



LEGAL X-RAY OF RESTRICTIVE MIGRATION POLICIES AND AFRICA'S DIPLOMATIC RELATIONS: CHALLENGES AND RESPONSES

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ABSTRACT

Migration has become an important feature of international relations, economic development, and regional integration. While states have the sovereign authority to regulate the entry, residence, and removal of foreign nationals, restrictive migration policies increasingly affect diplomatic relations, human rights, trade, and the movement of Africans both within and outside the continent. Despite international and regional frameworks protecting migrants, African nationals continue to experience restrictive visa regimes, detention, deportation, labor restrictions, and other barriers to movement. At the same time, African states themselves impose restrictive measures on other Africans, creating a gap between commitments to regional integration and the realities of migration governance. The article adopts a doctrinal approach, relying on international and regional legal instruments, judicial decisions, scholarly literature, policy documents, and relevant contemporary materials to examine the legal and diplomatic implications of restrictive migration policies. The study finds that states retain legitimate authority to control their borders, but such authority is limited by international human rights law, refugee law and regional obligations. Restrictive measures become particularly problematic where they are arbitrary, discriminatory, disproportionate, or inconsistent with non-refoulement and due-process requirements. The study further finds that deportations, visa restrictions, and migration agreements can generate diplomatic tensions, while weak African coordination limits effective responses. The article recommends stronger African diplomatic coordination, improved consular protection, greater use of regional legal mechanisms, implementation of the AU Free Movement Protocol, improved labor-migration pathways, and a continental mechanism for monitoring migration restrictions. These measures would promote lawful migration governance while strengthening Africa's diplomatic capacity and regional integration.

KEYWORDS: Restrictive Migration, African Diplomacy, Human Rights, Immigration Policy and the African Union.

1. INTRODUCTION

Migration in Africa presents a significant contradiction. African states have consistently promoted regional integration, free movement, intra-African trade, and stronger relations among African peoples. Yet, an African citizen crossing into another African country may still encounter visa requirements, additional documentation, restrictions on employment or residence, detention, deportation, or hostility based on nationality. Restrictive migration policies are therefore not only imposed on Africans by Europe, North America, or the Gulf States; they also exist within Africa itself. A Nigerian may experience immigration restrictions in another West African state, a Zimbabwean may face removal pressures in South Africa, and a Rwandan may encounter



restrictions elsewhere in East Africa. The African passport, by itself, does not guarantee unrestricted movement across the continent. This creates an important question for African migration governance: how can the continent pursue integration while individual states continue to exercise restrictive control over the movement of Africans? The 2018 AU Free Movement Protocol seeks the progressive implementation of free movement, residence, and establishment across Africa while recognising legitimate concerns relating to national security, public order and public health.

¹ The AU framework, therefore, does not seek to eliminate immigration control but attempts to balance State sovereignty with continental mobility.

The same approach appears in the AU Migration Policy Framework for Africa and Plan of Action 2018–2030, which addresses border governance, labour migration, irregular migration, forced displacement, migration and trade, migration governance and migrant protection.¹ The Framework also warns that excessive securitisation and the closure of legal migration channels can push migration underground, increase migrants' vulnerability, and contribute to transnational crime.² The AU's 2026 mid-term assessment similarly recognizes the importance of safe, orderly, and regular mobility while identifying uneven implementation among Member States and Regional Economic Communities. The practical consequences of restrictive migration policies are often experienced most directly by ordinary migrants. A border restriction may prevent a trader from reaching a market; deportation may deprive a worker of employment; and immigration enforcement may separate families or interrupt education. Once the affected individual is a national of another State, the matter can quickly move from domestic immigration administration into diplomatic relations. Governments may have to intervene through diplomatic or consular channels to obtain access to detained nationals, clarify the legal basis of detention, provide travel documents or challenge removal procedures.³

The 2013 expulsion of Rwandan citizens from Tanzania illustrates this relationship between migration and diplomacy. The issue subsequently reached the East African Court of Justice in proceedings concerning the failure to implement a directive addressing the expulsion. What began as a national migration measure consequently became an issue involving Rwanda, Tanzania and

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¹ African Union, *Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment* 2018, arts 3.

² African Union Commission, *Migration Policy Framework for Africa and Plan of Action 2018–2030*, 2018.

³ *ibid.*



the East African Community.⁴ The episode demonstrates that regional integration does not automatically prevent restrictive practices. The effectiveness of free-movement arrangements depends largely on national implementation.

The legal limits of migration control are further illustrated by *Anudo Ochieng Anudo v United Republic of Tanzania*.⁵ The applicant challenged the withdrawal of his Tanzanian nationality and his subsequent expulsion to Kenya. The African Court found violations including his right to nationality and right to be heard. The decision does not remove the sovereign authority of States to regulate immigration or nationality. Rather, it establishes that such powers cannot be exercised arbitrarily. Restrictions must have a lawful basis and comply with applicable human-rights obligations.

European jurisprudence provides a useful comparative perspective. In *Hirsi Jamaa and Others v. Italy*,⁶ the European Court of Human Rights considered Italy's interception and return of Somali and Eritrean migrants to Libya and found violations concerning inhuman treatment, collective expulsion and the right to an effective remedy. This illustrates migration externalization, where destination states rely on transit or origin countries to prevent migrants from reaching their territory. Such arrangements can involve development assistance, security cooperation, and broader diplomatic bargaining. The later decision in *N.D. and N.T. v Spain*⁷ demonstrates that restrictive border control is not automatically unlawful. The Court found no violation on the particular facts, taking account of the applicants' conduct and the availability of genuine and effective legal avenues for entry. The contrast between the two decisions shows that international law permits States to protect their borders, but the manner, purpose, proportionality, and safeguards surrounding such restrictions remain legally important. The contemporary diplomatic dimension of third-country deportation is reflected by the August 2026 arrangement under which the United States transferred approximately 20 third-country deportees to Liberia, with some subsequently transferred to Equatorial Guinea after refusing to disembark in Liberia. The development raises contemporary questions concerning sovereignty, responsibility, human-rights safeguards, and the bargaining position of African States in externally driven migration-control arrangements.⁸ The African experience must therefore be examined from both sides. Africa is often presented as a region whose citizens suffer restrictive migration policies abroad. That is true, but African governments also impose restrictive measures against migrants from other African countries, often citing security, employment, public order or irregular migration. This internal dimension is particularly important

⁴ Land Use Act 1978 (n 2).

⁵ [2018] AfCHPR 5.

⁶ (2012) 55 EHRR 21.

⁷ 2020, ECLI:CE:ECHR:2020:0213JUD000867515.

⁸ C Montoya-Galvez, Liberia receives first group of "third country" deportees from U.S., (CBC News, 20th August 2026) accessed online < Liberia receives first group of "third country" deportees from U.S., officials say - CBS News > 28th August 2026.



because more than half of African migrant workers remain within the continent.⁹ The AU Free Movement Protocol attempts to address this contradiction. It recognizes legitimate national security, public order and public health concerns while requiring progressive reduction of unnecessary barriers to movement and promoting non-discrimination.¹⁰ The challenge is therefore one of balance. Excessive restrictions can make free movement a largely symbolic commitment, while completely unrestricted movement may create political resistance where genuine concerns about trafficking, smuggling, terrorism, or public security exist.

Restrictive migration policies consequently have consequences beyond immigration administration. Mass deportations, border closures, discriminatory visa policies, and treatment of foreign nationals may strain diplomatic relations, while cooperation on labour migration, readmission, documentation and migrant protection can strengthen them.¹¹ Migration can therefore operate both as a source of diplomatic tension and as an opportunity for diplomatic cooperation. The AU's 2026 mid-term assessment, based on information from 34 Member States and Regional Economic Communities, confirms that implementation gaps remain despite progress in migration governance.¹² Africa therefore does not suffer from a complete absence of migration policy. It has developed continental and regional instruments, including the Migration Policy Framework, Free Movement Protocol, and ECOWAS free-movement regime. The more difficult problem is the gap between these commitments and the experience of migrants in practice.

Restrictive migration policies should no longer be viewed as purely domestic immigration measures. They increasingly have diplomatic, legal, economic, and regional consequences. A deportation can become a diplomatic dispute; a visa policy can affect bilateral relations; a border closure can disrupt trade and family relationships; and migration agreements can become part of wider political negotiations. The central challenge for Africa is therefore not to choose between completely open and completely closed borders. Neither approach adequately reflects the continent's realities. African States must retain the ability to address genuine security and public-order concerns while ensuring that migration restrictions remain lawful, proportionate, and consistent with human rights and regional commitments.

2. CONCEPTUAL CLARIFICATIONS

2.1 Migration

Migration refers to the movement of persons from one place to another, either within a State or across an international border. In the context of this article, international migration concerns the

⁹ International Organization for Migration (IOM), Migration Governance Indicators Data on the Implementation of the Global Compact for Migration in Africa. (IOM, Geneva, 2024).

¹⁰ *NI*.

¹¹ *ibid*.

¹² African Union Commission, Mid-Term Assessment of the 2018 Migration Policy Framework for Africa (2026). <Mid Term Assessment of the 2018 Migration Policy Framework for Africa | African Union > accessed online 28th August 2026.



movement of persons from one state into another, whether temporarily or permanently.¹³ It may be voluntary or forced, regular or irregular, and may involve workers, students, traders, tourists, refugees, and asylum seekers.¹⁴ Legally, migration is governed by different regimes depending on the status and circumstances of the individual. Article 12(2) of the International Covenant on Civil and Political Rights (ICCPR) recognises the right of everyone to leave any country, including his or her own,¹⁵ while Article 12(3) permits restrictions prescribed by law and necessary for recognised public interests.¹⁶ Similarly, Article 12 of the African Charter on Human and Peoples' Rights protects freedom of movement and the right to leave and return to one's country, subject to lawful limitations. However, a distinction must be made between migrants and refugees.¹⁷ Article 1 of the 1951 Convention relating to the Status of Refugees defines who qualifies as a refugee, while Article 33 protects refugees against refoulement.¹⁸ The 1969 OAU Convention further broadens refugee protection to reflect the particular circumstances of forced displacement in Africa.¹⁹ Thus, although states retain authority to regulate migration, such authority operates within established international and regional legal obligations. This distinction is particularly important where restrictive migration measures affect persons requiring international protection.

2.2 Restrictive Migration Policies

Restrictive migration policies refer to laws, regulations, and administrative measures adopted by states to limit, control, or discourage the entry, residence, employment, or movement of non-nationals. Such measures may include visa restrictions, border controls, detention, deportation, limits on employment and residence, and stricter conditions for legal entry.²⁰ Restriction, however, does not necessarily mean illegality. States possess the sovereign authority to regulate migration, but that authority must operate within applicable international and regional legal obligations.

3. LEGAL AUTHORITY OF STATES TO REGULATE MIGRATION

The authority of states to regulate migration derives primarily from the principle of State sovereignty. A state has the power to determine who may enter its territory, the conditions under which foreign nationals may remain, the rights attached to residence and employment, and the circumstances in which a non-national may be removed. This authority is recognized within the structure of international law, but it is not an unlimited power to exclude or expel persons at will. As Shachar observes, the commonly accepted idea that States possess an unfettered sovereign right to exclude non-nationals is increasingly contested in contemporary migration scholarship.²¹

¹³ M McAuliffe and L A Oucho (eds), *World Migration Report 2024* (International Organization for Migration 2024)21.

¹⁴ *ibid.*

¹⁵ ICCPR 1966, art 12 (2).

¹⁶ *ibid* 12(3).

¹⁷ ACHPR 1981, art 12.

¹⁸ Convention Relating to the Status of Refugee 1951, art 1(a).

¹⁹ OAU 1969, art i

²⁰ M McAuliffe and L A Oucho (eds), *World Migration Report 2024* (International Organization for Migration 2024)21.

²¹ A Shachar. Severing the Gordian Knot of Sovereignty and Migration Control. *AJIL Unbound*. 2024; 118.



International law consequently permits States to maintain immigration controls while requiring those controls to operate within established legal limits. Article 12(3) of the International Covenant on Civil and Political Rights (ICCPR), for instance, permits restrictions on freedom of movement where they are provided by law and necessary for recognised interests such as national security, public order or public health.²² Similarly, Article 12 of the African Charter on Human and Peoples' Rights recognizes freedom of movement while permitting lawful restrictions and providing protection against arbitrary expulsion. State sovereignty should therefore be understood as qualified sovereignty, rather than absolute discretion.²³ The African position is particularly important because migration control exists alongside regional commitments to integration. The AU Protocol on Free Movement of Persons, Right of Residence and Right of Establishment seeks to progressively facilitate movement across Africa, while retaining exceptions for legitimate security and public-order concerns. The practical operation of state authority is illustrated by *Good v Republic of Botswana*.²⁴ The African Commission on Human and Peoples' Rights considered the expulsion of a resident academic and found violations relating to fair hearing, expression, family life and non-discrimination. The significance of the case is not that Botswana lacked immigration authority, but that the exercise of that authority remained subject to the African Charter. A State may therefore decide that a foreign national should leave, but it must still comply with applicable procedural and human-rights requirements.

A similar principle was developed more directly in *Anudo Ochieng Anudo v United Republic of Tanzania*.²⁵ The African Court examined the withdrawal of the applicant's Tanzanian nationality, his subsequent expulsion, and the absence of adequate procedural safeguards. The Court held that Tanzania had violated his rights, including the right to nationality and the right to an effective remedy. The case demonstrates that immigration authorities cannot simply rely on administrative declarations to deprive an individual of legal status and remove him from the country. The same principle can be seen in *Abubakari v United Republic of Tanzania*,²⁶ where the African Court considered fair-trial and procedural guarantees in circumstances involving a foreign national. Its broader relevance is that migration status does not remove an individual from the protection of applicable human-rights standards. Immigration enforcement may be carried out through national institutions, but those institutions remain accountable to the legal obligations undertaken by the State.

The regional dimension becomes even clearer in *East African Law Society v Secretary General of the East African Community*,²⁷ arising from the 2013 expulsion of Rwandan and Burundian

²² ICCPR 1966, art 12(3).

²³ African Charter on Human and Peoples' Rights 1981, art 12.

²⁴ (2002) AHRLR 74.

²⁵ (2018) 2 AfCLR 248.

²⁶ (2016) 1 AfCLR 599.

²⁷ (2016) EACJ 113.



immigrants from Tanzania's Kagera region. The East African Court of Justice found that the EAC Secretary General had failed to properly perform his treaty responsibilities concerning investigation and follow-up of the expulsions, demonstrating an important practical limitation on national migration control: where a state belongs to a regional integration system, its immigration decisions may affect obligations owed not only to individuals but also to the regional community. Furthermore, in *Hirsi Jamaa and Others v Italy*,²⁸ the European Court of Human Rights held Italy responsible for intercepting migrants at sea and returning them to Libya without proper assessment of their protection claims. The applicants included Somali and Eritrean nationals, making the case particularly relevant to African migration. The Court's decision demonstrated that States cannot necessarily avoid their human rights responsibilities by transferring migration-control activities beyond their territorial borders.

At the same time, international law does not require States to leave their borders uncontrolled. In *N.D. and N.T. v Spain*,²⁹ the European Court took a more deferential approach to Spain's border-control measures and found no violation on the particular facts, emphasizing the circumstances of the applicants' entry and the availability of genuine avenues for lawful admission. The decision is useful because it illustrates the other side of the legal balance: States retain legitimate authority to prevent irregular entry, but the exercise of that authority must still be assessed against the safeguards required by international law.

Also, in *S.S. and Others v. Italy*,³⁰ decided in 2025, the European Court considered allegations arising from a maritime rescue situation involving irregular migrants, including Nigerian and Ghanaian nationals. The court's treatment of extraterritorial jurisdiction demonstrates that questions concerning where state responsibility begins and ends remain central to contemporary migration governance. Likewise, the African Court continued to develop its human rights jurisprudence in 2025 and 2026, demonstrating that questions of state authority, accountability, and access to justice remain active within the African legal system. Hence, States have the authority to regulate migration, but they do not possess an unrestricted license to disregard the rights of migrants. Immigration laws must have a legal basis, and their implementation must respect due process, non-discrimination, human dignity, applicable refugee protections, and regional commitments.³¹ This is particularly significant in Africa, where national migration policies increasingly operate within ECOWAS, EAC, SADC and AU frameworks that encourage greater mobility.

Accordingly, the central legal issue is not whether African States may control migration. They clearly may. The more important question is how that power is exercised. A state acting against

²⁸ (2012) 55 EHRR 21.

²⁹ (2020) 70 EHRR 2

³⁰ 2025, ECLI:CE:ECHR:2025:0520DEC002166018.

³¹ G S Goodwin-Gill and J McAdam, *Refugee in International Law* (4th edn, OUP 2021) 11.



trafficking, terrorism, irregular migration or genuine public-security threats may have legitimate grounds for restricting entry or residence. However, where restrictions become arbitrary, discriminatory, collectively punitive, or disproportionate, the exercise of sovereignty may become inconsistent with international and regional law. The challenge for African migration governance is therefore to preserve legitimate state control while ensuring that national immigration policies do not undermine the continent's wider commitments to human rights, free movement, and regional integration.

4. FREEDOM OF MOVEMENT, NON-DISCRIMINATION, AND PROTECTION OF MIGRANTS UNDER INTERNATIONAL AND AFRICAN LAW

Freedom of movement is an important legal benchmark for determining whether a State has exercised its migration powers lawfully. International law does not prohibit States from controlling their borders, regulating entry or removing foreign nationals. However, such powers are subject to legal, human-rights and procedural limitations. Article 12 of the International Covenant on Civil and Political Rights (ICCPR) protects the freedom of movement of persons lawfully within a State and recognizes the right of everyone to leave any country, including their own.³² Restrictions are permissible only where they are provided by law and necessary for legitimate purposes such as national security, public order, public health or the rights of others. The African Charter on Human and Peoples' Rights adopts a similar but particularly significant regional approach. Article 12 guarantees freedom of movement and the right to leave and return to one's country,³³ while Article 12(4) requires the expulsion of a legally admitted non-national to be based on a decision made in accordance with law.³⁴ Article 12(5) expressly prohibits mass expulsion directed against national, racial, ethnic or religious groups.³⁵ This is highly relevant to Africa because migration restrictions frequently affect Africans moving between neighboring States for employment, trade, education and family reasons.

The practical meaning of these provisions can be seen in *Anudo Ochieng Anudo v United Republic of Tanzania*,³⁶ Anudo was treated as having lost his Tanzanian nationality and was subsequently expelled to Kenya. The African Court found that the deprivation of nationality was arbitrary and that preventing him from returning to Tanzania violated his rights. The significance of the decision extends beyond nationality. It demonstrates that immigration authorities cannot simply label a person a foreigner and use that designation as the basis for exclusion or deportation where the person's citizenship is disputed.

³² ICCPR 1966 art 12.

³³ ACHPR 1981, art 12.

³⁴ *ibid* art 12(4)

³⁵ *ibid* art 12(5)

³⁶ (2018) 2 AfCLR 248.



A similar practical issue arose in *Lucien Ikili Rashidi v United Republic of Tanzania*.³⁷ The applicant, a Congolese national, was arrested and deported after Tanzanian authorities classified him and his family as prohibited immigrants. Importantly, he possessed evidence from Tanzanian authorities concerning his lost passport, which contained his residence permission. The African Court held that immigration authorities should reasonably have verified the document before treating him as a prohibited immigrant and found violations of his rights to residence and freedom of movement. The lesson for African migration administration is straightforward: immigration enforcement should involve verification, not automatic punishment. A missing passport, expired document or administrative irregularity should not automatically result in detention or deportation without examining the person's actual legal status. The prohibition of collective expulsion is equally important. In *RADDH v Zambia*,³⁸ although decided before the present period, the African Commission established an important principle concerning the expulsion of foreign nationals. Zambia had expelled large numbers of foreign residents, particularly West Africans, without adequate access to legal procedures. The Commission recognized that States possess the authority to deport foreigners but held that this authority does not justify the manner in which deportation is carried out. The case remains relevant to contemporary African migration because mass deportation can transform an immigration decision into a diplomatic dispute between States. This principle is particularly important when considering episodes such as the expulsion of African nationals from one African country to another. If hundreds of Nigerians, Zimbabweans, Congolese or other nationals are removed collectively because of their nationality, the issue is no longer merely an immigration matter. It may engage Article 12(5) of the African Charter, principles of non-discrimination and the diplomatic responsibility of the affected State to protect its nationals.

The African Guiding Principles on the Rights of Migrants, Refugees and Asylum Seekers, adopted by the African Commission, emphasize that migrants should be protected against discriminatory or arbitrary expulsion and should ordinarily have an opportunity to challenge an expulsion decision.³⁹ The Principles also prohibit removal where there are substantial grounds for believing that the person would face torture, cruel, inhuman or degrading treatment or other irreparable harm.⁴⁰ This reflects an important shift from viewing migrants merely as objects of immigration enforcement toward recognising them as rights-bearing individuals. Non-discrimination is therefore central to migration control. States may impose different visa requirements on Nigerians, Ghanaians, Kenyans or South Africans, for example, because nationality can legitimately form part of immigration policy. However, nationality cannot become a convenient cover for arbitrary or discriminatory treatment. Article 2 of the African Charter requires rights to be enjoyed without

³⁷ (2019) 3 AfCLR 13.

³⁸ (2000) AHRLR 321.

³⁹ African Commission on Human and Peoples' Rights, *African Guiding Principles on the Human Rights of All Migrants, Refugees and Asylum Seekers 2024*, Principles 20(1)

⁴⁰ *ibid*



distinction,⁴¹ while Article 12(5) provides a specific safeguard against mass expulsion based on nationality, race, ethnicity or religion.⁴² Viewed within the broader African integration project, this demonstrates that the continent's commitment to free movement cannot operate effectively where nationality continues to determine highly unequal treatment at borders.

The same principle applies to refugee and asylum situations. Article 12(3) of the African Charter recognises the right of persons facing persecution to seek and obtain asylum,⁴³ while the 1951 Refugee Convention and the 1969 OAU Refugee Convention provide additional protection, particularly through the principle of non-refoulement. A state, therefore, cannot simply classify every person entering irregularly as an immigration offender and return them without considering whether they may require international protection. This is especially important in Africa, where conflict, political instability and humanitarian crises frequently produce mixed movements involving refugees, asylum seekers, migrant workers and other travellers. In *Hirsi Jamaa and Others v Italy*⁴⁴ the European Court of Human Rights held Italy responsible for intercepting migrants at sea and returning them to Libya without properly assessing their protection needs hereby establishing that migration-control arrangements cannot be structured in a manner that allows a State to escape its human-rights obligations simply by preventing migrants from reaching its territory. Its relevance to Africa is considerable because many African migrants travel through transit states and dangerous maritime routes before reaching Europe. However, international law does not require States to abandon border enforcement. In *N.D. and N.T. v Spain*⁴⁵ the European Court reached a different conclusion concerning the immediate return of migrants who had crossed the Melilla border, emphasizing the circumstances of the particular case and the availability of genuine legal avenues for entry.

Consequently, freedom of movement under international and African law should not be understood as creating completely open borders. Rather, it establishes a framework within which States can address genuine concerns relating to terrorism, trafficking, smuggling, public health and irregular migration while respecting human dignity and due process. For Africa, this balance is particularly important. A Nigerian trader crossing into another West African State, a Congolese worker residing in Tanzania, or a Zimbabwean seeking employment in South Africa may be subject to legitimate immigration requirements, but those requirements should not become instruments of arbitrary detention, collective expulsion or discriminatory treatment.

⁴¹ ACHPR 1981, art 2.

⁴² *ibid* art 12(5).

⁴³ *ibid* art 12(3).

⁴⁴ (2012) 55 EHRR 21.

⁴⁵ (2020) 70 EHRR 2.



5. CONSULAR PROTECTION, DIPLOMATIC RECIPROCITY, AND THE ECONOMIC IMPACT OF RESTRICTIVE MIGRATION POLICIES.

Restrictive migration policies have consequences that extend beyond immigration administration and increasingly affect consular protection, diplomatic relations, trade, and investment. When an African national is detained, deported, denied entry, or subjected to serious immigration proceedings abroad, the matter may require intervention by the person's government through diplomatic and consular channels. The legal foundation for such intervention is principally found in the Vienna Convention on Consular Relations 1963, particularly Article 36, which provides for communication and access between consular officers and nationals of the sending State who are detained in the receiving State.⁴⁶ Consular protection is therefore a practical mechanism through which states protect their nationals abroad. A consular mission may verify the identity of a detained national, facilitate communication with family members, provide information about available legal procedures, monitor detention conditions, assist in obtaining travel documents and communicate concerns to the authorities of the receiving State. This does not, however, give a diplomatic mission authority to prevent the enforcement of another State's immigration laws.⁴⁷ The role of consular protection is to ensure that enforcement is carried out lawfully, fairly and consistently with applicable international obligations.

The importance of consular access was recognised by the International Court of Justice in *Avena and Other Mexican Nationals (Mexico v United States)*,⁴⁸ where the Court found that the United States had breached Article 36 of the VCCR by failing to provide required consular notification and access to certain Mexican nationals. Although the case predates the recent period, its principle remains relevant to contemporary migration enforcement: detention of a foreign national can create an international legal issue where consular rights are disregarded. Similarly, in *Jadhav (India v Pakistan)*,⁴⁹ the ICJ reaffirmed the importance of Article 36 and held that Pakistan had breached its obligations concerning consular access to an Indian national detained and sentenced to death. The case demonstrates that consular protection is not merely diplomatic courtesy; it can constitute a legally enforceable international obligation.

Practically, if a Nigerian national is detained in another African State, for example, Nigerian consular officials may seek access to that person, establish their identity, communicate with the detaining authorities and ensure that the individual understands the relevant legal process. Where several nationals are simultaneously detained or expelled, the matter may move beyond individual consular assistance and become a bilateral diplomatic issue. Restrictive migration policies may also generate diplomatic reciprocity. A State that introduces stringent visa requirements against another State's nationals may provoke a corresponding response. Reciprocity is a familiar principle in

⁴⁶ VCCR 1963, art 36.

⁴⁷ *ibid.*

⁴⁸ (2004) ICJ Rep 12.

⁴⁹ (2019) ICJ Rep 418.



international relations, but its use in migration policy can produce unintended consequences.⁵⁰ Retaliatory visa restrictions may affect students, workers, tourists, researchers, investors and families who have little connection with the original diplomatic disagreement.⁵¹ Governments should therefore distinguish between legitimate diplomatic signaling and measures that unnecessarily punish ordinary citizens.

The economic implications are equally important. Migration facilitates trade, investment, professional exchange, education and regional integration. A businessperson unable to obtain a visa in time may miss a commercial negotiation; a researcher may be excluded from an academic programme and a skilled professional may be prevented from taking up legitimate employment. This concern is particularly relevant to the implementation of the African Continental Free Trade Area (AfCFTA) and regional free-movement arrangements. The movement of goods cannot be completely separated from the movement of the people who negotiate contracts, provide services, establish businesses and facilitate investment.⁵² Restrictive mobility regimes can consequently weaken the practical benefits of economic integration.

The problem is further complicated by unequal diplomatic bargaining power. African States negotiating individually with major destination countries may have limited leverage when seeking improved visa access, protection for migrant workers or fair treatment of their nationals. A more coordinated African diplomatic approach could strengthen collective bargaining while still allowing individual States to respond to specific migration concerns. Ultimately, migration policy should not be treated as an isolated domestic matter. Detention can require consular intervention, deportation can trigger diplomatic engagement, visa restrictions can produce reciprocal measures, and excessive mobility barriers can undermine trade and investment.

6. REGIONAL INTEGRATION AND THE AFRICAN UNION

The African Union (AU) recognizes migration as an important part of continental integration, economic development, and regional cooperation. The Protocol on Free Movement of Persons, Right of Residence, and Right of Establishment seeks to progressively facilitate the movement, residence and establishment of African citizens across Member States.⁵³ This is also relevant to the African Continental Free Trade Area (AfCFTA) because traders, professionals, investors and service providers must be able to move across borders to fully benefit from regional economic integration. In practice, implementation remains uneven. Different visa requirements, border controls and employment restrictions continue to make movement difficult for Africans within Africa. In *Anudo Ochieng Anudo v Tanzania*,⁵⁴ the African Court emphasized that immigration and

⁵⁰ J Crawford, *Brownlie's Principles of Public International Law* (9th edn, Oxford University Press 2019) 383.

⁵¹ *ibid.*

⁵² *ibid.*

⁵³ AU, Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment 2018, art 3.

⁵⁴ (2018) 2 AfCLR 248.



nationality powers must be exercised lawfully and without arbitrariness. Likewise, *Lucien Ikili Rashidi v Tanzania*⁵⁵ highlighted the need for proper procedures before immigration authorities detain or remove foreign nationals. These cases demonstrate that African integration requires not only agreements but practical protection of mobility rights. Africa's criticism of restrictive migration policies abroad should therefore be accompanied by stronger implementation of free movement within the continent.

7. GLOBAL MIGRATION GOVERNANCE, EXTERNALIZATION, AND READMISSION

The Global Compact for Safe, Orderly and Regular Migration (GCM), adopted by the UN General Assembly in 2018, provides an important framework for contemporary migration governance. Although it is not a treaty and therefore does not create binding obligations in the same manner as the 1951 Refugee Convention, it provides 23 objectives covering regular migration pathways, labour mobility, trafficking, detention, consular assistance, return and reintegration, and international cooperation.⁵⁶ Its value to African states lies particularly in its use as a diplomatic framework for negotiating safer and more orderly migration arrangements. African States also participated actively in the negotiations, demonstrating the value of coordinated regional diplomacy. A related development is the externalization of migration control, whereby destination States seek to prevent irregular migration before migrants reach their territory. This may occur through border-control funding, interception arrangements, carrier sanctions, readmission agreements, offshore processing and cooperation with transit states.⁵⁷ In *Hirsi Jamaa and Others v Italy*,⁵⁸ the European Court of Human Rights held Italy responsible for human rights violations arising from the interception and return of migrants to Libya, showing that migration control cannot necessarily escape legal scrutiny merely because it occurs outside national territory.

For African States, externalization may create an unequal relationship in which African countries are encouraged or financially supported to enforce migration controls primarily serving the interests of destination States. This raises concerns about sovereignty, human rights and diplomatic bargaining power. Cooperation is legitimate, but it should not transform African States into enforcement extensions of foreign migration systems. Readmission agreements are another important tool of migration diplomacy. They allow States to establish procedures for returning persons who have no lawful basis to remain in another country. While such agreements can improve orderly migration management, they must operate consistently with non-refoulement, due process and human rights obligations.⁵⁹ The *M.S.S. v Belgium and Greece*⁶⁰ decision, for example, demonstrated the legal risks of transferring migrants where the receiving state's conditions may

⁵⁵ (2019) 3 AfCLR 13.

⁵⁶ UNGA, *Global Compact for Safe, Orderly and Regular Migration*, UN Doc A/RES/73/195 2018, 7.

⁵⁷ *ibid.*

⁵⁸ (2012) 55 EHRR 21.

⁵⁹ F Crépeau, 'The Global Governance of International Migration: Groping Towards a New Architecture' (2016) 25 *Global Governance* 1.

⁶⁰ (2011) 53 EHRR 2.



expose them to treatment contrary to human rights standards. However, African States negotiating such agreements should therefore insist on individual assessment, asylum safeguards, consular notification, family-unity protection, humane return procedures, monitoring, and reintegration measures. Migration cooperation should facilitate lawful movement and dignified return, rather than simply making deportation faster.

8. CONCLUSION

In conclusion, restrictive migration policies have consequences beyond immigration control. They affect diplomatic relations, trade, investment, education, employment, family life and regional integration. Although international law recognizes the sovereign right of States to regulate entry, residence, and removal, this authority is subject to human rights and regional obligations. The African challenge is therefore not to eliminate migration control, but to ensure that it is lawful, proportionate, non-discriminatory and respectful of human dignity. African States should move from fragmented bilateral reactions towards stronger continental coordination. Ultimately, effective migration diplomacy requires a balance between State sovereignty, human rights, and African integration. A coordinated approach would better protect African migrants abroad while also improving the movement and treatment of Africans within the continent.

9. RECOMMENDATIONS

1. African states should adopt a more coordinated approach to restrictive migration policies affecting their citizens. The African Union should strengthen diplomatic coordination, develop model bilateral migration agreements, and establish a continental mechanism for monitoring visa restrictions, deportations, detention, labor restrictions, and discrimination. Such coordination would provide reliable evidence for negotiations and strengthen Africa's collective bargaining position.
2. Consular protection should also be strengthened. African diplomatic missions should have sufficient resources to assist nationals facing detention, deportation, or other immigration proceedings. Where restrictions violate regional or international obligations, African States should make greater use of available regional legal and human rights mechanisms.
3. At the continental level, greater attention should be given to implementing the AU Free Movement Protocol and improving intra-African mobility. African States should also negotiate fair labor-migration arrangements that provide lawful pathways for workers while protecting their rights. Border-security policies must equally preserve access to asylum procedures and respect the principle of non-refoulement.