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I wish to thank the Chair of the Global Forum for Migration and Development (GFMD) and the Secretariat for having given me this opportunity to be here in the first place as a participant and secondly as a discussant on this session entitled "**legal aspects of the Global Migration Compact**".

I also wish to thank **Mr. Ryszard Cholewinski** for the very articulate and concise presentation, outlining the legal aspects that would be of essence in developing the Global Migration Compact. These are essential for establishing the institutional and legal conditions which should fall within the general principles of international law and address the current institutional and legal short falls that exist.

The drivers of the global migration are various and include among other things security challenges and regional instability; deteriorating economic and social Environment; poverty and unemployment and climate change, which threaten livelihoods.

THE GLOBAL COMPACT

The Global Compact aims at enhancing global governance and coordination on international migration by way of promoting migration and development; addressing irregular migration and addressing forced migration /displacement.

The presentation has indeed given a guide on these legal aspects that would guide formulation of the Global migration compact as a well of consolidating the many fragmented efforts that do exist in this field.

That notwithstanding, the fact remains that, it be at national or regional level, legal frameworks to deal with issues of both refugees and migrants do exist. The African region has put in place a very robust mechanism to deal with both migrants and refugees. Although, there is a challenge in distinguishing between refugees and migrants, the former is well addressed through the use of international refugee law.

AT THE AFRICAN UNION LEVEL

The AU has adopted a number of legal and policy instruments intended to regulate voluntary and forced migration on the continent. These frameworks are informed by the vision of African economic integration outlined in the Treaty Establishing the African Economic Community (Abuja Treaty), which came into force in 1994, and has been ratified by at least 48 AU member states. The Abuja Treaty commits member states – individually, bilaterally, or through regional groups to taking, "*the necessary measures, in order to achieve progressively the free movement of*

persons, and to ensure the enjoyment of the right of residence and the right of establishment by their nationals within [the African Economic] Community".

The AU's overarching approach to migration is articulated in two policy documents: the **African Common Position on Migration** and **Development** (African Common Position), and the **Migration Policy Framework for Africa**, both adopted by the Executive Council of the AU in 2006.

Of the AU's two central policy documents, the Migration Policy Framework is the more comprehensive. It covers nine key thematic migration issues: labour migration, border management, irregular migration, forced displacement, human rights of migrants, internal migration, migration data, migration and development, and inter-state cooperation and partnerships. It also makes policy recommendations for AU member states and their regional economic communities (RECs).

The AU African Common Position on Migration and Development emphasizes the positive role of migration in development and urges the "protection of economic, social and cultural rights of migrants, including the right to development". This is taken as a fundamental component of comprehensive and balanced migration management systems.

Challenges and potential shortcomings

The frameworks also have a number of fundamental weaknesses which include institutional. First and foremost, neither the African Common Position nor the Migration Policy Framework have a dedicated institutional mechanism for guiding or monitoring AU member states' compliance with their content. As such, member states cannot be held accountable within these frameworks, and even those states committed to implementing the frameworks must do so without much-needed guidance and support at the level of the AU. As a result, an important next step is for the AU to move towards establishing an institutional mechanism that would provide the necessary guidance and accountability measures necessary to achieve the vision it lays out in its existing policies.

AT SUB- REGIONAL LEVEL - SADC

Within SADC a number of official documents refer to the need to better address migration. These include:

The SADC Treaty signed in 1992, is the foundational document of SADC and sets forth the regional body's objectives, to achieve development and economic growth,

alleviate poverty, enhance the standard and quality of life of the peoples of Southern Africa and support the socially disadvantaged through regional integration. These objectives are to be achieved through increased regional integration, built on democratic principles, and equitable and sustainable development.

One might expect that such regional integration would involve freer movement of people across the region's borders. Indeed Article 5(2)(d) of the Treaty states that SADC shall "*develop policies aimed at the progressive elimination of obstacles to the free movement of capital and labour, goods and services, and of the people of the Region generally, among Member States*", within a framework of democracy, human rights and the rule of law.

Furthermore, in 2005 SADC came up with a Protocol on Facilitation of Movement of Persons. The Protocol currently provides a regional legal framework on migration in the SADC. Although the protocol has a legal binding mechanism, it has not yet come into force as too few Member States have ratified it to date.

Another SADC legal instrument that touches on migration is the SADC Protocol on Education and Training.   Article 3(a) of the said protocol states as an agreed objective of Member States "to work towards the relaxation and eventual elimination of immigration formalities in order to facilitate freer movement of students and staff within the Region for the specific purposes of study, teaching, research and any other pursuits relating to education and training".

Furthermore, the 2003 SADC Charter of Fundamental Social Rights and 2008 Code on Social Security, which provides for incorporation of migrants into the SADC 2014 Employment and Labour Protocol is signal shift towards more rights-based migration governance.

The 2005 SADC Protocol whose main provisions is to allow visa-free entry to another SADC country for just 90 days, beyond which national laws governing longer-term migration permits apply expressed in accordance with the laws of individual states.

Although the Code is non-binding in nature, it does, however acknowledge that the rights of migrants require explicit attention, and that migrants are variously and unequally protected by other legal instruments, depending on their individual migration status.

IMPLEMENTATION CHALLENGES

- ❖ Poor ratification

❖ Lack of finance and technical expertise
❖ No harmonisation of laws due to lack of a clear regional framework
❖ National laws and policies are used to limit migration-work permits requirements.

REGIONAL CONTEXT AND DEALING WITH CHALLENGES TO MIGRATION GOVERNANCE THROUGH MIGRATION DIALOGUE FOR SOUTHERN AFRICA

As a result of the increasing migration within SADC and from the rest of the African continent, beyond the legal framework there have been efforts to build on a long-established tradition of regional labour migration through a number of initiatives.

One such forum working to advance the regional harmonization of migration policy in SADC is the Migration Dialogue for Southern Africa (MIDSA) a Regional Consultative Processes (RCPs) on migration.

It has three over-arching objectives, signalling a simultaneous thematic refocusing on migration and development and a geopolitical expansion to address emerging continental and global agendas and debates on migration. The objectives are:
1. Assist SADC governments to respond to the AU Strategic Framework on Migration and AU Common Position on Migration and Development.
2. Stimulate discussion and debate on the implications of ratifying the SADC Draft Protocol on the Facilitation of Movement.
3. Assist governments to participate in global debates about migration and development e.g. Global Commission on International Migration, UN High Level Dialogue on International Migration and Global Forum on Migration and Development.

CONCLUSION

In light of the existing regional policy frameworks, the Global migration Compact should not be seen as a new phenomenon, but a complementary effort to guide migration management.

In case of the African continent in general and SADC in particular, intra-regional migration takes place in a context of unharmonized and contradictory legal and policy frameworks, with uneven and weakly enforced protection and rights regimes.

The tension is usually between "free movement" and "security threat" discourses aimed at safeguarding states Sovereignty and security concerns while maintain the claim to liberalization of regional migration policy. At national level there are disparities in immigration and labour laws.

The failure to implement the protocols that have been agreed to by member states, in itself works against the spirit of enhancing safe, orderly and regular migration.

RECOMMENDATIONS

In as much as the Global Compact would be able to address the legal aspects:-
   i.   there is need for it to accommodate the regional frameworks and instruments which have evolved and agreed upon by member states over a period of time;
   ii.   Partnership will also be key, especially with the many African states to ensure effective border management systems are implemented to remove security concern; and
   iii. International Organisation for Migration`s history in dealing with migration is very much appreciated and would be more than needed at a time as this when the organisation has formally joined the United Nations family.

I thank you