

Multilateral migration governance in SADC countries

Yumi Nakayama

African Studies Center – Tokyo University of Foreign Studies, Japan

Abstract

The remarkable number of migrants in southern Africa has brought various problems to the region. This paper focuses on the history of efforts to establish regional migration governance in the region and reveals that regional migration governance by the SADC countries has emerged in line with regional migration governance theory. The emergence of regional migration governance in southern Africa proceeded through three waves of activity during the mid-1990s, the early 2000s and the 2010s regarding the formal and informal features of the framework and the successful approach to achieving agreements. The liberalization-oriented approach of the first wave aiming for a formalized framework failed, whereas the second wave's informal framework encouraged intraregional networks and various efforts indicate that member states were seriously interested in non-traditional security issues related to migration problems. In the third wave, regional migration governance progressed to practical collaborations within the region beyond networking and dialogue, although establishing a formal framework remains elusive.

Keywords: south-south migration, regional migration governance, SADC, MIDSA



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1. Introduction

The significant increases in international migrations since the 1990s has led to the emergence of multilateral migration governance frameworks primarily concerned with South-to-North migrations. This governance reflects the eagerness of the developed states in the global North (as global rule makers) to enhance their border controls and combat irregular migrations. South-to-South migration is less interesting to the global North, but regional migration governance also has developed in the global South since the 1990s. Africa is of particular concern because its number of international emigrants has rapidly increased. In 2017, more than 36 million emigrants originated in Africa, which was a 68 per cent increase since 2000 (United Nations 2017: 9-10). About 19 million relocated within Africa, while about 9 million immigrated to Europe.

Africa's growing numbers of international emigrants is causing various problems, both on the African continent overall and sub-regions coping with the migration issues under regional migration governance. Regional migration governance has evolved in Africa during the past two decades, although the forms of governance differ by region. This paper focuses on regional migration governance in southern Africa, which has a relatively underdeveloped migration governance framework.

2. Migration in Africa

2.1. International migration in southern Africa

According to the United Nations Department of Economic and Social Affairs, Population Division, the number of international emigrants from the Southern African Development Community (SADC) countries continually increased through the 2000s, with about one-half of them moving to other SADC countries. Although the destination countries vary, within-region migration remains prominent in southern Africa. In 2017, South Africa is the most popular destination, with more than 2,000,000 immigrants, which is much more than immigration in the other member states. In contrast, Zimbabwe experienced the most emigration (780,193) followed by Mozambique (563,648). Figure 1 shows that, during the 2000s, the number of emigrants to locations outside the SADC exceeded intraregional migrations, and immigration from outside the SADC decreased. However, the numbers of immigrants from outside the SADC have significantly increased since 2010.

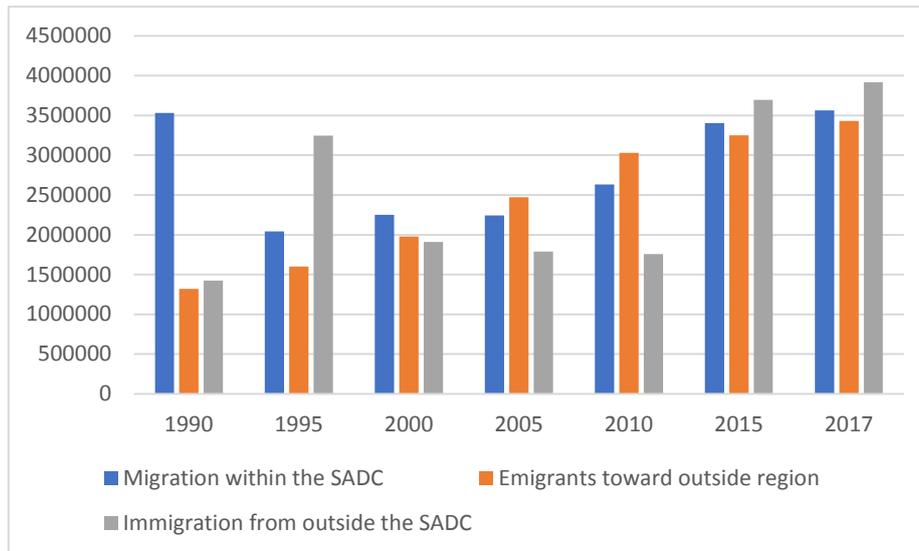


Figure 1. International Migration^a of SADC Member States (numbers of persons)
Sources: United Nations, Department of Economic and Social Affairs, Population Division (2017a)

^a The number of refugees reported by The UN Refugee Agency (UNHCR) are included in the estimates.

2.2. History of southern African migration

Southern Africa has a long history of intraregional migration flows. For example, labour demands in the mining sector increased after diamonds and gold were discovered in late 19th century. The mining sector has supported regional economies for more than one hundred years, and South Africa particularly benefited from mining during the 1980s, which, at its height in 1980, contributed 21% to the country's gross domestic product (Mining Review Africa 2018). South Africa's mining industry created job opportunities beyond South Africa's borders, and more than 760,000 jobs were provided to southern Africans at its peak in 1987. Migrant miners were required to be clearly documented and controlled under bilateral agreements.

The end of apartheid in South Africa significantly changed southern Africa. Political instability, economic inequality between South Africa and her neighbours, and drought and environmental degradation are some of the factors that caused the region, particularly South Africa, to experience escalated migrations (SAMP 2001: 4). The demand for labour in the mining sector decreased during the 1990s, but immigrant miners remained in South Africa, which led to a proportional increase in immigrants and the externalisation of the mining workforce (Maja and Nakanyane 2007: 10). The mining industry tended to use subcontractors that situated many workers in irregular employment situations (SAMP 2001: 8). Simultaneous labour demands were emerging in other sectors, such as commercial farming, construction and services and domestic workers, which became a pull factor. Therefore, the numbers of South Africa's undocumented workers significantly increased along with the immigrant labourers with official contracts.

In addition, refugees and asylum seekers fleeing regional conflicts provided informal labour in their host communities. Refugees' movement in southern Africa began in the 1960s when people fled conflicts in Angola and Namibia. During the 1980s, a flood of Mozambican refugees swept into the region. International frameworks to protect refugees aimed to protect these people, but some of them were not formally recognized as such, and, therefore, they were considered illegal immigrants. Further, some ex-refugees avoided repatriation programmes and remained in their host communities as undocumented workers. Even now, although illegal immigrants tend to be poorly paid and live in exploitative situations, crossing borders is an important strategy for survival and combatting poverty.

In addition to economic migration, small-scale informal traders have increasingly worked across borders since 1990. Some of them cross borders for short periods of about one to four days, whereas others stay for longer periods of about one week to two months, to sell various items, such as fruit, vegetables, mattresses, stereos and household goods (Peberdy 2002: 35-36). Although we have little reliable data, irregular migration is a well-known phenomenon and problem in the SADC region. South Africa's Department of Home Affairs reported that, since the 2001 – 02 fiscal year, the number of deported people continually increased, reaching 280,837 in 2008 – 09 fiscal year compared with 156,123 in 2001 – 02 fiscal year (Africa Check 2016). As irregular migration increased, xenophobic statements escalated and erupted into violent attacks, the largest of which claimed 60 victims and created 800,000 internally displaced persons in 2008. After the Zimbabwean Documentation Project was implemented in 2010, the number of internally displaced persons decreased, and 54,169 people were deported from South Africa during the 2014 – 15 fiscal year.

The end of apartheid also engendered fears in the SADC region that highly trained or intelligent people would flow to South Africa. Many skilled migrants tried to enter South Africa from other SADC states (SAMP 2002: 3), but South Africa's restrictive immigration policy temporarily controlled the "brain drain" problem in other SADC states. However, the problem recurred during the 2000s. For example, Malawi lost 103 nurses and midwives, whose destinations focused on the United Kingdom (Record and Mohiddin 2006). As Figure 1 above shows, emigration to outside the SADC region consistently increased after 1990 and exceeded intraregional migration in 2005 and 2010.

3. Regional migration governance in Southern Africa

3.1. Theory of regional migration governance

Lavenex *et al.* (2016: 459) identified three types of regional migration governance: liberalization-oriented, security-based and rights-based. In general, governance roots are found in the regionalism movement for liberalization. For example, the 1985 Shengen Agreement that mostly abolished border checks within the Shengen Area is well known as the most progressive governance framework. Lavenex *et al.* (2016: 457) insisted that regional migration governance has two purposes. First, it aims to achieve freedom of movement of persons within a regional integrated framework based on the understanding

that liberal internal mobility might be needed to establish a broad market. In this approach, the four Regional Economic Communities (RECs) of the African Union are the favoured formal governance structures with legal and political instruments that are expected to play key parts in regional migration governance. Second, it aims to encourage dialogue and cooperation within informal transnational networks.

3.2. Formal migration governance in Africa

The Economic Community of West African States (ECOWAS) has put forth the most advanced migration governance framework on the African continent. Since its establishment in 1975, the ECOWAS has aimed to achieve intraregional freedom of movement through the Protocol Relating to Free Movement of Persons, Residence and Establishment (adopted in 1975). It has achieved internal freedom of movement by issuing the ECOWAS passport during the 2000s, and about 5.6 million intraregional migrants have benefited from the freedom of movement. In 2015, it is estimated that 64% of the region's emigrants chose to remain within the region rather than relocate outside it (Table 2).

Table 2. Comparison of formal migration governance between southern Africa (SADC) and western Africa (ECOWAS)

Characteristic	Southern Africa	Western Africa
Total Population (2015) ^a	325 million	348 million
Number of international migrant stocks (2017) ^b	7 million	6.4 million
Share of intraregional migrants as share of all emigrants from region (2017) ^c	51%	64%
Reciprocal open visa policies (2016) ^d	52%	100%
Regional integration framework	Southern African Development Community (since 1992)	Economic Community of West African States (since 1975)
Legal instrument for intraregional movement	Protocol on Facilitation of the Movement of Persons (2005)	Protocol Relating to Free Movement of Persons, Residence and Establishment (1975)

^a Source: United Nations, Department of Economic and Social Affairs, Population Division (2017b)

^{b, c} Source: United Nations, Department of Economic and Social Affairs, Population Division (2017a)

^d African Development Bank (2017:21)

Following the ECOWAS, other African RECs, such as the Common Market for Eastern and Southern Africa (COMESA) and the SADC, have continued discussing introducing freedom of movement to their regions. The SADC has 52% of reciprocal open visa policies (means having reciprocal visa exemptions) among member states, but only 51% of the region's emigrants have remained within the region, partly because the Protocol on Facilitation of the Movement of Persons adopted in 2005 has not been implemented because of ratification delays. To date, Botswana, Mozambique, South Africa, Swaziland, Zambia and Lesotho have ratified the protocol, which requires ratification by two-thirds of the SADC member states.

3.3. Informal migration governance in Africa

In addition to the formal migration framework, efforts are being made to encourage dialogue and cooperation by developing informal transnational networks. In particular, the Regional Consultative Processes on Migration (RCPs) are popular because of their informal non-binding features. Although the first RCPs were established in 1985 by states in the global North, the numbers of RCPs in the global South have increased since about 2000. Currently, RCPs in Africa are either within-region or African-European dialogues (Table 3).

Table 3. RCPs in Africa

Type	Content
Within-region	Intergovernmental Authority on Development (IGAD) Regional Consultative Process on Migration (IGAD-RCP)
	Migration Dialogue from the Common Market for Eastern and Southern Africa Member States (MIDCOM)
	Migration Dialogue for Central African States (MIDCAS)
	Migration Dialogue for Southern Africa (MIDSA)
	Migration Dialogue for West Africa (MIDWA)
African-European	5+5 Dialogue on Migration in the Western Mediterranean
	EU-Horn of Africa Migration Route Initiative (Khartoum Process)
	Euro-African Dialogue on Migration and Development (Rabat Process)

Source: based on International Organization for Migration (IOM) n.d. 'Inter-state consultation mechanisms on migration'. <https://www.iom.int/inter-state-consultation-mechanisms-migration> / accessed on 02 January 2019

Migration Dialogue for West Africa (MIDWA), established in 2001, has contributed to a continuous dialogue among the ECOWAS member states through a regional initiative led by its Steering Committee.

The establishment of the Regional Secretariat within the ECOWAS Commission in 2017 indicates that MIDWA had successfully created a formal dialogue among the member states. However, Migration Dialogue for Southern Africa (MIDSA) is believed to have had little influence on developing regional migration governance. Although MIDSA had an important role as a regional clearing-house, it has lacked follow-up procedures for implementing recommendations (Köhler 2011: 81-83).

4. Emergence of regional governance in southern Africa

4.1. The first wave

Regional cooperation in southern Africa began in 1980 when the Southern African Development Coordination Conference (SADCC) was established by Angola, Botswana, Lesotho, Malawi, Mozambique, Swaziland, Zambia and Zimbabwe. In 1992, the SADCC was transformed into the SADC. The initial purpose of the SADC was to achieve development and economic growth, alleviate poverty, enhance the people's standards and quality of life, support socially disadvantaged people, promote and defend peace and security and promote self-sustaining development through regional integration.

As soon as it was established, the SADC began preparing for freedom of movement within the region. The SADC Secretariat, with general guidance from the former Secretary General (Dr Kaire Mbuende) and the SADC's Chief Economist (Dr Charles Hove), held its first workshop on freedom of movement in 1993 (Oucho and Crush 2001: 142-143). It seems clear that the SADC Secretariat was seeking to promote regional migration governance through the liberalization-oriented approach because one of the supervisors was a Belgian expert on the European Schengen Agreement.

The draft Protocol on the Free Movement of Persons in the SADC was introduced in 1995, but it was rejected by the member states, most vehemently by South Africa. The Human Sciences Research Council of South Africa raised concerns that the Protocol might increase unmanageable flows of economic migrants and bring job competition to South Africa (Oucho and Crush 2001: 145-147). Therefore, South Africa rejected the Protocol in 1996, and began instead to draft the Protocol on the Facilitation of Movement for submission to the SADC. However, the SADC Secretariat rejected South Africa's draft and redrafted the 1995 Protocol draft, renamed the Protocol on the Facilitation of Movement of Persons in the SADC. Although the words changed from 'Free Movement' to 'Facilitation of Movement', the SADC Secretariat was still seeking liberalization of the region regarding migration. In 1998, the SADC Council of Ministers rejected that draft Protocol, with South Africa, Botswana and Namibia particularly opposed (Oucho and Crush 2001: 144).

At that point, efforts to achieve regional integration through migration policy were suspended. South Africa was the obvious major obstacle to liberalization, which was related to the new post-apartheid South Africa's confrontation with international migration pressures from the outside and South Africans' dissatisfaction with migrants taking jobs away from South African citizens (SAMP 2001: 5). South Africa's immigration policy had become increasingly restrictive since 1994 (SAMP 2001: 9-12), and,

although prospective immigrants could apply for entry while they were in the country of origin, they just obtained temporal residency.

Besides, the Protocol on Education and Training adopted in 1997 has had scant influence on regional migration governance, although it refers to ‘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’ (Article 3, g), and it aims to ‘facilitate movement of researchers within SADC countries for purposes of research, consultancy work and related pursuits’ (Article 8, 3).

4.2. The second wave

The second wave of effort began in the early 2000s. The SADC Protocol on Facilitation of Movement of Persons again attracted the attention of the member states. However, it was the SADC Organ on Politics, Defence and Security Cooperation (SIPO), which was launched in 1996 as an institution under the SADC to achieve and maintain security and rule of law in the region, that raised concerns in 2003 about the protocol (SAMP 2006: 5). After the draft Protocol on Facilitation of Movement of Persons was approved by the SIPO’s Ministerial Committee, it was forwarded to the SADC Summit and adopted in 2005.

The protocol’s main objective was to facilitate entry into member states without visas for a 90-day maximum period. It required the states to establish sufficient numbers of border crossing points, at least one of which must be open 24 hours every day. However, it does not mention migrants’ rights in terms of the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (Bamu 2014: 37). Thus, the protocol was promoted under the security-based approach.

Surprisingly, South Africa changed its position and supported the protocol. Before the protocol’s adoption, South Africa had announced its intention to offer preferential treatment to highly skilled workers in its Immigration Amendment Act 19 of 2004. However, only six of the required nine member states signed and ratified the protocol of the second wave, partly because it created financial burdens for them, particularly the sending states.

On the other hand, some of the member states have had success regarding bilateral agreements. Table 4 indicates that South Africa has been a key party to these bilateral agreements. The agreements correspond with each other on the following five points: (1) identification of the competent responsible authorities, (2) objectives and areas of cooperation, (3) methods of cooperation, (4) coordination of programmes and financial arrangements and (5) rules governing amendments (Bamu 2014: 24-25).

Some of the bilateral agreements aimed to combat problems regarding irregular migrants. For example, under the first agreement, undocumented Zimbabweans in South Africa were provided opportunities to apply to the South African government for amnesty and, if granted, they were officially allowed to work in South Africa. However, these agreements were inadequate regarding human rights

or entitlements because migrants were given no legal standing to claim their rights. Because these agreements did not require international instruments on migration (Bamu 2014: 26), the cost to member states was less than that of the Protocol.

Table 4. Bilateral agreements between SADC member states

Agreement	Date
South Africa-Mozambique Cooperation Agreement in the fields of Migratory Labour, Job Creation, Training, Studies and Research, Employment Statistics, Social Dialogue and Social Security	17 January 2003
Memorandum of Understanding between the Government of the Republic of South Africa and the Government of the Republic of Zimbabwe in the Fields of Cooperation and Labour	1 October 2004
South Africa-Democratic Republic of Congo Memorandum of Understanding on Cooperation in Immigration and Population Matters	30 November 2004
South Africa-Lesotho Memorandum of Understanding on Cooperation in the Field of Labour	30 October 2006
South Africa-Tanzania Agreement on Cooperation in areas of Migration Matters	4 May 2007
South Africa-Namibia Memorandum of Understanding on Cooperation in the Field of Labour	20 October 2008
South Africa-Zimbabwe Memorandum of Understanding on Cooperation and Mutual Assistance on Migration Matters	4 May 2009
South Africa-Zimbabwe Memorandum of Understanding on Cooperation in the fields of Employment and Labour	27 August 2009

Source: Bamu (2014: 58-59)

In 2003, the SADC member states began expressing interest in workers' rights and the Charter of the Fundamental Social Rights in SADC ('Charter') was adopted that year. In 1998, the International Labour Organization (ILO) had adopted the Declaration on Fundamental Principles and Rights at Work, which commits the member states to respect and promote the principles and rights of the eight core ILO Conventions. Thus, the norms regarding social rights were imported from outside the SADC and disseminated among member states through their ratifications of the ILO Conventions. The Charter required them to ensure the tripartite structure of governments, employers and workers and to promote the formulation and harmonization of legal, economic and social policies and programmes (Article 2, 1(a) and (b)). Because the Charter's objectives were to promote labour policies, practices and measures that facilitate labour mobility and eliminate distortions in the labour markets (Article 2, 1(c)), its content secured a space for providing a rights-based approach to regional migration governance.

Another feature of the second wave of regional migration governance was transnational networks.

The Southern African Ministers' Conference on Population and Development (SAMCPD) is a regional cooperation body for government agencies. Its branch, the Southern African Forum for Population and Development (SAFPAD), had recognized migration as a regional priority in 1999 and started conducting research on migration (Segatti 2017: 54). Although SAMCPD and SAFPAD were integrated into the SADC structure, prominent results have yet to be produced.

The MIDSAs are another networking effort that created a framework for frequent dialogue among SADC member states to enhance interstate cooperation towards improved regional migration governance. Since 2000, MIDSAs have collaborated with the International Organization for Migration (IOM) and other international organizations to organize numerous workshops and conferences. Participants have included representatives of member states and presenters and observers from international organizations, such as the UN Refugee Agency (UNHCR), the IOM and the United Nations Office for Drug Control and Crime Prevention, and regional organizations, such as the African Union and the European Union. Table 5 lists the non-traditional security issues, such as trafficking, irregular migration, forced migration and smuggling, that have frequently been discussed at MIDSAs workshops; notably, liberalization-oriented topics, such as development and human capital, have been less prominent. In other words, the member states apparently have common security issue interests they want to address.

Table 5. MIDSAs workshop agendas

Workshop Date	Agenda
2002	Trafficking
2003	Trafficking
2003	Irregular migration and migrant smuggling
2003	Forced migration
2004	Smuggling
2004	Health
2004	Development
2005	Migration management
2005	Policy harmonization
2006	Irregular migration
2006	Development
2007	Human capital mobility
2008	Trafficking
2009	Health and development
2009	Policy integration

Source: International Organization for Migration (IOM) n.d. 'Migration dialogue for southern Africa (MIDSAs)' < <https://www.iom.int/migration-dialogue-southern-africa-midsa> / accessed on 02 January 2019 >

Since its regional office was established in 1996, the IOM also has supported the SADC member states' efforts to develop national migration policies and regional networks. For example, to reduce migrants' risks of contracting HIV, the IOM established the Partnership on HIV and Mobility in Southern Africa (PHAMSA) in 2004 to 2006. PHAMSA developed four programmes: advocacy for policy development, research and education, regional coordination, and technical cooperation and pilot projects (IOM 2007: 2).

4.3. The third wave

The third wave of governance started in the 2010s, and regional cooperation has developed in a practical and formal multisectoral approach. Regarding transnational networks, MIDSA made significant progress by launching the Ministerial Conference for high-level dialogue among the member states. The first MIDSA Ministerial Conference in 2010 recommended enhanced migration management coordination. Subsequently, various regional approaches have developed, some led by the Secretariat and others led by individual member states. For example, a Regional Action Plan on Labour Migration for Southern Africa was drafted at the MIDSA Technical Meeting in 2012 and forwarded to the Meeting of SADC Ministers of Employment and Labour Sector in 2013 (SADC 2013: 6). The Secretariat implemented it with the support of the IOM and ILO. As a result, the SADC Secretariat and the member states began preparing the Protocol on Employment and Labour, which concerned labour migration problems, and the SADC Labour Migration Policy Framework was endorsed in 2014 (SADC 2016: 1). However, despite the Secretariat's efforts to establish a legal basis for it, none of the member states have ratified the Protocol on Employment and Labour to date.

The SADC Regional Decent Work Programme (2013 – 2017) emerged from a workshop held by the Secretariat. The concept had diffused during the early 2000s through international discourse, such as the UN World Summit in 2005 and the UN ECOSOC Ministerial Declaration. The ILO had indicated that promoting the Decent Work Programme might be a priority theme. The SADC region was negatively affected by the global economic crisis of 2007 – 2008, and it experienced serious unemployment problems. The member states became interested in establishing the Functional SADC Labour Market Information System. In collaboration with the ILO Decent Work Team, the SADC Secretariat held a capacity-building workshop in 2013, after which the member states approved three tools to harmonize labour market data: a draft template for employment reports, a module on labour migration, and a module on disability. Then, the member states conducted a Labour Force Survey, although the lack of an evidence-based policy and the lack of capacity in the Secretariat are unresolved problems (ILO 2014).

In 2012, the Declaration on Tuberculosis in the Mining Sector was adopted under South Africa's initiative. Member states have historically been more interested in HIV/AIDS than in tuberculosis, and the 2004 MIDSA workshop recommendation on migrants' health matters referred to 'HIV' or 'HIV/AIDS' 39 times whereas 'TB' was mentioned just three times. Similarly, in the 2009 workshop,

‘Tuberculosis’ or ‘TB’ was referred to four times and ‘HIV/AIDS’, ‘HIV’ or ‘AIDS’ were mentioned 84 times. However, tuberculosis is a serious health problem, particularly in the gold mining sector of South Africa, which reports the increasing number of new tuberculosis cases since 2000 (Republic of South Africa, Department of Health 2007:5). Because South Africa had depended on migrant workers from countries such as Lesotho, Swaziland and Mozambique, regional cooperation is essential to combat the disease. South Africa supported the declaration and the related initiatives, including a 1,000-day campaign to meet tuberculosis and HIV/AIDS targets in the region (IRIN 2013).

The last important feature of the third wave is the migration and tourism nexus. Although the SADC established the Regional Tourism Organization of Southern Africa (RETOSA) in 1998 to develop tourism, many obstacles have been in its path to success, such as contagious diseases and poor transportation (Acheampong and Tseane-Gumbi 2016: 2). RETOSA established a working group to consider introducing the UniVisa system to facilitate the movement of international and regional tourists. Currently, because of tourism’s growth, most of the member states have exempted the others from visa requirements through bilateral agreements.

Conclusion

Establishment of regional migration governance in southern Africa has undergone three waves: (1) a liberalization-oriented approach in the 1990s, (2) a security-based approach in the 2000s and (3) a multisectoral approach in 2010s. In the background, regional migration governance in southern Africa was influenced by the individual interests of the SADC’s member states, particularly South Africa. In addition, implementing regional governance of migration through a formal framework is expensive for member states, and an intergovernmental approach through bilateral agreements continues to dominate regional efforts. The development of an informal framework through regional transnational networks contributed to merging national interests during the second wave. The Secretariat had an important role in establishing regional migration governance. Although it failed to establish a formal framework under the liberalization-oriented approach, its role was more effective and significant during the third wave through its encouragement of practical regional coordination with the generous support of international organizations.

Further research on ways that the SADC Secretariat and member states interact and the processes by which their interests shifted from a liberalization orientation to a focus on multisectoral issues should be conducted to identify the emergence mechanisms. This study’s analysis should be expanded to investigate other frameworks for regional integration in southern Africa, such as the Southern African Customs Union and COMESA, to deepen our understanding of the dynamics of regional migration governance.

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