Labour and Asylum:
Regional Approaches to Migration

1. Introduction

All over the world, millions of people continue to move from one region to another, seeking sanctuary from violence and poverty. Almost monthly, a fresh horror emerges from the waters around southern Europe, where thousands of people risk the voyage from North Africa in leaky, unseaworthy boats. In one such incident in September 2014 approximately 500 migrants died when their boat sank near Malta. According to initial reports, traffickers deliberately sank the boat after the passengers refused to move to a smaller craft[1].

Within Africa, refugees continue to travel across borders in search of a safer life. However, in the broader international context the civil war in Syria has sent millions fleeing to neighbouring countries. This is putting a massive strain on the resources of international organizations that aid refugees, and limiting what they can accomplish within the continent.

In parallel with these massive refugee flows, millions more people travel in search of jobs and better pay. Journalist Michael Schmidt reports that "at any one time there are some 215 million migrants on the move"[2]. Large sections of the world economy are sustained by migrants. Activities from vegetable farming in California to mining in South Africa depend on these labour migrants, who travel hundreds of miles in order to work and earn money.

Regionalization is an important trend in modern international relations. Nations are increasingly integrating their economies and policies, with regional formations such as the European Union (EU) and the Association of South East Asian Nations (ASEAN) becoming more and more relevant on the world stage over the last few decades. Increasingly, responses to challenges and crises are also formulated at the regional level. The highest profile and most integrated such regional organization is the EU, which has established a set of common norms and standards, alongside a unified currency and free internal movement. Europe has also made moves towards a common foreign policy and a unified legal framework, albeit not entirely smoothly. There have been recent controversies and setbacks[3], but these do not fundamentally detract from the EU's overall status as the most integrated and developed regional formation.

In this context it is worth considering what regional approaches to asylum seeking, refugees and migratory labour in our region might look like. How would such approaches be negotiated or formulated? Are there special legal principles (such as the so-called 'first country principle') that need to be considered? Can burden sharing within regions assist in dealing with refugee crises? More specifically, it is worth considering these issues in relation to Southern Africa, where the Southern African Development Community (SADC) is perhaps the best recognised formation for dealing with these issues.

At a recent round table hosted by the Catholic Parliamentary Liaison Office, the speakers focused on regional approaches to asylum and migration. Various topics were presented, including the European Union's politics around this question, the legalities of the 'first safe country' principle, and the labour migration regimes of Southern Africa.

2. Experiences from the European Union

The European Union is generally seen as the most integrated and complete product of the regionalization process, and rightly or wrongly is often thought of as a blueprint or model for other

regions. There has been some pushback against this idea from thinkers who argue in favour of a 'custom' approach to regionalization, tailor-made to fit local circumstances. However, an examination of European approaches to migration issues could still be educational, since it may have implications for Southern Africa's approach.

European experiences suggest that openness to immigration depends largely on the economic climate, and perceptions about the 'closeness' or 'distance' of potential immigrants. According to Luca Marin[4], of the Centre for the Study of Migration in Paris, European attitudes towards migration tend to be liberal during periods of economic growth, but highly hostile during difficult times. Furthermore, attitudes towards migration often depend very heavily on the identity of the immigrants. For example, a Swiss person migrating to France will be viewed as much less of a problem than a Moroccan or Algerian person. This is bound up in attitudes around race, culture and religion, which result in people from outside the union being regarded as the 'other' and thus more potentially threatening. The way in which people approach these issues is largely emotive, and not based on a precise, logical orientation. As Luca points out, a migrant from Mexico to Spain could well be fluent in Spanish, but be seen as more 'other' than an Icelandic immigrant who speaks not a word of Spanish.

Luca also argues that the European Union has been built around the principles of "freedom, safety and justice". However, these values are realized only for people living within the Union. Freedom *from* the outside, safety *from* the outside, and justice for insiders would be a more accurate description of the EU's values when it comes to refugees and asylum seekers.

It is worth noting that migration within the European Union has not been without controversy. When new countries accede to the European Union they have often been subjected to limitations on the number of people that they can 'send' to the rest of the Union. Following the 2004 enlargement of the European Union, fears over large numbers of immigrants from the newly joined countries displacing people from their jobs and lowering wages were a popular subject of discussion and controversy. This has been epitomised by the meme of the 'Polish plumber[5]' in France, which represented the tension between an economy that demanded cheap, effective labour, and worries about foreigners competing with French workers.

In terms of policy responses, the European Union has attempted to slow immigration levels by making deals with 'sending' countries, but while these have had short term successes, they have usually been eclipsed by political instability in North Africa and the Middle East, which has resulted in huge numbers of people seeking refuge abroad.

3. The 'First Safe Country' Principle

One concept within the field of regional migration that has gained some traction recently is the 'first safe country' principle. Broadly, this is the idea that asylum seekers ought to claim asylum in the first safe country that they arrive in. This has been extended to a notion that countries (such as South Africa) can deny asylum seekers entry on the basis that they have transited through other 'safe' countries in order to arrive at their final destination.

Roni Amit, of the University of the Witwatersrand's African Centre for Migration and Society, argues that this is not at all the case. According to her the "first safe country principle is not a recognised principle of international law[6]." Rather, she argues, it is a device used by countries in an attempt to avoid their responsibilities towards asylum seekers. It lacks credibility in international law and has been deployed only in a few bilateral agreements. It certainly does not have the scope or credibility to be seen as customary international law, and there are no multilateral treaties that entrench it.

Furthermore, even if it were to be implemented in a comprehensive fashion, it would be subject to severe limitations in order for it to be brought in line with wider international law on refugees and asylum.

The key limitation is that a first safe country principle could not be based on a simple 'safe country list' system, and would require extensive investigation of each asylum seeker's prospects in the countries that they have transited. This is in order to avoid the risk of *refoulement*, which is a widely accepted and entrenched legal principle stating that countries may not send *bona fide* refugees back into danger.

In other words, receiving countries could not simply reject asylum seekers on the grounds that they transited through 'safe' countries, but would actually have to be certain that the 'safe' countries

would accept them, and would not simply deport them back to their original country, or to another, unsafe destination. Properly implemented, this would create significant administrative burdens, and it is unclear if it would improve the situation with regard to asylum seekers in any way.

While Amit's arguments show that the first safe country principle has serious problems, this does not entirely close the door to a regional approach to asylum seekers. The concept of burden sharing during refugee crises could have some merit, if enacted by participating countries in a manner that ensured that asylum seekers were dealt with humanely and fairly. Such an arrangement could see countries sharing refugee populations in order to mitigate the cost of safely and effectively supporting and harbouring them. Few states have the resources or the capacity to handle refugee crises alone, and sharing the load with other states could be a legitimate solution to this problem.

However, any such arrangement must be put in place in order to manage refugee issues more effectively and humanely, not simply as a cynical attempt at buck passing where states attempt to 'fob off' refugees on their neighbours.

4. A Regional Labour Agreement for Southern Africa

Two researchers at the Migration for Work Research Consortium (MiWorc), Christopher Nshimbi and Lorenzo Fioramonti,[7] have been considering what a Southern African labour agreement would look like. To this end they have conducted extensive research on the dynamics of Southern African labour patterns, and have come to the conclusion that the sub-continent is badly in need of a regional framework for migration.

Before examining this topic, it is worth discussing briefly the current regional dynamics of Southern Africa. The region is dominated by two major regional configurations. The first is the Southern African Customs Union (SACU), which is comprised of Botswana, Lesotho, Swaziland, Namibia and South Africa. SACU is effectively a free trade region, within which goods flow freely. In addition, revenues raised by taxes on external imports and exports to and from the region are shared among the countries. This effectively amounts to a significant flow of development aid from South Africa to the rest of the region, since South African exports and imports are far larger than those of its neighbours.

The Southern African Development Community (SADC), on the other hand, is much larger and includes the Democratic Republic of the Congo and all countries to its south, as well as Madagascar, Mauritius and the Seychelles. It is less closely knit and, in some senses, more aspirational. SADC nations have signed a free trade agreement and economic integration is a key part of SADC's agenda. However, SADC has a broader policy reach than SACU – it includes issues such as regional security within its ambit. SACU is solely about economics and trade.

In both of these organizations South Africa is perhaps the most important role player, in the sense that it has a significant amount of wealth, power and capacity. This is not to say that SADC or even SACU are simply puppets controlled by Pretoria, but it is certainly fair to say that South Africa is well placed to drive processes within these organizations.

The first point that Nshimbi and Fioramonti make in their paper is that Southern Africa does not have any kind of a comprehensive regime in place, but such a regime would be both desirable and feasible. The current situation involves a series of ad hoc, reactionary and generally unilateral measures by South Africa, such as the Zimbabwean Documentation Project[8]. This is against a backdrop of an aggressive policy of deportation and a climate of violent xenophobia. However, Nshimbi and Fioramonti argue that projects such as this represent an unsatisfying patchwork approach to migration issues, and that the current trend of continuous deportations and emergency measures is both expensive and ineffective. According to them, the Southern African Customs Union[9] (SACU) would be a good 'laboratory' for a multilateral free movement agreement.

Their primary argument in favour of this approach is that a free movement regime within SACU would save significantly on border costs, as well as the costs of detaining and deporting irregular migrants. Within SADC (as opposed to SACU), they propose a broader labour migration pattern, which might not extend to free movement, but which would none the less open up and regularise movement within SADC.

Currently, South Africa has a number of bilateral agreements on labour with nearby countries. These agreements are consistent enough that it would be viable to use them as a blueprint to begin

working towards a comprehensive labour agreement.

How rapidly SADC would move towards such an agreement is open to question, due to the Department of Home Affairs' generally difficult and obstructive approach towards immigration from neighbouring countries. It would have to be seen what appetite there is within the South African government towards a regional migration policy. As the wealthiest and most powerful member of SADC, South Africa is uniquely positioned to obstruct or promote any such a shift.

5. Moral and Legal Approaches to Migration

Perhaps the most important aspect of any regional framework would be how it is informed by moral approaches to migration. If, as in the European Union, it is underwritten by the notion that foreigners must be kept out of the region, it will result in an arrangement that resembles an exclusive 'club' surrounded by a *cordon sanitaire* that keeps 'foreigners' out.

The 'first safe country' principle illustrates this issue well. If enacted as a way of allowing countries to evade their responsibilities to asylum seekers it would undermine international law and potentially cause great harm to legitimate asylum seekers. However, a carefully planned burden sharing arrangement could enable better handling of refugee flows. It could also generate support for humane asylum policies by encouraging regional cooperation on refugee issues. This could potentially increase appetite for more open migration policies by reassuring receiving countries that the responsibility towards refugees will not be theirs alone.

Similarly, the formation of a regional labour agreement needs to be based on a legitimate give and take from the countries involved. It should not simply be a way for more powerful countries such as South Africa to control migration flows in a fashion that suits their interests. Rather, it needs to be based upon respect for human rights and an understanding of the needs of all the partners involved in such a union.
Ultimately, if policy is embarked upon with the intention of avoiding responsibility, excluding outsiders, and preventing people with legitimate needs from migrating in order to meet those needs, it will fail, and it will result in tremendous suffering along the way. It will fail because overly-rigid policy attempts to overcome basic fundamental patterns of migration, which are established for extremely good reasons. Prevailing migration patterns in the region are driven by very fundamental economic considerations. Similarly, asylum seekers are impelled by serious threats to their lives and safety. Refusing to acknowledge these realities and attempting to make people conform to a unilateral, security driven policy will ultimately fail.

Consequently, as a matter of both morality and practicality, establishing a humane, responsible regional framework for asylum seeking and labour migration would be an extremely useful step. While such a process would take a while to establish, it would greatly improve migration management in the region.

6. Conclusion

South Africa's current migration regime, while characterised by bright spots such as the Zimbabwean Documentation Project, has serious problems. Continued hostility towards immigrants and the current policies of detention and deportation are expensive, inhumane and ineffective. While the government has a legitimate interest in securing South Africa's borders, a broader and more inclusive approach to the problem is sorely needed. The current approach simply cannot keep pace with the massive flows of both migrant labourers and asylum seekers. Looking towards the rest of the region may be exactly what is needed in terms of a new approach. After all, issues of migration and labour do not just involve South Africa, but are dynamics that take place across the entire region and continent. No country can deal with such modern, complex issues on their own, and as a result a regional approach could have significant value.

As noted before, such an approach must not be manipulated to suit exclusionary, xenophobic agendas. Rather, it should be based on a legitimate understanding of the needs and responsibilities of all the states involved, as well as the rights of refugees and migrants under international humanitarian law.

It is worth remembering that the free movement of persons is also an important part of integration. Too often modern processes of globalization and regional integration involve massive unregulated flows of capital and goods, while people are ignored or forced to struggle through massive realms of red tape in order to migrate. African

leaders have repeatedly committed themselves to the integration of Southern Africa, and a comprehensive agreement on labour and refugees would be a major step along that road.

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[1] Malta Boat sinking 'leaves 500 dead' – IOM. BBC News. http://www.bbc.co.uk/news/world-europe-29210989

[2] Schmidt, Michael. 1 October 2014. http://www.dailymaverick.co.za/opinionista/2014-10-01-migration-the-push-of-landless-poverty-and-the-pull-of-transnational-trade/#.VC5jrBZpWGw

[3] Most recently, a general right wing trend within European politics has led to a backlash against deeper integration of the EU. British Prime Minister David Cameron has promised a referendum on the UK's continued involvement in the EU in 2017, assuming the Conservative Party is still in power. http://www.bbc.com/news/uk-politics-26538420

[4] Luca Marin made these points at a Round Table discussion hosted by the Catholic Parliamentary Liaison Office in Cape Town.

[5] The "Polish plumber" meme first emerged when a French politician noted that they would probably hire a Polish plumber to work for them if their plumbing broke on the logic that they would do a good job at a low price. This was a controversial statement which 'went viral' and spawned various reactions, including a Polish tourism campaign featuring handsome models wearing plumber uniforms.

[6] Roni Amit made these points at the same Round Table discussion as Luca Marin, but they are also contained in a written Migration Issue Brief. See: Amit, Roni. The First Migration Principle in Law and Practice. Migration Issue Brief 7. June 2011. Available at: <http://www.migration.org.za/uploads/docs/brief-7.pdf>

[7] Nshimbi, Christopher Changwe and Fioramonti, Lorenzo. A Region without borders? Policy frameworks for regional migration towards South Africa. 2013. MiWorc Policy Brief Number 1, Centre for the Study of Governance Innovation. Available at: www.miworc.org.za/docs/MiWORC-PolicyBrief_1.pdf

[8] The ZDP was put in place by South Africa in order to regularise the status of Zimbabwean immigrants who entered the country irregularly following the collapse of the Zimbabwean economy. This has since been extended with a follow up programme, the Zimbabwean Special Dispensation Permit, which is planned to go into effect from the end of 2014 and will run for four years. Although the details of this project have not been made entirely clear, it will effectively act as a successor to the ZDP.

[9] See their policy brief, cited above.