or/and duplication of conflicting programmes.⁸⁹ The situation is worsened by the existence of multiple institutions and forums which sometimes work in competition with each other despite the purported alliance of their agenda. For instance, by belonging to a *de facto* REC – the Economic Community of the Great Lakes Countries – Burundi is said to have given preferential treatment to migrant workers from Rwanda and DRC contrary to the EAC principles contained under Article 3(2) (a) and (b) of the CMP.⁹⁰

The slowness and hesitancy to put in place new frameworks to govern irregular migration or implement the existing ones implies the absence of political will and the trend of subjecting migration issues to sovereign interests. It is important to recall that “political will” is listed under Article 6 (a) of the Treaty as one of the fundamental principles on which the achievement of the Community objectives hinges. Lack of political will is evidenced by dearth of specific and coherent regional legislation or policy document on governance of irregular migration. For instance, the only legislative attempt so far by the EALA is the passing of the Anti-Trafficking

⁸⁸ Eva, D & Benjamin, S., “Regional Migration Governance in Africa and Beyond: A Framework of Analysis”, *Discussion Paper 9/2018*, Bonn: German Development Institute, 2018, p. 6.

⁸⁹ *Assessing Regional Integration in Africa II: Rationalizing Regional Economic Communities*, Addis Ababa: ECA & AU, 2006, p. 51-2.

⁹⁰ See Mshomba, R.E. above (n. 81) p. 117.

Bill. The Bill was tabled through a private member's motion after inaction by the Council despite the Assembly's resolution requiring legislative intervention on the matter. However, the Bill is awaiting assent by the EAC Heads of State before it becomes a Community law.⁹¹

As it stands, the EAC took a dual approach to migration governance where a few issues are provided for under the Community frameworks while many aspects are left to be governed by national frameworks. For the latter, only EAC rules seek to achieve harmonisation or approximation of national laws, practices and policies in line with the Community objectives. However, the two exercises are not free of challenges.

4.3 Contradicting Provisions

The introduction of 'free movement of persons' provisions in the EAC Treaty and CMP aimed at, among others, removing border restrictions and allowing free movement of citizens of EAC partner states. In turn, this was envisaged to reduce irregular crossing of EAC borders. However, contrary to this good intention, it has been observed that provisions on what is called 'free movement of persons' scheme are contradictory and have negligible impact on reducing intra-region irregular migration. In reality, instead of 'free' movement of persons it should read 'eased' cross-border movements of persons since a number of restrictions remain. In other words, the substantive provisions of the EAC Treaty and the CMP speak about easing cross border movement of persons and not rendering the same free.⁹² This is similar to the words 'facilitation of movement' as used in the SADC

⁹¹ See the list of EALA pending Bills at <<http://www.eala.org/documents/category/bills>> (accessed on 6/5/2019). The Bill is awaiting the accomplishment of procedures listed under Art. 63 of the Treaty.

⁹² See for example art. 104(3) (a) of the Treaty and art. 5(2) of the CMP.

instrument.⁹³ A pertinent question would then be: Is “easing” movements analogous to rendering movements “free”? Literally, the two words convey different meanings. The former can be defined to mean reducing bureaucracy, while the latter signifies the absence of any sort of restrictions. Unlike the EAC-CMP, the SADC Protocol stipulates clearly that it aims at eliminating obstacles to the movement of persons into and within territories of Member States and that the same shall be progressive.⁹⁴

In fact, a thorough interpretation of Article 7(2) (a) of the CMP suggests that what is being referred to as “free” is not the entry. Instead, the freedom of movement referred to in this provision relates to movements of persons who are citizens of other Partner States when they are already within the territory of another Partner State. This means, enjoyment of free movement is post-entry. Another area of inconsistency lies between the proposed collective mechanisms for governing irregular migration and the causes, nature and *modus operandi* under which irregular movements of persons take place. For example, the EAC framework is silent on proper mechanisms in handling mixed flows especially those facilitated by organised criminal groups.

4.4 Incoherent and Inefficient Institutional Framework

Unlike in the EU, there is no specific regional organ designated with an exclusive mandate on migration governance at the EAC level. Instead, activities related to governance of migration are entrusted to Partner States’ institutions. One would expect, at least, to find a regional supervisory body tasked with overseeing the implementation of the Community provisions on border management. The Community instruments propose “integrated border management” as a strategic mechanism to promote cross border

⁹³ See the SADC Protocol on the Facilitation of Movement of Persons, 2005. Available at <https://www.sadc.int/files/9513/5292/8363/Protocol_on_Facilitation_of_Movement_of_Persons2005.pdf> (accessed on 8 May 2019).

⁹⁴ *Ibid*, Art. 2.

security, including irregular migration. Specifically, the strategy is to be achieved through cooperation in information sharing, joint operations and training among Partner States.⁹⁵

According to Article 151 of the Treaty, Protocols concluded in each area of cooperation must spell out, among other things, the institutional mechanisms for overseeing and effecting such cooperation. Based on this provision, one would expect the EAC Peace and Security Protocol, under which Partner States undertook to cooperate in combating irregular migration, to set up regional institutional mechanisms for management of irregular migration. Instead, the Protocol states that “the Council shall determine the institutional arrangements for the implementation of this Protocol”.⁹⁶ Further, the Protocol directs Partner States to cooperate with regional and international organisations whose activities have a bearing on its objectives.⁹⁷

Since the Secretariat which is the only organ of the Community tasked to implement decisions made by the Summit and the Council and oversee Treaty implementation by Partner States, it is expected to be vested with concrete executive authority, resources and administrative mechanisms to deal with migration governance. To the contrary, the evidence indicates that the Secretariat lacks the said attributes hence affecting the realisation of EAC objectives.⁹⁸ The inaction by the Secretariat, especially against the Partner States, was clearly observed in the case of *East African Law Society v. The Secretary General of the East African Community*⁹⁹ where the Court remarked that

⁹⁵ Article 124 of the Treaty and Article 12(1) of the EAC Peace and Security Protocol.

⁹⁶ Article 15 of EAC Peace and Security.

⁹⁷ Article 16 *Ibid*.

⁹⁸ Kaahwa, W.T.K., “The Institutional Framework of the EAC”, in Ugarashebuja, E. et al (eds.), *Op. cit.* p. 63. Also see Mwapachu, J.V., *Challenging the Frontiers of African Integration: The Dynamics of Policies, Politics and Transformation in the East African Community*, Dar es Salaam: E&D Vision Publishing Limited, 2012, p. 56.

⁹⁹ Reference No. 07 of 2014.

“...in those circumstances, indeed, the Respondent ought to have executed due diligence in carrying out his Treaty obligations.”¹⁰⁰

Governance, infrastructural and resource challenges facing EAC institutions are also acknowledged in a number of EAC documents. For example, the EAC Communication Policy lists inadequacy of resources as a serious concern slowing down the level of performance of the Secretariat and other organs and institutions of the Community.¹⁰¹ Further, it was reported to the Council by the Secretariat that being donor dependent, the peace and security sector (where irregular migration is placed) is much affected by non-disbursement of funds to finance its activities.¹⁰² Following the inefficiency of EAC institutions in addressing cross border challenges including irregular migration, some studies have recommended creation of new regional institutions and equip them with required resources and mandates.¹⁰³

4.5 Security and Criminal Oriented Frameworks

In spite of the confluence of migration and security discourses, the implications resulting from governing irregular migration under strict security laws are well documented. The spirit of the existing framework is to criminalise, control, combat and prevent irregular migration through coercive measures. This can be discerned from the words and phrases used in EAC

¹⁰⁰ *Ibid*, Para 66.

¹⁰¹ See item 2.2 at p. 12 of the Policy. For details on critical challenges facing the EAC institutions and organs generally see Kamanga, K.C., “An Enquiry into the Achievements and Challenges of East African Regional Integration”, in Johannes, D *et al.* (eds), *Harmonisation of Laws in the East African Community: The State of Affairs with Comparative Insights from the European Union and Other Regional Economic Communities*, Nairobi: LawAfrica, 2018, p. 79.

¹⁰² The EAC Secretariat, *Report of 38th Ordinary meeting of the Council of Ministers: Enhancing the Economic, Social and Political Integration of the East African Community*, 30th January, 2019, Arusha, Tanzania (Ref: EAC/ExCM/388/2019), p. 89.

¹⁰³ Reith, S & Boltz, M., “The East African Community: Regional Integration between Aspiration and Reality”, *KAS International Report*, KAS, 2011, p. 104.

laws and policy documents. For example, both the EAC Treaty and Protocols use the term “illegal migration”.¹⁰⁴ This is not by chance because a similar phraseology is common in the Partner States’ laws and policies.

Irregular migrants are classified under the Community regime as cross-border criminals who need to be prevented, controlled and punished.¹⁰⁵ Since migration is regarded as a serious threat to peace and security, it is not surprising to find relevant provisions on irregular migration falling under the EAC defence and security domain. In turn, this criminalization of migration tends to compromise universal governance standards applicable in irregular migration including respect for human rights. Equally, it tends to obscure the positive impact of migration to development.¹⁰⁶ This is contrary to the position expressed for instance, in the Global Compact for Migration, Migration Policy Framework for Africa, the 2030 Agenda for Sustainable Development, and IOM 2015 Migration Governance Framework which view migration as a catalyst of development.¹⁰⁷

¹⁰⁴ For the criticisms levelled against the use of the term “illegal migrants” as opposed to “irregular migrants” see Koser, K., “Irregular Migration, State Security and Human Security”, *A Paper Prepared for the Policy Analysis and Research Programme of the Global Commission on International Migration*, 2005. p.5; and Harwood, C., “In Pursuit of the Southern Dream: Victims of Necessity (Assessment of the Irregular Movement of Men from East Africa and the Horn to South Africa)”, p. 15.

¹⁰⁵ See for example Art. 12(1) (e) of the Peace and Security Protocol.

¹⁰⁶ Irregular migration has proved to have some positive impact to both communities of origin and destination in terms of remittance, technology transfer and labour force, among others.

¹⁰⁷ See Objective 2 (para. 18) of the Global Compact for Migration, Item 9.1 (p. 44) of the Migration Framework for Africa, para. 29 and SDG 10 of the 2030 Agenda for Sustainable Development and Objective 2 of the IOM Migration Governance Framework.

5. LESSONS EAC CAN LEARN FROM OTHER RECs

For efficient governance of irregular migration in the region, EAC can learn some best practices found in other RECs and avoid replication of incompatible ones. The first area where lessons can be learnt from other RECs concerns governance of intra-regional irregular migration. In this regard, EAC can learn from the European Union (EU), the Economic Community of West African States (ECOWAS), and North America Regional Consultations on Migration (Puebla Process). For instance, the EU through the Schengen Agreement EU citizens are guaranteed equal treatment and the right to free entry, residency, employment and family reunification. Also there are established common rules and standards on return, external border control, employers sanction and use of Integrated Border management (IBM) system. The ECOWAS Free Movement Protocol and its Supplementary Protocols contain useful provisions on, *inter alia*, refusal of entry for inadmissible migrants, expulsion and repatriation procedures, cooperation and coordination between states and ECOWAS organs, measures to fight smuggling of persons and human trafficking, employers sanction and rights of irregular migrants.

Further, EAC needs to learn from the Puebla Process on how to govern irregular migration through the Regional Consultative Processes (RCPs) and Inter-regional Fora (IRFs). These consultations and dialogue forums help to strengthen cooperation on irregular migration governance among states and between regions.

The second area where EAC can learn some lessons from other RECs concerns governance of international irregular migration. In this aspect, EAC needs to learn how regional approaches involving, *inter alia*, bilateral and multilateral agreements, diaspora programmes, and externalisation measures have worked successfully in governing international irregular migration in other regions. Particularly, the EU and ECOWAS can offer best experiences in this area of migration governance. For instance, through its external policy,

the EU adopted the Global Approach to Migration and Mobility (GAMM) and the European Neighbourhood Policy (ENP). Together with the Common European Asylum System, the GAMM and ENP encompass common approaches towards irregular migration at the EU's external borders. The measures include information exchange, capacity building, readmission agreement and development assistance. With the said programs, the EU has also established Frontex and European Asylum Support Office (EASO) to coordinate the implementation of migration and asylum policies and programs. Similar to the EU, in 2008 ECOWAS through its Commission defined a Common Regional Approach on Migration (ECAM) covering a range of measures. They include, strengthening dialogue, cooperation and collaboration between ECOWAS, host, and transit countries; information and awareness campaigns for potential migrants on the danger of irregular migration and smuggling networks; and setting up a regional system for monitoring migration flows inside and outside ECOWAS.

6. CONCLUSION AND RECOMMENDATIONS

The article examined the EAC laws, policies and institutions, and offered articulate insights on the gaps presented by the said frameworks. Whilst the role of RECs in governance of irregular migration is well known and acknowledged, the focus of the EAC is primarily on regulation of regular movements especially for economic reasons and control irregular migration under the umbrella of regional peace and security. There is absence of detailed provisions on irregular migration governance. The few existing ones are incomprehensive with impractical implementation strategies. For those few provisions on migration governance, a clear gap exists between what was anticipated in the EAC instruments and what has actually been done.

In this article, we have also shown that there is no specific institution dealing with migration governance in the EAC. However, some irregular migration governance aspects expressly or impliedly fall within the mandates of the

Secretariat, the Council, EALA and the Court. Lack of enough human and financial resources, required skills and technologies and poor coordination are among the key identified challenges facing EAC institutions in realising the Community agendas on migration governance. Thus, it is recommended that the identified gaps be addressed through legislative and administrative measures.