



# Session 4: Movement of Persons and African integration

AfCFTA Trade Facilitation Agreement  
and the

Protocol on the Free Movement of Persons, Right of Residence and  
Right of Establishment (FMP)

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# AfCFTA Trade Facilitation Agenda



# Trade Facilitation

- What is trade facilitation? **WTO** describes it as

*the simplification, modernization and harmonization  
of export and import processes*

- The **AfCFTA** defines it as:

*the simplification and harmonisation of international trade procedures,  
including activities, practices, and formalities involved in collecting,  
presenting, communicating, and processing data required for the  
movement of goods in international trade*

# Trade facilitation in the WTO

- **Trade facilitation** has in one way or another long been a **focus area of the WTO** (non-tariff barriers alongside global tariff reductions, incl. transit goods, border formalities, transparency of government procedures and regulations, etc.)
- Generally **lacked important detail**, specificity and commitments, and timelines
- **But:** In February 2017, the **WTO Trade Facilitation Agreement (TFA)** entered into force
- **36** African countries have ratified the **WTO TFA** (of the 42 African WTO Member States)

# Trade facilitation in the WTO

**WTO TFA** contains provisions for:

- Expediting the **movement, release and clearance** of goods, including goods in transit;
- Effective **cooperation** between customs and other appropriate authorities on trade facilitation and customs compliance issues;
- **Technical assistance** and capacity building around these issues

# Trade facilitation in Africa

- Trade facilitation initiatives on the African continent **pre-date the WTO TFA** and the **AfCFTA provisions on trade facilitation**
- **RECs** also have provisions on trade facilitation e.g.
  - *SADC – provisions on harmonizing customs laws and procedures in region*
  - *COMESA – provisions on trade facilitation (Art. 70 of the treaty)*
- **ASYCUDA** – UNCTAD’s automated customs data system and the global standard for customs clearance – already implemented by over 40 **African** countries
  - *origins lie in a request by ECOWAS for assistance with trade data capture*
- Border agency co-operation fairly advanced in parts of Africa, e.g. a number of **one-stop borders** developed, under construction or in planning



## Map of OSBP in Africa

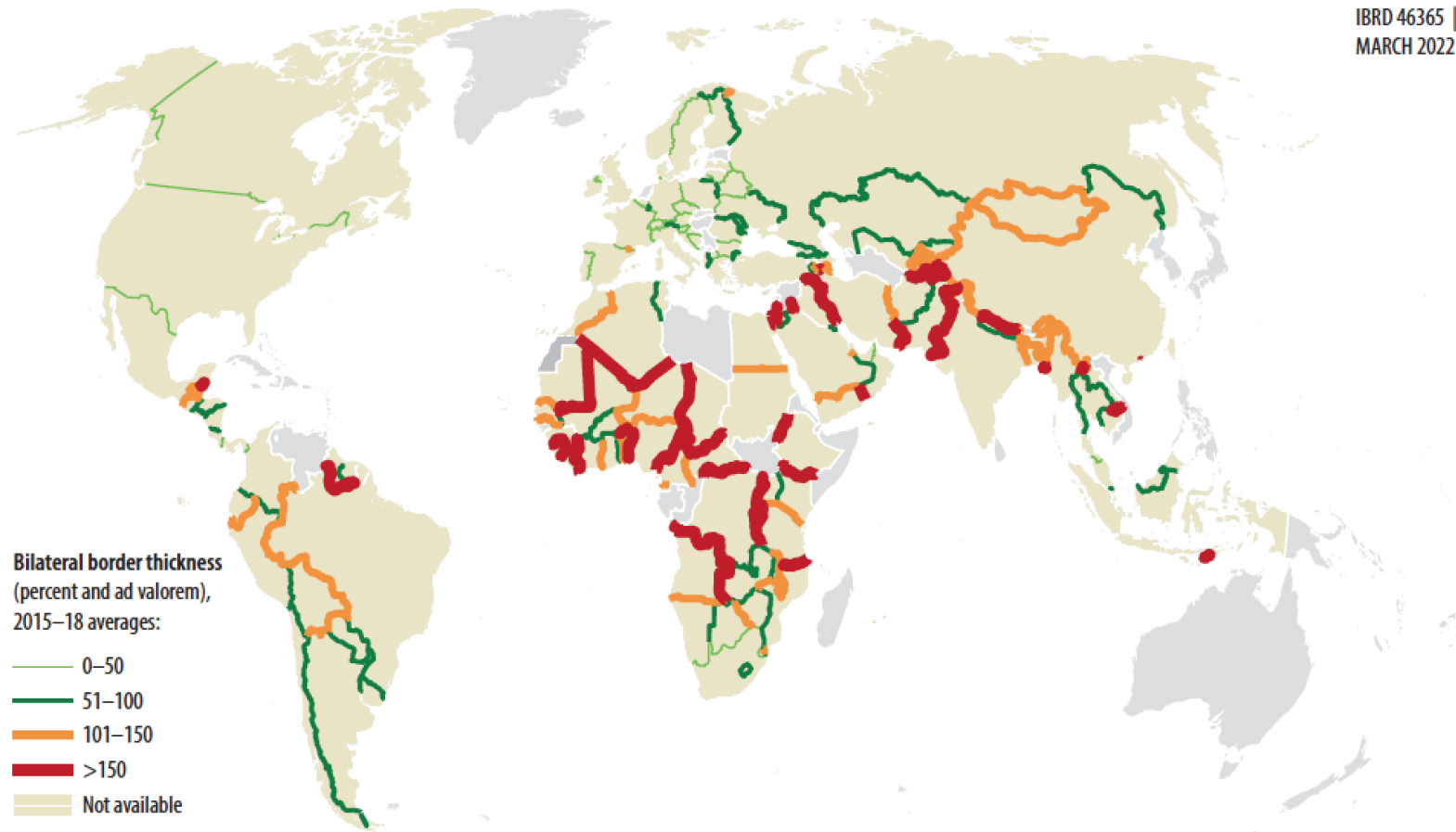


# One-stop border posts in Africa

Source:

Programme for Infrastructure Development in Africa (AU-PIDA)

IBRD 46365 |  
MARCH 2022



Source: Calculations based on World Bank-UNESCAP bilateral trade costs database (<https://www.unescap.org/resources/escape-world-bank-trade-costs-database>).

# Bilateral border thickness: costs of cross-border trade

(2015-18  
averages)

Source: World Bank

*The African Continental  
Free Trade Area: Economic  
and Distributional Effects.*



# Trade facilitation in the AfCFTA

- The **AfCFTA** has multiple provisions on trade facilitation including customs and border management – these form an integral part of the **trade in goods** protocol
- **Annex 3 on *Customs Co-operation and Mutual Administrative Assistance***
  - State parties' cooperation in all areas of customs administration, improved customs efficiencies
- **Annex 4 on *Trade Facilitation***
  - Simplification and harmonization of international trade procedures and logistics to expedite importation, exportation and transit processes
- **Annex 8 on *Transit***
  - Customs management and trade facilitation for goods, services and conveyancers that are in transit to their final destination

# Trade facilitation in the AfCFTA

- Annexes to the **AfCFTA Trade in Goods Protocol** :

Annex	Title	Border management provisions?
1	Schedule of tariff concessions	No
2	Rules of Origin	No
<b>3</b>	<b>Customs co-operation and mutual administrative assistance</b>	<b>YES</b>
<b>4</b>	<b>Trade Facilitation</b>	<b>YES</b>
5	Non-Tariff Barriers	No
6	Technical Barriers to Trade	No
7	Sanitary & Phytosanitary Standards	No
<b>8</b>	<b>Transit</b>	<b>YES</b>
9	Trade Remedies	No

# Trade facilitation in the AfCFTA

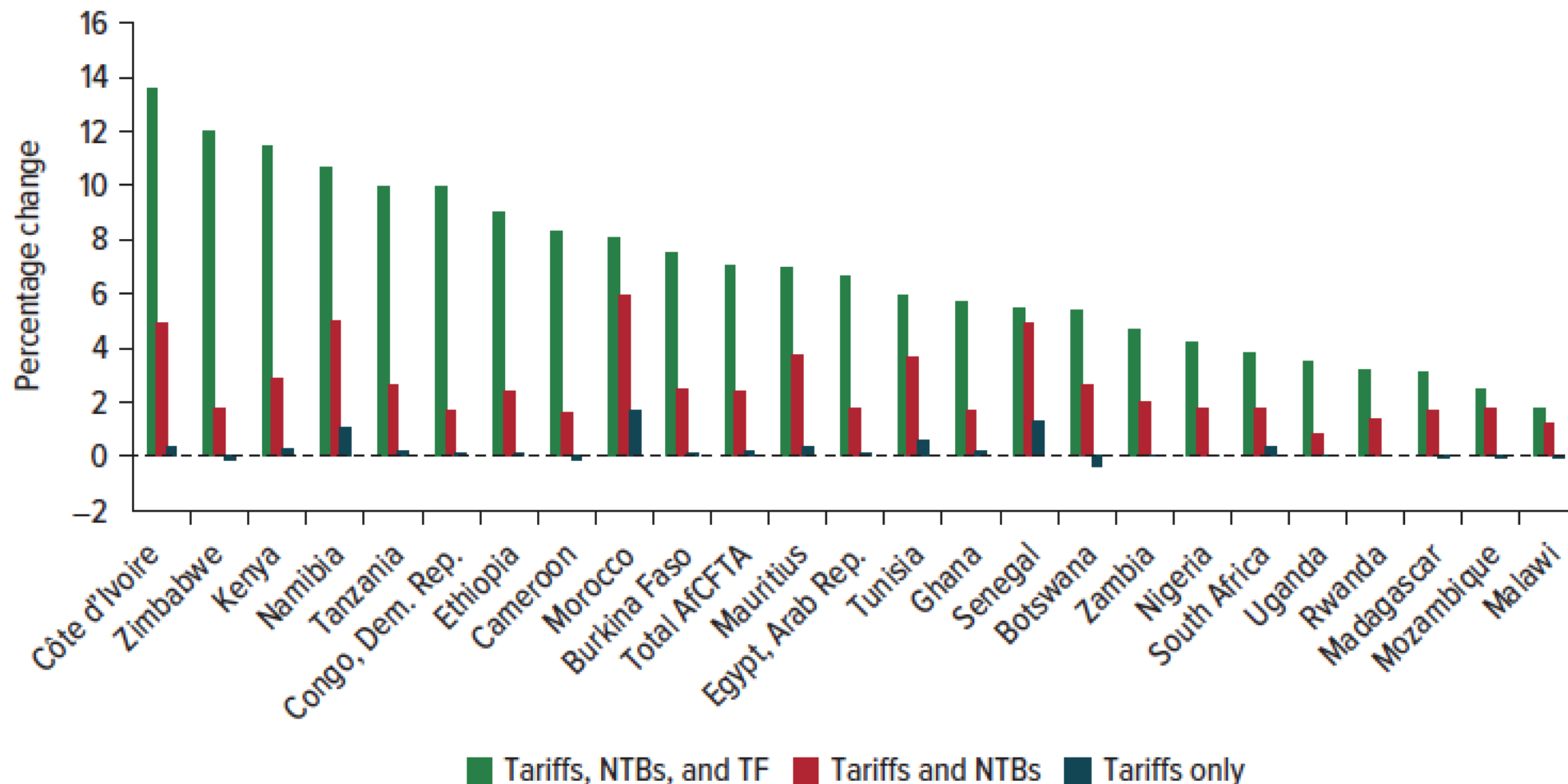
- **AfCFTA** (in Annex 3+4) shares many provisions of the **WTO TFA**, often using very similar wording and sequencing of provisions – in effect an incorporation of key WTO TFA provisions into the AfCFTA
- Explicit recognition in the AfCFTA of the **WTO TFA** – for example **notifications** and timing of implementation(s)
  - *to either to AfCFTA Sub-Committee on Trade Facilitation, Customs Cooperation and Transit, or*
  - *under the WTO TFA (Annex 4, Art. 29)*
- **Institutional arrangements:** Committee on Trade in Goods, Sub-committees on trade facilitation, non-tariff barriers ('red tape'), technical barriers ('standards'), SPS
  - *Composed of representative of the Member States*

# Trade facilitation in the AfCFTA

- AfCFTA disciplines on trade facilitation contain or impact various cross-cutting issues
- **Border management** and customs cooperation
  - → *this links to and potentially impacts movement of persons, work of immigration authorities etc.*
- Annex 8 on **Transit**
  - *Links between movement of goods (under customs bond) and movement of persons (truck drivers, related support services, and mutual recognition of licensing and the certification of service providers)*
- **Who benefits?** AfCFTA implementation of **trade facilitation** estimated to form the bulk of the expected gains in income levels (followed by reduction in NTBs... tariff liberalization on its own involves the least gain)
- **Implementation** of trade facilitation commitments are **crucial building blocks** in support of trade in goods and services, movement of persons, FDI etc.

# Expected real income gains AfCFTA

Source: World Bank The African Continental Free Trade  
Area: Economic and Distributional Effects.



Source: World Bank 2020.

Note: AfCFTA = African Continental Free Trade Area; NTBs = nontariff barriers; TF = trade facilitation.

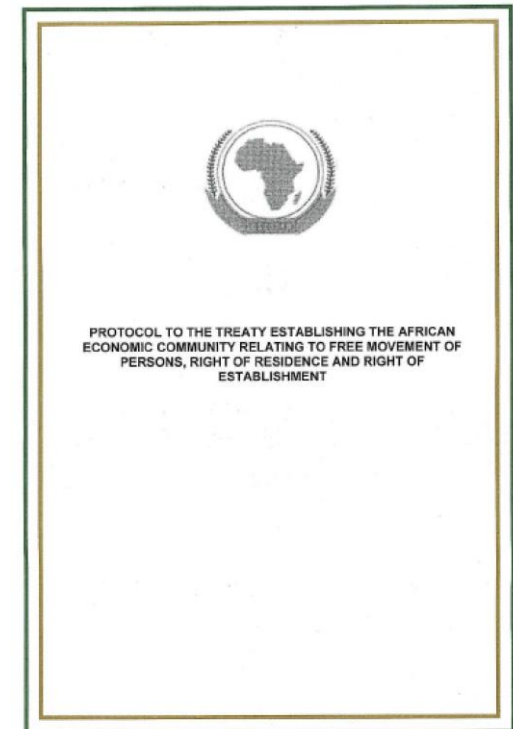
# Movement of Persons





# Background and Timelines of the FMP

- The movement of persons has been a long-standing and divisive “issue” on the continental integration agenda, and more than 15 years after the launch of the AU there had been no continental agreement on **person movement**
- Major momentum especially in **2017** with many rounds of negotiation around the principles of peoples’ right to entry
- The AU adopted the *Protocol on the Free Movement of Persons, Right of Residence and Right of Establishment (FMP)* in **January 2018**
- **Signed** by a significant number of countries in March 2018 at the 10th Extra-Ordinary Summit of the AU held in Kigali (alongside the **AfCFTA**)



# Objectives and Rationale

- The overall objective of the **FMP** is to provide for the *progressive implementation of free **movement of persons**, **right of residence** and **right of establishment** in Africa*, as an important building block to *facilitate the establishment of the African Economic Community*.
- It aims to advance trade, promote socio-economic development, and enhanced political integration
- Not part of the AfCFTA *per se* but rooted in Aspiration 2 of AU's Agenda 2063 – for **Africa to be an integrated and united continent**

# Free Movement of Persons, residence, defined

- How does the FMP define the *free movement of persons*?
- “...means the right of nationals of Member State to enter and move freely and reside in another Member State in accordance with the laws of the host Member State and to exit the host Member State in accordance with the laws and procedures for exiting that Member State.”
- **Right of residence :**
  - “...right of the national of one Member State to reside and seek employment in another Member State other than their Member State of origin”

# Right of establishment

- **Right of establishment** : “...right of a national of a Member State to take up and pursue the economic activities specified in Art. 15 [*business, trade, profession, vocation, or an economic activity as a self-employed person*] in the territory of another Member State

# Progress on adoption of the FMP

- At the launch date of the FMP in Kigali in March 2018, **30** AU Member States **signed** the Protocol. Cote d'Ivoire and Sierra Leone signed later that year, raising the number of signatories to **32**
- 15 ratifications are needed for the **FMP** to enter into force *for those countries that have ratified the agreement*
- 4 countries have **ratified** the agreement and deposited instrument of ratification – these are **Rwanda** (May 2018), **Mali**, **Sao Tome and Principe** (both May 2019) and **Niger** (July 2019)
- Since then, **no further signatures or ratifications**, yet 45 countries have ratified the AfCFTA ( → 17 countries since 2020 )

# Design of the FMP and implementation

- The FMP adopts a phased implementation approach: “**progressive realization**”
- **Phase 1** : **Right of entry** of AU Member States citizens for 90 days and abolishing requirements the need for a visa for such purposes
- **Phase 2** : **Right of residence** including for an AU national’s spouse and children
- **Phase 3** : **Right of establishment** – setting up business, trade or professional activities, including self-employed activities
- A **roadmap** annexed to the Protocol to serve as a guideline for implementation



# Other provisions of the FMP

- Free movement of **residents of border communities** – countries to facilitate this ‘without compromising security or public health of host country’
- **Students and researchers** – in accordance with host country laws
- Free movement of **workers and their spouses/children** – also subject to laws of host country
- **Work or residence permits** – host country to issue these according to their own laws

# Possible barriers to adoption of FMP

- **Loss of sovereignty** around a generally sensitive subject
- Concerns around **law enforcement**, the **spread of crime** and 'open' borders
- **Inadequate identification systems** and population registers in some countries
- **Systems for information exchange** of person-related crime data
- The need for **repatriation agreements**
- **Political concerns** particularly by wealthier African countries around economic migration and managing local expectations, **perceptions** around loss of control over borders

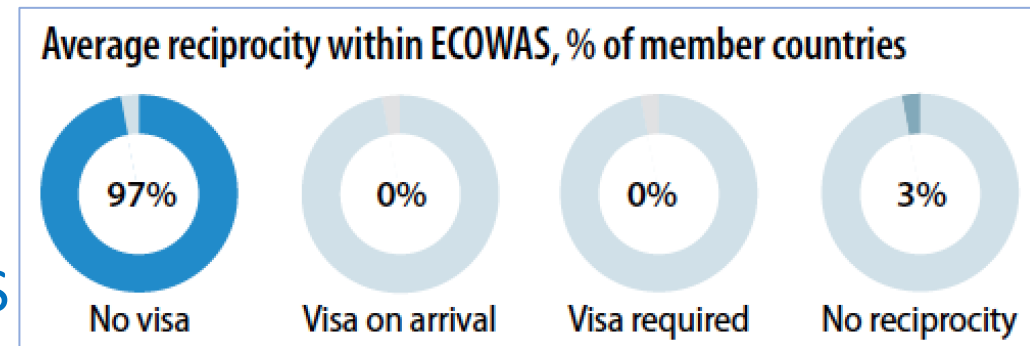
# Linking the FMP to the Regional Economic Communities

- **Article 28 : Roles of Regional Economic Communities (RECs)** - considered **building blocks** through which free movement of persons can be realized
- The FMP views the RECs as :
  - Focal points for promoting and evaluating **implementation of the FMP**, and reporting progress towards free movement in their respective RECs
  - RECs to submit periodic **reports** to the Commission on progress of implementation
  - RECs to **harmonize their policies and procedures** on free movement

# Observations on *regional* openness

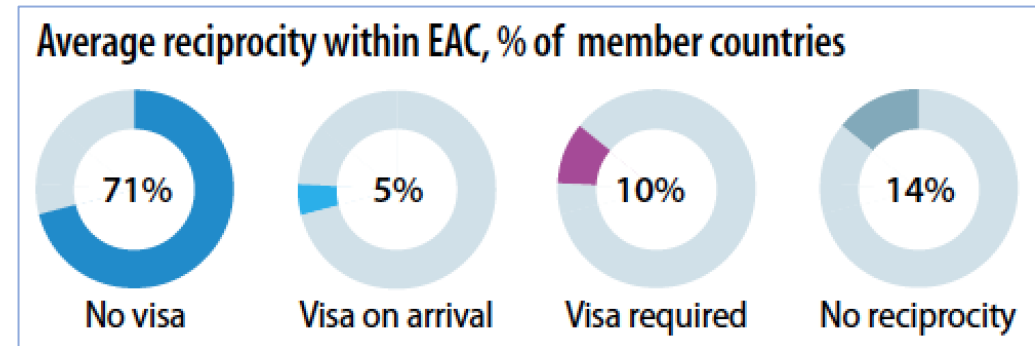
- The FMP recognizes that regional initiatives often pre-exist the FMP and may even be at an advanced stage. **Some examples:**
- **ECOWAS** : In 1979 it set itself a 15-year target of implementing free movement and right of residence liberalization on a **regional basis**.
  - To happen in 3 phases
  - (1) visa free access 90 days,
  - (2) right of residence and right to carry out employment activities, and
  - (3) right to establishment. To date, **Phase 1 has been implemented**
- 11 countries signed FMP (incl. 2 ratified)
- 4 not signed (incl. Nigeria)
- High average visa-openness on continental rank

**Most of the highest ranked countries from ECOWAS**



# Observations on *regional* openness

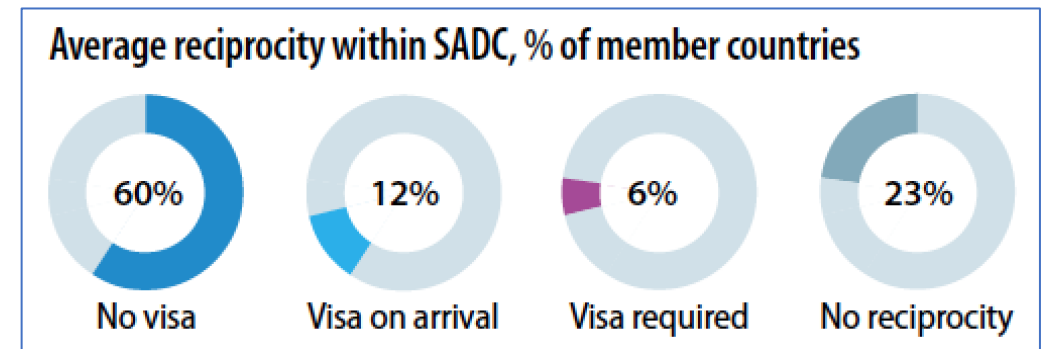
- **EAC** : The EAC treaty contains provisions on the free movement of persons, goods, services, right of establishment, capital flows, and a EAC passport.
- **Common Market Protocol** included commitments on free movement of people (2010).
- Some progress on free movement
  - (1) free movement for short visits not exceeding 30 days
  - (2) Right of residence (restricted and subject to special permits and/or work permits)
- 5 countries signed FMP (incl. 1 ratified)
- 1 not signed (Burundi)
- **Low average visa-openness on continental rank**



# Observations on *regional* openness

- **SADC** : Adopted draft protocol on free movement in 1995, but **not implemented**
- 2005 ***Protocol on facilitation of the movement of people***, signed by most countries, but ratified only by 6 (SACU+Mozambique)
- However, that Protocol has different ambitions, promotes sovereignty, makes free movement of persons (*visa free*), residence and establishment subject to domestic legislation, → encourages ***bilateral*** arrangements among countries
- 8 signed FMP, 8 not signed (incl. most SACU and Island States)

Openness on continental ranking is above average, but the above countries advocating for regional / bilateral openness generally ranked lowly on continental scale





# Future of the FMP?

- The success of African integration, and the success of the AfCFTA, depends on greater openness to the free movement of persons
- **No progress in terms of new signatures, or ratifications, since mid 2019**, yet 44 ratifications of the AfCFTA over the same period as the FMP (and almost 20 new ratifications since the last FMP ratification)
- Developments around visa-openness over past 5-6 years have shown that progress often more realistic and more progressive **in smaller regional groups**; will a focus on regional progress result in greater strides in implementing FMP disciplines?
- Upper middle-income countries perhaps more reluctant to adopt **continent-wide** FMP

# Future of the FMP?

- Does the FMP Roadmap (an integral part of the FMP) **encourage** or **discourage** adoption of the FMP?
  - *Some analysts believe that clearer **incremental strategies** and schedules should be incorporated into the **roadmap**, since...*
  - *countries may see **ratification** as **triggering an irrevocable process** with fixed and binding timelines over which they have little control*
- Africa's track record of **implementation** of agreements suggests that there is still insufficient political will around **continental reciprocal** free movement, with many unresolved contributing concerns
  - *Issues around border disputes, xenophobia, security, insufficient 'institutions' and border management systems to manage free movement, "continental opening", etc.*
- Regional / REC initiatives likely offer the greatest chance of real progress