

INTERNATIONAL ORGANIZATION FOR MIGRATION THINK PIECE

Making the Case to Integrate Human Mobility into Cross-border Trade and Trade Facilitation

Cross-border Trade and Border
Management in Select Countries
and Borders in the COMESA
Region: A Case Study



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COMESA is an intergovernmental organization whose main aim is to attain sustainable economic growth and development through trade and investment which requires the mobility of people engaged in trade in goods, trade in services and investment. Under Article 164 of the COMESA Treaty, COMESA Member States made an undertaking to adopt individually, at the bilateral and regional levels, the necessary measures in order to achieve progressively regional integration. The COMESA Migration Programme is therefore an integral part of trade facilitation under the Market Integration Pillar of the current Midterm Strategic Plan of the organization.

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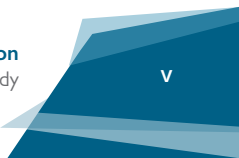
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Abbreviations and acronyms

AEC	African Economic Community
AfCFTA	African Continental Free Trade Area
AUFMP	African Union Free Movement of Persons Protocol
AUMPF	African Union Migration Policy Framework
BCP	border control posts
BMIS	border management information systems
CBM	coordinated border management
CBMMS	Cross-Border Migration Management Stakeholder
CBT	cross-border trade
CBTA	cross-border trade association
CCZ	common control zone
COMESA	Common Market for Eastern and Southern Africa
COMESA FMP	Common Market for Eastern and Southern Africa Protocol on the Free Movement of Persons, Labour, Services, the Right of Establishment and Residence
EAC	East African Community
EDF	European Development Fund
ETD	emergency travel document
HBM	humanitarian border management
IBM	integrated border management
ICT	information and communications technology
IHR	International Health Regulations
IOM	International Organization for Migration
ITC	International Trade Centre
MRTD	machine-readable travel document
MoU	memorandum of understanding
N-ZIMS	New Zambia Immigration Management System
NMC	National monitoring committee
NTB	non-tariff barrier
OSBP	one-stop border post
PoE	port of entry
REC	Regional Economic Community
SADC	Southern African Development Community
SOP	standard operating procedure
SPS	sanitary and phytosanitary
SSCBT	small-scale cross-border trader
TID	Trade information desk
TIDO	Trade information desk officers
TFTA	Tripartite Free Trade Agreement
TMEA	TradeMark East Africa
VoT	victim of trafficking



Background and introduction

Trade, migration and cross-border human mobility are inherently interconnected; without people, goods and services¹ would be unable to cross borders and contribute to formal economic development. Cross-border traders, due to their frequent crossing of international borders, are mobile populations and therefore of interest to the International Organization for Migration (IOM) and Common Market for Eastern and Southern Africa (COMESA). Traders or businesspersons, which include migrant entrepreneurs travelling for business development purposes, normally have business skills and also possess technical knowledge or technology that can be used to contribute to a positive relationship between migration and international trade.²

Emphasis in the COMESA region has been placed on the reduction and removal of tariff and non-tariff barriers (NTBs) that impede the movement of goods and services across borders and along trade corridors.³ While there has been considerable improvement in the intra-COMESA trade in terms of both goods and services, less focus has been placed on how cross-border human mobility impacts trade, including the dimensions of facilitation, health, protection, capacitation, humanitarian response and security at border control posts (BCPs).

This think piece examines the interrelationship between cross-border trade (CBT) and human mobility across borders. Land linked countries, in particular, face logistical challenges in moving goods that need to transit across several countries before reaching major ports. This necessitates a corridor approach in which harmonized and integrated immigration and border management standards and procedures are employed to create trade efficiencies and prevent bottlenecks in the movement of people and goods across various borders, thereby reducing the cost of doing business. This paper is intended to contribute to policy and operational responses that integrate human mobility and border management into trade facilitation responses from an immigration and border management perspective. It draws on existing research and studies undertaken, particularly those undertaken by IOM.⁴

While a corridor approach to human mobility and trade is taken in this paper, it also focuses on the cross-border mobility of small-scale cross-border traders (SSCBT), noting that the majority of SSCBTs tend to operate at one specific border, rather than crossing multiple borders and along trade and transport corridors.⁵ Due to cumbersome border procedures, corruption and harassment especially of female traders and in some cases strict immigration requirements, significant numbers of cross-border traders avoid crossing borders through formal designated entry points and use informal crossing points where goods are smuggled. Apart from exposing cross-border traders to dangers in informal crossing points, this practice also denies governments from much-needed tax revenue required for the provision of social services in

¹ This paper does not focus on trade in services.

² Such benefits on bilateral trade flows include the following: (a) lowering of transaction costs (such as through overcoming information asymmetries and developing transnational networks); (b) facilitating nostalgia trade (the so-called immigrant-preference effect); (c) direct capital investment in businesses or capital markets in the country of origin or ancestry; and (d) developing migrant- or diaspora-owned enterprises. However, these measures are not the focus of this think piece.

³ Non-tariff barriers (NTBs) are defined in the broadest sense. As defined in the Agreement Establishing a Tripartite Free Trade Agreement among the Common Market for Eastern and Southern Africa, the East African Community and the Southern African Development Community, NTBs are “any laws, regulations, administrative and technical requirements other than tariffs imposed by a partner State whose effect is to impede trade” (see www.tralac.org/news/article/7646-signed-agreement-establishing-a-tripartite-free-trade-area-among-comesa-the-eac-and-sadc.html).

⁴ It draws on the forthcoming IOM study titled *Promoting a Regional Corridor Approach to Coordinated/Integrated Border Management in Eastern and Southern Africa*, referenced to as “the study” in this report.

⁵ Certain SSCBTs travel longer distances to trade including beyond neighbouring countries.

a country. Nevertheless, many of the human mobility challenges that are pertinent to SSCBT (especially informal traders) are also relevant to cross-border traders in general. It recognizes the different nature of trade and trading conditions at the different BCPs, and this calls for a border-specific approach with no “one size fits all” approach possible.

The paper primarily draws from a migration and human mobility approach to trade which, as this paper argues, an integral aspect of trade and investment that has not received sufficient attention. It draws loosely on case studies looking at examples and practices from four COMESA Member States – Democratic Republic of the Congo, Malawi, Zambia and Zimbabwe. It provides examples from three border crossing points – Chirundu One Stop Border Post (OSBP) (between Zambia and Zimbabwe), Mwami–Mchinji (between Zambia and Malawi) and Kasumbalesa (between Zambia and Democratic Republic of the Congo). These countries and BCPs have been selected as they are part of the COMESA-managed project “The Cross-Border Trade Initiative: Facilitating Small-scale trade across the borders” (funded under the European Development Fund (EDF 11) project),⁶ which IOM is an implementing partner of COMESA.

This report is divided into five sections, each with corresponding points of consideration for COMESA as an organization and its Member States, as well as for other stakeholders including the private sector, donors, partners and local communities. The first section provides an overview of the regional integration context and explains how the free movement of persons and trade facilitation intersects. The second section looks at definitions of CBT. The third section examines available data on traders. The fourth section examines regional and national policy coherence on trade, border management and integrated/coordinated border management approaches. The fifth section provides an overview of the six elements (pillars) to address in integrating human mobility into CBT facilitation, including: (a) facilitation; (b) health; (c) protection; (d) capacitation; (e) humanitarian response; and (f) security. The final section concludes the paper.

Summary of key points

This report makes four key points. Firstly, that barriers to the cross-border human mobility of traders are NTBs, which in most cases increase cost of doing business and inefficiency in CBT. Some of the points made here are hypothesis, to be researched in more detail.

Secondly, the SSCBTs' failure to utilize formal crossing points limits the possibility of this CBT to contribute to the formal economy in terms of revenue. This is a commonly asserted statement, but one that is mainly restricted to examining barriers to customs and trade. Any such analysis requires corresponding analysis of immigration procedures and formalities.

Thirdly, there is a need for greater policy coherence and harmonization between trade and immigration at the Regional Economic Community (REC) and national level. Different approaches in relation to immigration and trade including over integrated/coordinated border management and limited intra-, inter- and international cooperation are limiting the potential for trade facilitation to be successfully achieved.

Finally, as the movement of people across borders is more complex than the movement of goods, it requires further attention in the trade context. Six elements, as outlined above, need to be addressed, which are examined in more detail in this paper. Emphasis is placed on the measures that can facilitate cross-border human mobility.

⁶ This project is funded by the European Union under the Eleventh EDF envelope for the COMESA region.

1. Regional integration, free movement of persons, border management and free trade agreements

The movement of goods and persons is a key pillar of the COMESA regional integration agenda. It focuses on transforming the region into a common market⁷ and facilitating the integration of its Member States into the world economy, through the implementation of regional integration policies at national and regional levels. The freedom of movement of people, capital, goods and services, which are all factors of production are the aspired four basic freedoms that are required to implement a successful regional trade regime.

To enhance the interlink between trade facilitation and human mobility, COMESA has promulgated two legal instruments under Article 164 of its treaty, which forms the basis of the COMESA Free Movement of Persons Agenda. These two instruments are the Protocol on the Gradual Relaxation and Eventual Elimination of Visa Requirements (hereinafter referred to as the COMESA Visa Protocol) (1984) and the Protocol on the Free Movement of Persons, Labour, Services, Right of Establishment and Residence (hereinafter referred to as the COMESA FMP, 2001).

At the continental level, the African Union has adopted the African Union Free Movement of Persons Protocol (AUFMP), which has yet to receive the required ratifications to come into force.⁸ As with the COMESA FMP, the AUFMP envisions a phased approach to implementation, with nothing affecting “more favourable provisions for the realization of the free movement of persons, right of residence and right of establishment contained in national legislation, regional or continental instruments” (AUFMP, Article 5.3 (a)) or preventing “the accelerated implementation of any phase of free movement of persons, right of residence and right of establishment by a regional economic community, sub-region or Member State before the time set by this Protocol or the Assembly for the implementation of that phase” (AUFMP, Article 5.3 (b)).

The COMESA Free Movement Protocol and the COMESA Visa Protocol are intended as a complement to the COMESA Economic Integration Agenda, which includes the free trade area. The Tripartite Free Trade Agreement (TFTA) between COMESA, East African Community (EAC) and the Southern African Development Community (SADC) addresses the issue of overlapping REC membership and enhances convergence towards the realization of the African Economic Community (AEC), established under the Lagos Plan of Action. The TFTA includes an Annex on the Movement of Business Persons as a step towards the eventual realization of Free Movement of Persons under the AEC. At the continental level, the African Continental Free Trade Area (AfCFTA)⁹ has been developed to create a single continental market for goods and services, with free movement of businesspersons and investments. Its objective is to establish a Continental Customs Union.¹⁰ The AfCFTA reached the threshold number of ratifications required for it to come into force on 30 May 2019.¹¹

⁷ A common market is a merger/union of two or more territories to form one common territory in which there is free movement of goods, labour, services and capital, and the right of establishment and residence.

⁸ Protocol to the Treaty Establishing the African Economic Community Relating to the Free Movement of Persons, Right of Residence and Right of Establishment, 2018.

⁹ African Continental Free Trade Area, 2018.

¹⁰ At the end of March 2019, only three countries had yet to sign the consolidated text of the AfCFTA Agreement: Benin, Eritrea and Nigeria.

¹¹ On 29 April 2019, the last two countries to have received parliamentary approval for ratification of the Agreement Establishing the African Continental Free Trade Area deposited their instruments of ratification with the depository, paving the way for the AfCFTA's entry into force. According to Article 23 of the agreement, entry into force occurs 30 days after the 22-country threshold is reached.

In the COMESA context, there has been a rapid move towards trade facilitation by addressing the logistics of moving goods more efficiently through ports or by roads and facilitating documentation required for CBT. There have been more limited measures that facilitate the movement of persons, including cross-border mobility. While the COMESA Visa Protocol is in force, the Free Movement Protocol has yet to be ratified by the requisite number of countries and therefore for it to be in force.¹² Article 164 of the COMESA Treaty requires the COMESA Visa Protocol to be implemented fully before the Free Movement of Persons enter into force.

Several measures explained in this paper have already been undertaken by COMESA and its Member States to facilitate free movement, in line with the COMESA Treaty's concept of variable geometry, which acknowledges that all countries cannot move at the same pace, and therefore individual, bilateral and multilateral measures can be undertaken by Member States outside the COMESA Economic Integration Agenda to make progress towards the attainment of free movement of persons. To this effect, a significant number of COMESA Member States have taken progressive measures through individual, bilateral and regional measures that have enhanced the implementation of the COMESA Visa Protocol, such as the granting of visas to all African citizens at ports of entry. Such Member States include the Ethiopia, Kenya, Mauritius and Seychelles. In addition to the two COMESA Protocols currently in place, the COMESA Council of Ministers has also made several decisions aimed at facilitating the progressive attainment of the free movement of persons under the COMESA Economic Integration Agenda. These measures include the decision to develop a visa for businesspersons as an interim measure before the complete elimination of visa requirements, the development of migration profiles, the establishment of a regional migration database and related information-sharing mechanism.

Free movement of persons is a phased process of progressive implementation, which is closely aligned with the various stages of regional economic integration. The transition from a free trade area to a customs union and on to a common market requires effective controls of the internal borders and, eventually, of the external borders of the common market. The COMESA FMP outlines a common approach to security in relation to cooperation in the prevention and the fight against crime.¹³

While not explicitly outlined in either the Visa Protocol or FMP, there is also a need for the harmonization of border procedures and travel documentation to facilitate the entry of bona fide travellers and address irregular migration and cross-border mobility. In 2011, at the Fourth COMESA Meeting of the Ministers Responsible for Immigration, it was suggested that border regulations and procedures should be harmonized.¹⁴ To facilitate the harmonization of immigration laws and procedures in the COMESA region, the COMESA Council of Ministers adopted a Model Law on immigration that Member States can use as a guiding tool to achieve harmonization.

The free movement of persons does not mean the uncontrolled movement of people or the removal of borders and border control. Nevertheless, free movement of persons is often poorly understood, including by government officials, the private sector¹⁵ and the general public. Furthermore, awareness of the two COMESA Protocols among stakeholders is limited. With the support of IOM,¹⁶ COMESA is implementing a pilot project in Zambia and Zimbabwe to increase awareness of the two protocols to improve implementation.

¹² While the Protocol on the Free Movement of Persons and the Protocol on the Gradual Relaxation and Eventual Elimination of Visa Requirements was adopted in 2008, to date, only four countries have signed the protocol: Burundi, Kenya, Rwanda and Zimbabwe. Of these, only Burundi has ratified.

¹³ As outlined in Article 8 of the COMESA FMP.

¹⁴ See recommendation 55.

¹⁵ COMESA Business Council, Private Sector Position brief: Addressing the following NTB; Facilitation of movement of business persons in the region and elimination of visa requirements (n.d.).

¹⁶ The project was titled "Building the Capacity and Raising Awareness Among COMESA Member States on the Free Movement Protocol" and was funded by the IOM Development Fund.

Support included the following: (a) creation of interdepartmental national monitoring committees (NMCs) to help advance the free movement agenda; (b) development of a training manual on the COMESA Free Movement Agenda and provision of training; (c) development of standard operating procedures (SOPs) for Immigration Officers on the two protocols; and (d) development and dissemination of an awareness-raising strategy.

To identify the challenges and reasons why COMESA Member States have been slow in fully implementing the Visa Protocol, in 2018, IOM¹⁷ undertook an analysis of existing Member State alignment to the COMESA Visa Protocol. A series of recommendations and national action plans for each Member State were developed to gradually move towards its full implementation. It was also complemented by the design of a new criteria to benchmark States' progress in relation to the Visa Protocol implementation.¹⁸

Building on the recommendations formulated in the analysis of the existing COMESA Member State alignment to the Visa Protocol, in 2019, IOM provided support to COMESA recommending the design of an online monitoring and reporting mechanism on the implementation of the Visa Protocol, through funding from the European Union-ACP Action. The design recommended the platform be integrated within existing COMESA Online Monitoring and Evaluation Mechanism.¹⁹ The intention of the platform is to enable Member States to report on progress made in relation to adherence to the Visa Protocol implementation.

Points of consideration

- COMESA Member States that have not done so are encouraged to ratify and implement the COMESA FMP and ensure full implementation of the Visa Protocol as a means of strengthening further regional integration.
- COMESA may wish to promote increased understanding of the free movement concept and the provisions of the COMESA FMP, including through the following: (a) establishment of NMCs; (b) provision of training; (c) development and implementation of awareness-raising strategies; and (d) further engagement with the private sector and the public.
- COMESA may consider implementing the platform for the online monitoring and reporting on the implementation of the Visa Protocol, in line with the IOM-supported recommendations for its design and set-up.

¹⁷ Technical assistance was provided by IOM through the ACP-European Union Migration Action, funded by the European Commission.

¹⁸ This technical assistance was pursuant to several COMESA minister's decisions, namely the Task Force on the Development of a Roadmap for the implementation of, inter alia, the Visa Protocol and the adoption of the 2015 Strategy and Action Plan for the Implementation of Council Decisions and Visa Protocol.

¹⁹ The creation of the COMESA Visa platform therefore aligns with the African Union Free Movement Article 25(3), which states that "State Parties shall – through bilateral or regional arrangements – cooperate with each other by exchanging information related to the free movement of persons and the implementation of this Protocol".



2. Cross-border traders as mobile populations

CBT has grown to be an important source of livelihoods in the COMESA region, where it is driven by factors including the following: (a) resource/income differentials between countries; (b) geographical contiguity; (c) established informal commercial links; (d) existing border markets; (e) high unemployment and lack of skills; (f) high unemployment rates in the region; and (g) commodity price differences between countries.

CBT typically happens at small scale and is often dominated by women and youth. Revenue obtained through CBT is often the primary source of income for small-scale traders, notably for women and young people. A large majority of individual traders (70% to 80%) are women for whom this activity is often the main or the only source of income.²⁰

Informal CBT constitutes a major form of informal activity in most African countries. Traders often end up working in the informal sector due to a scarcity of jobs. Informal CBT among SSCBTs void using formal structures at border points for crossing due barriers within the formal sector, which include difficulties in accessing trade- and immigration-related documentation, long waiting times at the borders, corruption and sexual harassment of women traders, and inadequate knowledge of border immigration and customs formalities.

Nevertheless, there is little consensus on what constitutes a cross-border trader and no internationally recognized definition. Traders, in particular SSCBTs, mainly trade in agricultural products and commodities, most frequently purchasing goods for resale in their home country.

Traders can make up part of the “mixed flows”²¹ that cross borders. From an immigration perspective, where cross-border traders are registered (on entry) by Immigration authorities, they generally fall under the category of businesspersons (or possibly investors). Immigration legislation is unlikely to define a trader as a specific category of persons entering/exiting the country.

²⁰ See notably: International Trade Centre, Case story on gender dimension of aid for trade – Women informal traders transcending African borders: Myths, facts and ways forward (n.d.); P. Brenton, C.B. Bucekuderhwa, C. Hossein, S. Nagaki and J.B. Ntagoma, “Risky business: Poor women cross-border traders in the Great Lakes region of Africa”, Africa Trade Policy Note #11 (World Bank, Washington, D.C., 2011); USAID – Enabling Agricultural Trade, “Women in cross-border agricultural trade”, Policy brief no. 4 (October 2012); TradeMark East Africa (TMEA), *Access and Opportunity: Gender and Trade in East Africa – Faces of Women in Trade* (Nairobi, 2015).

²¹ “Mixed flows have been defined as ‘complex population movements including refugees, asylum seekers, economic migrants and other migrants’. Unaccompanied minors, environmental migrants, smuggled persons, victims of trafficking and stranded migrants, among others, may also form part of a mixed flow” (IOM’s Ninety-Sixth Session, Discussion Note: International Dialogue on Migration). The principal characteristics of mixed migration flows include the irregular nature of and the multiplicity of factors driving such movements, and the differentiated needs and profiles of the persons involved (see www.iom.int/files/live/sites/iom/files/Country/docs/Mixed-Migration-HOA.pdf (accessed 4 March 2019)).

Cross-border traders can (but may not necessarily) be migrants²² depending on the duration of stay and their status in the country of non-habitual residence.²³ While not necessarily labour migrants,²⁴ traders are economic migrants, and may be either self-employed or employed and with an employment relationship generally being with the country in which they reside.²⁵

There are also many forms of cross-border traders, from large-scale commercial traders, medium-size traders, informal traders,²⁶ and SSCBTs. Traders can be engaged with both informal and formal trade. There may also be a series of middlepersons, “transporters”²⁷ and other individuals involved in the movement of goods across the border. Small-scale traders are often conflated with border residents, with legal provisions in some countries in place to facilitate the cross-border movement of border residents (see section 5.1.6. Border residency arrangements and provisions for cross-border traders).

Points of consideration

- COMESA and States may consider examining existing border residency arrangements to see how they may facilitate the further mobility of border residents including cross-border traders living in border areas.

²² In Zambia, SSCBTs are considered to be temporary migrants and have been given the space within the COMESA Market for a specific period using a special temporary residence permit.

²³ The United Nations defines an international migrant as “any person who changes his or her country of usual residence” (§32, United Nations Department of Economic and Social Affairs Statistics Division (UN DESA), *Recommendations on Statistics of International Migration* (Revision 1), ST/ESA/STAT/SER.M/58/Rev.1 (United Nations, New York, 1998). The resident population includes not only nationals but also foreigners, persons without citizenship, undocumented migrants, applicants for asylum and refugees (UN DESA, *Principles and Recommendations for Population and Housing Censuses* (Revision 2), ST/ESA/STAT/SER.M/67/Rev.2 (United Nations, New York, 2008). An international migrant who changes his or her place of usual residence for at least one year is defined as a long-term migrant, while a person who changes his or her place of usual residence for more than three months but less than one year is considered to be a short-term migrant. Although this definition is endorsed by the UN Statistical Community, this definition is not applied uniformly across countries.

²⁴ A labour migrant has an employment relationship, including a contract and corresponding immigration status, in the country of destination.

²⁵ However, migrants may start and continue to own enterprises in the country of residence or in the country of origin, either upon physical return to the origin country or remotely through intermediaries. The IOM study confirmed that most (small-scale) traders buy to sell in their countries of origin.

²⁶ The World Bank argues that the distinction between “small-scale” and “informal” trade is important. In the existing literature, many sources refer to the phenomenon described in this article as *informal cross-border trade* (ICBT); however, this often carries a negative connotation as “informal” can be easily confused with “illegal”. It also inaccurately reflects the reality of trade flows on the ground, as traders may indistinctly use both formal and informal crossing channels depending on a variety of factors, such as the value of their consignment, the length of the queue at the border or the mood of the individual official on duty (see www.tralac.org/images/docs/13116/bridges-africa-june-2018-ictsd.pdf (accessed 11 June 2019)).

²⁷ At Kasumbalesa, transporters commonly cross the borders on bikes with goods obtained from large container trucks, thus evading taxes.

3. Available migration-related data on traders

There is a lack of data concerning the number, nature and frequency of cross-border traders. Cross-border traders are not a homogenous group, and that fact limits the possibility of data capture and analysis. From a migration perspective, two principal sources of data exist – flow and stock data, both of which are required to provide a complete picture of the migratory situation in the country.

The principal source of flow data is border data. Data captured at borders generally refers to the data collected by Immigration authorities concerning the entry and exit of nationals and non-nationals. Immigration data that is captured at the border includes the time and location of the individual crossing the border (on entry/exit) by nationality, gender and purpose of entry. Border data can also encompass information regarding visas, including those issued at borders. Border data is generally intended for security purposes rather than policymaking.

Immigration entry/exit data is captured against the type of visa and immigration-related permit issued, or entry category, and not against the type of goods one trades in. For the three countries, all traders, regardless of type and size, are included within a single category of business visitors. Data regarding SSCBT is not collected by immigration agencies (see section 5.1.3. Border infrastructure and border management information systems). Data regarding the movement of cross-border traders are generally estimates obtained via sporadic surveys at select BCPs undertaken by cross-border trade associations (CBTA).

A further data constraint relates to the level of informality across borders. It is well documented that borders are highly porous, with much of the human mobility and much of the trade taking place outside of official BCP and therefore not captured by existing data capture systems.

A second source of migration data is stock data. The stock of international migrants refers to people who live in a country at a specific point in time and who have previously migrated to the country. Stock data is commonly obtained from administrative records, such as national censuses and population registers.

While the human mobility data may provide a possible proxy of business-related CBT into these countries, it cannot inform decision-making on goods as it is not disaggregated by types of goods and services traded in. Business visitors can be traders of goods; others can trade in services, while others can simply be attending conferences or negotiating business.

Other sources of migration-related data include data captured during epidemics and migrant health data. Wellness centres and clinics at BCPs collect and analyse data pertaining to their clientele. In addition to utilizing the data for planning the trade facilitation function of migrant health, the data could also be used for the planning of interventions meant to reduce the social costs of risks associated to migrant health.

Points of consideration

- States are encouraged to address the requirement for accurate, reliable and timely data on cross-border traders, including sex-disaggregated data. Only through evidence-based data is it possible to better describe and understand the linkages between trade and human mobility.
- States may wish to investigate the possibility of utilizing stock and flow data to better inform trade and migration policy and operational responses at BCP.
- COMESA may consider providing guidance to States on migration data capture, analysis and use for CBT purposes.



4. Policy harmonization on trade, migration, border management and integrated/coordinated border management approaches

Within the COMESA regional integration agenda, the removal of barriers to the movement of persons and those relating to goods are two sides of the same coin. Nevertheless, corresponding policy approaches are often siloed. A harmonized approach is therefore needed in relation to policies, laws and procedures to facilitate cross-border migration and trade.

Within free movement, there are differences and variations both within and between RECs regarding measures related to the cross-border movement of persons. The COMESA-EAC-SADC Tripartite Free Trade Area is a free trade agreement between the three regional blocks. Each of these RECs have their own separate free movement arrangements with different provisions. Within COMESA the Visa Protocol is in force, however the COMESA FMP is not. While recognizing that each of the RECs has their own mandates and membership, of the existing Free Movement Protocols in Africa, only the EAC Protocol is in force.²⁸

Moreover, varying levels of regional integration within the COMESA, as well as overlapping membership of different RECs by several States, increases the obstacles to harmonization on free movement issues in relation to cross-border mobility.²⁹

From a migration policy perspective, the African Union Migration Policy Framework (AUMPF),³⁰ which provides continental guidance on countries that wish to formulate migration policies, includes focus on trade and migration; it focuses mainly on the contribution that migrants have on trade. It also includes provisions related to border management that refer to harmonization. While COMESA has in place legal guidance related to Free movement as set out in the COMESA Treaty provisions provided for under Article 164, it has no detailed regional migration policy guidance for its Member States. At present, Zambia, Malawi and Zimbabwe are in the process of developing national migration policies, in line with the AUMPF.

National immigration legislation is often outdated and focuses primarily on border control rather than trade facilitation, with limited harmonization of procedures that facilitate CBT and migration. Three of the four countries included in this paper each has immigration legislation:³¹ Malawi (Immigration Act, 1964), Zambia (Immigration and Deportation Act, 2010) and Zimbabwe (Immigration Act, 2010).

²⁸ The provisions relating to free movement of persons are outlined in the Protocol on the Establishment of the East African Community (EAC) Common Market, which entered into force on 1 July 2010. The Protocol is complemented by a series of annex (regulations) to implement the provisions of Article 7 of the Protocol and ensure that there is uniformity among the partner States.

²⁹ The Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment (AUFMP) is intended to remove discrepancies between different free movement arrangements. In regions where regional free movement protocols already exist, those RECs should seek to amend their protocols to align the continental AUFMP. However, the AUFMP is not currently in force.

³⁰ EX.CL/Dec.986-1007(XXXII) Migration Policy Framework for Africa and Plan of Action (2018-2030). Thirty-Second Ordinary Session of the Executive Council, 25–26 January 2018 (Addis Ababa, Ethiopia).

³¹ The Democratic Republic of the Congo has no Immigration Act in place.

Conversely, trade-related legislation tends to omit provisions that relate to the movement of people. Zambia's Border Management and Trade Facilitation Act, which came into force in 2018, represents an important milestone relating to trade facilitation. Nevertheless, the act contains no reference to mobility of persons related to trade or human rights principles.³² In 2004, COMESA developed a model law on immigration as guidance for Member States. The model law on immigration serves to “regulate the entry into and the remaining within (Member State) of immigrants and visitors to provide for the removal from (Member States) of criminals and other specified persons” (Model Immigration Act) While the model law includes a couple of important provisions including guidance on entry categories, it does not specifically include measures regarding trade facilitation and could benefit from revision.

Harmonized approaches and ensuring policy coherence require common frameworks relating to coordinated/integrated border management (see section 5.1.4. Integrated/Coordinated border management). In May 2012, the draft African Union Strategy for Enhancing Border Management in Africa was released. The AUMPF refers to cooperative border management³³ rather than integrated border management (IBM). Different African Union documents provides different definitions of IBM and CBM concepts.³⁴ While the African Union Border Programme sets out its approach on IBM, aligning it in general terms to the European Union IBM concept, there is currently no detailed guidance for States on how to operationalize an IBM approach within the relevant pillars and principles envisioned for this new paradigm of border management.

COMESA has indicated its intention to develop coordinated border management guidelines.³⁵ Coordinated border management primarily focuses on measures to facilitate trade and goods rather than corresponding immigration and human mobility requirements. Zimbabwe and Malawi are currently in the process of developing integrated/coordinated border management, while Zambia has outlined a commitment to developing IBM.³⁶ It is foreseen that additional regional guidance will be provided by COMESA in order to harmonize national policies, legislation and procedures in relation to immigration and border management with neighbouring States.³⁷

The One Stop Border Post (OSBP) is both a trade facilitation and border management tool (see section 5.1.5. One-stop border posts). Malawi, Zambia and Zimbabwe are developing OSBPs and have/are enacting One Stop Border Post acts. OSBP must tackle human mobility challenges that are common to traditional national border controls and also require much deeper bilateral coordination and engagement, including the standardization and compatibility of legislation, administrative frameworks and operational procedures.

³² National Assembly of Zambia, The Border Management and Trade Facilitation Act, 2018. Available at www.parliament.gov.zm/node/7857.

³³ It states that “Cooperative Border Management (CBM) refers to a cohesive government response to the challenges of border management, through the cooperation of public authorities across sectoral and international boundaries toward a shared goal: to balance the easy and legal movement of humans and goods and the prevention of illegal activities, human and national insecurity through effective and efficient joint arrangements”. (African Union, The Revised Migration Policy Framework for Africa and Plan of Action (2018–2027), Draft (Addis Ababa, n.d.)

³⁴ Including reference to coordinated border management (CBM), collaborative border management and comprehensive border management.

³⁵ Commitments to the IBM approach have been indicated within reports of the various COMESA divisions, including within reports produced as an outcome of the annual COMESA Chiefs of Immigration Officers meetings.

³⁶ Zambia's Seventh National Development Plan (2017–2021) includes an aspiration to move towards implementing an IBM approach.

³⁷ SADC has in place Coordinated Border Management Guidelines, which were approved by ministers in 2011. It is unclear the extent to which these guidelines are used in the development of CBM approaches in the SADC region.

Points of consideration

- COMESA may consider providing guidance to Member States on trade and migration policy formulation to ensure coherence and consistency between policies. Such guidance may be provided in line with the AUMPF, with specific consideration that COMESA is a trade-focused REC.
- COMESA may evaluate the possibility of revising and updating the COMESA Model Law on Immigration to integrate trade facilitation considerations relevant to cross-border human mobility.
- COMESA could evaluate putting into place guidance on coordinated/integrated border management, in line with African Union guidance, which also integrates immigration and human mobility considerations.
- Member States may consider promoting greater coordination between customs, immigration and other border agencies and ensure coherence between integrated/coordinated border management approaches including measures that address human mobility concerns.



5. Six pillars: Integrating human mobility into cross-border trade facilitation

As the movement of people across borders is more complex than the movement of goods, it requires a comprehensive approach. Six elements need to be addressed: facilitation, health, protection, capacitation, humanitarian response and security. In the following sections, specific emphasis is placed on measures that can facilitate cross-border human mobility including through effective border management.

A common principle transversal to all these pillars is the need for all States to respect obligations under international law³⁸ and international humanitarian law, particularly refugee law and human rights law,³⁹ as well as various regional human rights instruments.

5.1. Pillar 1: Facilitation of the movement of persons across the border through effective border management

Facilitation measures are crucial to decreasing the time and cost that travellers require to cross borders. Such measures are frequently conceived in terms of removing barriers to trade, including NTBs. However, facilitation measures can also include the removal or liberalization of excessive immigration control measures. This pillar explores measures that States can take to facilitate the cross-border movement of traders including visa liberalization, access to travel documentation, increased cooperation and coordination at borders and other measures including border residency arrangements.

5.1.1. Free movement of persons: Visa liberalization

The cost and time for an individual to obtain a visa can increase the cost of CBT. According to the COMESA Business Council, several COMESA countries charge visa fees. These fees can vary between USD 80 and EUR 80 respectively.⁴⁰ Related obstacles can include delays and lack of uniformity in the application of visa and immigration procedures and passenger checks.

Visa liberalization⁴¹ and the eventual removal of visa requirements is the most direct link between trade and cross-border human mobility within a regional integration context.⁴² In the COMESA context, visa liberalization and the eventual removal of visas, as outlined in the COMESA Visa Protocol, is also the first stage of the COMESA Free Movement Protocol.

³⁸ Relevant conventions and protocols include, inter alia: (a) United Nations Convention Against Transnational Organized Crime; (b) Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (Palermo Protocol); (c) Protocol against the Smuggling of Migrants by Land, Sea and Air; (d) Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition; (e) International Convention for the Suppression of the Financing of Terrorism; and (f) United Nations Convention Against Corruption.

³⁹ The nine core international human rights treaties apply to all persons, including migrants. These are as follows: (a) International Covenant on Economic, Social and Cultural Rights; (b) International Covenant on Civil and Political Rights; (c) International Convention on the Elimination of All Forms of Racial Discrimination; (d) Convention on the Elimination of All Forms of Discrimination against Women; (e) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; (f) Convention on the Rights of the Child; (g) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; (h) International Convention for the Protection of All Persons from Enforced Disappearance; and (i) Convention on the Rights of Persons with Disabilities.

⁴⁰ COMESA Business Council (n.d.).

⁴¹ Including the creation of e-visa platforms and reducing visa requirements.

⁴² The removal of visas for African nationals is also a continental objective set out in Agenda 2063.

Visas are used to control the entry and stay of foreign nationals in a country.⁴³ Although there is no internationally recognized definition of a visa, broadly speaking, a visa is a “conditional authorization granted by a country before arrival to a foreign national, allowing the traveller to enter and remain (often for a limited duration) in the country”.⁴⁴

There is a lack of consistency by COMESA Member States on what a visa is and how it is applied.⁴⁵ Several COMESA Member States have introduced the concept of “visa on arrival”⁴⁶ to facilitate movement and yet retain an important source of revenue for Immigration authorities. The loss of revenue from visas is regarded as an important barrier to the full implementation of the COMESA Visa Protocol.⁴⁷ Moreover, even where visa liberalization is practiced, some States, including those in this study, do not have visa policies or complete/updated immigration legislation and regulations in place that would include, inter alia, prerequisites for entry and the conditions upon which permission is granted.

For most countries in Southern Africa, there is no visa requirement in place for nationals of countries within the region. This means that individuals who wish to enter (a neighbouring country) for trade purposes can do so for periods ranging from between 30 and 90 days without the need of a visa.⁴⁸

Of the target countries in this paper, all have taken steps towards visa liberalization. In 2015, Malawi adopted a new visa regime that reciprocated to all countries that did not require visas for Malawian nationals to enter their territories. Zambia has amended its Immigration and Deportation Act to provide for the issuance of a cross-border permit.⁴⁹ The permit is valid for a period of six months and can be obtained by an individual who is a member of a COMESA/SADC State and/or shares a border with Zambia. The permit costs 1,500 kwacha (ZMK) to attain (approximately USD 125) and ZMK 2,250 to renew (approximately USD 185). Zimbabwe has relaxed visa requirements for all COMESA countries except for Djibouti, Eritrea and Sudan. The Democratic Republic of the Congo has slightly relaxed its visa system for some African countries; however, visas are required for several African States, including within the COMESA region.

Visa-free travel does not necessarily give the right to trade; some countries specify that an individual is not able to enter the country for economic purposes without a corresponding permit. In addition, individuals may still be required to comply with additional immigration formalities,⁵⁰ such as proof of return, funding for duration of stay and proof of address while in country.

⁴³ A “visa” is usually processed prior to travel and, in itself, does not guarantee entry into a country, although a visa will usually carry with it a reasonable expectation of being granted entry (on the basis of and for the duration for which it was issued) upon arrival.

⁴⁴ The definition provided is a practical one and does not reflect the IOM institutional position. The current IOM Glossary defines a visa as “an endorsement by the competent authorities of a State in a passport or a certificate of identity of a non-national who wishes to enter, leave, or transit the territory of the State that indicates that the authority, at the time of issuance, believes the holder to fall within a category of non-nationals who can enter, leave or transit the State under the State’s laws” (R. Perruchoud and J. Redpath-Cross (eds.), *Glossary on Migration, 2nd edition*. International Migration Law no. 25 (IOM, Geneva, 2011).

⁴⁵ L. Veerassamy and G. Watts, “Support the development of a set of recommendations to address the obstacles related to the full implementation of the COMESA Visa Protocol among Member States” (IOM, 2015 and 2016).

⁴⁶ As foreseen in Article II.I of the Visa Protocol. Strictly speaking, the concept of a visa on arrival does not adhere to the above-mentioned definition of a visa.

⁴⁷ G. Watts, The COMESA Visa Protocol Presentation. Presentation made at the COMESA Chiefs of Immigration Meeting, 26–27 July 2017 (COMESA, Lusaka).

⁴⁸ IOM, *Visa policies in Southern Africa*. January 2017. Produced by IOM’s Senior Regional Thematic Specialist for Immigration and Border Management for Southern Africa (Internal document).

⁴⁹ See www.zambiaimmigration.gov.zm/index.php?option=com_content&view=article&id=77&Itemid=85 (accessed 10 April 2019).

⁵⁰ As outlined in the COMESA Visa Protocol, “the grant of a visa or the waiver of visa requirements ... shall not exempt nationals of a Member State ... from compliance with the laws and regulations of such Member States concerning the entry, residence (whether temporary or permanent), exit and employment of aliens” (Article 2.5).

It also remains the prerogative of the Immigration Officer at the border to determine whether or not an individual can enter the territory. With or without a visa, Immigration Officials can also refuse entry on grounds including national security, law and order, public health or morality.⁵¹ A number of countries, including those in this study, include provisions in their legislation to refuse entry for “prohibited persons”.⁵² Moreover, in accordance with national legislation and international law provisions, law enforcement officers have the right to detain individuals who do not meet immigration requirements, or to remove them from the territory.

Countries in this study have in place visa requirements, including for neighbouring countries. The Democratic Republic of the Congo and Malawi have reciprocal visa arrangements, as does Zambia. In the case of the Democratic Republic of the Congo and Zambia, visas cost USD 50 and are valid for 90 days.⁵³ For an individual from the Democratic Republic of the Congo (who is not a border resident) who wishes to engage in trade in Zambia, he or she can obtain a Zambian business visa, which is valid for 30 days. After 30 days, if he/she still wishes to do business, he/she will need to obtain a cross-border permit, which is valid for up to six months. This permits the trader to cross the border for up to six months within a 12-month period.⁵⁴ It is specifically intended to provide possibilities for trade and requires the applicant to specify where he/she will trade⁵⁵ and is for use by COMESA and SADC nationals.

Once the 30 days of visa-free travel have expired, the traveller may be required to obtain a visa or some form of permit, which comes at an additional cost, increasing the associated cost of CBT. In Zambia, a traveller wishing to trade outside of the 30 days of visa-free travel must obtain a business or cross-border visa.

For larger scale traders wishing to enter the country and trade, associated costs may be higher. In the case of Zambia, large-scale traders may enter and trade using an investor visa, which permits any individual with more than USD 250,000 invested in Zambia to have a period of three-year residency. Obtaining an investor visa, in turn, can pave the way to citizenship.

COMESA has encouraged its Member States to take a gradual implementation approach to visa liberalization and removal of visas, which can include individual and bilateral initiatives as permitted under Article 164 of the COMESA Treaty.⁵⁶ Measures include the development of a COMESA business visa, which is currently under the final stages of development by the COMESA Business Council.⁵⁷ The concept behind the visa is the creation of a common multiple entry visa applicable for businesspersons in the region. Discussions are ongoing to examine ways of introducing free movement of businesspersons within the context of the

⁵¹ Article 12 of the African Charter on Human and People’s Rights and Duties (Banjul Chapter), adopted 27 June 1981 states, “Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.... This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality”.

⁵² Those likely to be a charge on public funds or convicted criminals. The COMESA Model Immigration Act, for example, provides examples of “prohibited non-nationals” in Annex I.

⁵³ IOM, *Kasumbalesa Baseline Report: For the introduction of the ‘e-jeton’ system*. February 2019 (Internal document).

⁵⁴ After the six-month period has expired, the individual must return to his/her country and cannot trade until the 12-month period has expired.

⁵⁵ As per section 30 of the Immigration and Deportation Act, No. 18 of 2010, the permit “shall not entitle the holder to seek or obtain paid employment in Zambia”.

⁵⁶ The article states that “The Member States agree to adopt, individually, at bilateral or regional levels the necessary measures in order to achieve progressively the free movement of persons, labour and services and to ensure the enjoyment of the right of establishment and residence by their citizens within the Common Market.” (COMESA, Chapter Twenty-Eight on the Free Movement of Persons, Labour, Services, Right of Establishment and Residence. In: Treaty Establishing the Common Market for Eastern and Southern Africa. Available at www.comesa.int/wp-content/uploads/2019/02/comesa-treaty-revised-20092012_with-zaire_final.pdf)

⁵⁷ As of April 2019, the COMESA business visa had not been adopted at the COMESA Policy Organs meeting and was still in draft form.

TFTA.⁵⁸ Nevertheless, as the majority of cross-border traders in the COMESA region are SSCBT, and the provisions of the COMESA business visa are intended to focus on big business with branches in countries of origin and destination. Even if eligible, corresponding costs for SSCBT of obtaining such a visa would likely be high.

Five COMESA Member States, including Malawi and Zambia, are pushing for the implementation of a memorandum of understanding (MoU) on the Accelerated Programme on Economic Integration (APEI) among themselves. The MoU's purpose is to facilitate regional integration based on the principle of variable geometry. The MoU includes measures such as those that facilitate the movement of businesspersons and professionals within the APEI countries. It proposes for Temporary Employment Permit and Long-Term Employment Permit on government priority areas.⁵⁹

Points of consideration

- COMESA is encouraged to adopt, utilize and promote a unified definition of a visa (including in the Visa Protocol and FMP, COMESA business visa and COMESA Model Immigration Act).
- Member States are encouraged, where lacking, to develop visa policies and corresponding legislation and regulations that incorporate a unified definition of a visa.
- COMESA may wish to consider promoting the harmonization of visa and permit systems.
- COMESA and Member States can consider examining the Zambia cross-border permit for potential replication and scale-up in other COMESA countries.
- States to consider identifying alternative revenue streams for countries that are reliant on visa fees leading to equivalent or enhanced levels of commerce, trade and tourism.
- States could evaluate the possibility of adopting security measures to address concerns where visa requirements are lifted (see Pillar 6: Security at borders – Ensuring the bona fide movement of goods and persons).

5.1.2. Travel documentation

Recognizing that all travellers, including traders, require a travel document to cross international borders, the cost of obtaining and using travel documentation can also increase the cost of trade. A travel document is defined in the COMESA Visa Protocol as being “a passport or any other valid travel document establishing the identity of the holder and containing his photograph, issued to him ... by the Government of the Member State of which he is a national and on which endorsement by immigration authorities may be made” (Article 1, COMESA Visa Protocol).⁶⁰

Unlike the ECOWAS region, where individuals can travel within the region with only their identity cards, no such arrangements exist in Southern Africa or for the COMESA block. The cost of travel in the select countries identified in this study is therefore potentially higher, in particular for traders that cross the border frequently and quickly accumulate stamps in standard travel documents such as passports.⁶¹ Passport costs vary and are approximately USD 67 in Malawi and USD 100 in Zambia. Passports are only issued in the capital and require various supporting documents, including birth certificates.⁶²

⁵⁸ See www.tralac.org/news/article/13087-comesa-eac-sadc-immigration-chiefs-discuss-free-movement.html (accessed 21 March 2019)

⁵⁹ See <http://rmce.org.mu/English/Documents/MOU%20Professionals%20workshop%20report.pdf> (accessed 18 March 2019).

⁶⁰ The FMP definition of a valid travel document “means a passport or any other valid travel document establishing the identity of the holder issued by or on behalf of the Member State of which a person is a citizen and shall include a Laissez Passer issued by the Common Market for a staff Member establishing a certificate issued to the Common Market expert on mission establishing the identity of the holder” (Article 1).

⁶¹ Especially where a passport can cost more than USD 100.

⁶² Particularly in the Democratic Republic of the Congo, many individuals do not have birth certificates.

Once in force, the AUFMP requires Member States to cooperate in the process of identification and issuance of travel documents (AUFMP, Article 9).⁶³ The introduction of an African Union passport is intended to provide a unified travel document for African nationals to travel within the continent. To date, the African Union passport has only been introduced to high-level diplomats.⁶⁴

In Zimbabwe, it was found during the study that individuals often use emergency travel documents (ETDs)⁶⁵ rather than a passport to cross the border at Chirundu OSBP. When asked, traders confirmed that this was due to the cost of obtaining a passport. Reliance on an ETD is also likely due to the lack of a cross-border permit in Zimbabwe (see section 5.1.6. Border residency arrangements and provisions for cross-border traders). Lack of access to travel documentation may also have important ramifications for women traders with small children. During the study, it was identified that at Mchinji BCP, women SSCBTs who are breastfeeding leave their children at home in the absence of travel documentation.

The creation of border residency arrangements, including the issuance of cross-border permits (see section 5.1.6. Border residency arrangements and provisions for cross-border traders) has been one measure that States have used to facilitate the mobility of border residents, as well as decrease the cost of cross-border travel. However, there is no COMESA standard in border residency arrangements or their application, a lack of bilateral agreements and where national level arrangements are in place, they don't necessarily include traders. Moreover, border residency travel documents are not always recognized by Immigration authorities.⁶⁶

Points of consideration

- COMESA may wish to evaluate the need for the introduction of a COMESA Simplified Common Travel document to facilitate the CBT of categories of traders not already covered by the COMESA business visa or existing national provisions.

5.1.3. Border infrastructure and border management information systems

The facilitation of the movement of goods and people can be hampered by a lack of infrastructure and immigration information technology (IT) systems, including border management information systems (BMIS), as well as insufficient information and data-sharing between authorities operating at the border, which can slow down cross-border checks.

Border infrastructure rarely caters for the needs of small-scale traders, often forcing them to share the clearance area with trucks and other vehicles, which increases insecurity and slows down procedures. Border infrastructure is also rarely designed principally with the movement of people in mind or to respond to potential mass movement in case of a man-made or natural disaster; this is the case both for traditional border posts, as well as OSBPs (see section 5.1.5. One-stop border posts).

⁶³ Article 9 also calls for Member States to mutually recognize and exchange specimens of the valid travel documents issued by the Member State for Member States to issue to their nationals valid travel documents to facilitate free movement.

⁶⁴ See Assembly/AU/ Dec.607 (XXVII) welcoming the launch of the African passport and urging Member States to adopt the African passport and to work closely with the African Union Commission to facilitate the processes towards its issuance at the citizen level based on international, continental and citizen policy provisions and continental design and specifications.

⁶⁵ Emergency travel documents are not intended for regular travel and are usually intended for one-off use.

⁶⁶ Although outside the scope of this paper, this is the case in Botswana (a non-COMESA Member State) where the only form of travel document recognized by the Immigration authorities is a machine-readable travel document (MRTD), in this case, a passport.

Border and migration management assessments (BMMA) provide a useful tool for the undertaking of a comprehensive analysis of the major elements of national migration control systems including legislation, policy, procedures, passport/travel documents, visa issuance, entry/exit controls, monitoring and reporting. BMMA also serve to provide guidance on border infrastructure, as well as IT solutions. IOM-supported BMMA have been undertaken at key BCPs in Zimbabwe and select BCPs in Zambia, including Kasumbalesa.

BMIS are government immigration systems that capture exit and entry data on people crossing the border. They are important data capture tools that improve efficiency, allowing for real-time data capture, and effectively collecting, processing, storing and analysing information to identify travellers, data collection and analysis. This allows countries to better track the movement of people across borders that can be useful for trade-related purposes. BMIS can determine potential blockages and pinpoint where CBT and transport costs accrue to enact corrective policy measures. Data captured from BMIS can also serve to support operational policymaking, including ascertaining staffing allocations required at borders.⁶⁷

While strides are being made in the introduction of customs systems, with most countries having an automated customs data system such as ASYCUDA or ASYCUDA World in place, no global BMIS exists. Countries usually have a national BMIS, sometimes more than one, which creates challenges of interoperability and data exchange between systems.

There are also significant challenges in terms of BMIS coverage. In study undertaken by IOM in 2017, it was found that approximately 70 per cent of all borders in the COMESAS region⁶⁸ are subject to manual data capture at the BCP/ports of entry (PoE). These figures mask considerable differences within the region and within countries. Most countries, including those identified in the study, do not have complete BMIS coverage at all PoE/BCP. For some countries, including the Democratic Republic of the Congo and Malawi, the majority of PoE are still subject to manual data capture. Where BMIS exist, border passes are not machine-readable travel document (MRTD) compliant, therefore most BMIS cannot easily capture the biodata unless an officer manually enters the data, which takes time and slows down movement. Moreover, many borders are subject to power cuts and shortages with data unable to be sent real-time to Immigration Headquarters to generate statistical reports.

The study found that at Chirundu OSBP and Mwami BCP, Zimbabwe and Zambia capture exit and entry data through their national BMIS systems. While at Mchinji in Malawi, data is captured in a manual ledger. BMIS in Zimbabwe and Zambia have the potential to capture real-time data regarding the flows of individuals at the majority of BCPs. However, this data is not systematically captured and analysed for planning purposes. In addition, the Immigration Offices do not have capacity to carry out detailed analysis of the BMIS data to produce information on frequency of crossings and location of crossing and avoid double counting persons crossing the border. While real-time data has the potential to be captured, the analysis is not. All the surveyed BCPs have data capture capacities, with limited installed data analysis capacities. Most of the data analysis is done at the head offices.

The limitations of BMIS not only have implications to understand the cross-border mobility of persons, but also the interface with trade. Malawi, Zambia and Zimbabwe have ASYCUDA/ASYCUDA World in place, but the interface is not yet fully functional. Customs in Zambia and Zimbabwe have indicated that BCPs are now linked, but the two customs authorities are still working on the modalities of data exchange. However,

⁶⁷ IOM/COMESA Regional Consultative Process (RCP) on Migration Dialogue (MIDCOM) Meeting, "Enhancing regional cooperation and mobility through effective governance mechanisms, data and dialogue", Presented by Elizabeth Warn, Senior Regional Thematic Specialist for Southern Africa on Border Management Information Systems and Border Data to Enhance (Migration) Policymaking in COMESA States. IOM and COMESA, July 2017.

⁶⁸ IOM, Points of Entry in COMESA States: An Overview of Border Control Points (BCP) and One Stop Border Posts (2017).

to date, in none of the countries included in this report are the BMIS either fully connected to customs data systems or the emerging National Single Windows.⁶⁹

Points of consideration

- All stakeholders may consider factoring in human mobility into the designs of BCP and OSBP to facilitate the orderly and regular movement of persons, including traders.
- States may wish to consider undertaking BMMA in order to identify major elements of national migration control systems.
- States are encouraged to install BMIS at all principal BCPs/PoEs in order to provide real-time data capture on the entry/exit of persons at the border, including traders.
- COMESA may consider providing guidance to States on immigration data capture, analysis and use to facilitate policymaking on migration and trade facilitation.
- States may consider the full integration of interfaces between customs and immigration information systems including through National Single Windows.

5.1.4. Integrated/Coordinated border management

Inadequate and uncoordinated border management, both within and between countries, is a possible barrier to trade facilitation, as it can increase delays and lengthen border processing times. Inefficient border management impacts not only on large-scale trade at borders but also on small-scale and informal cross-border traders, in particular women and young girls who cross borders daily. Regional and national policy and operational coherence is central for integrated/coordinated border management approaches to work.

The (draft) African Union Strategy for Enhancing Border Governance in Africa⁷⁰ defines border management as “national and international coordination and cooperation among all the relevant authorities and agencies involved in border security and trade facilitation to establish effective, efficient and coordinated border management, in order to reach the objective of open, but well controlled and secure borders”.

Customs agencies frequently favour a Coordinated Border Management (CBM) approach,⁷¹ which focuses on the following: (a) trade facilitation mechanisms; (b) World Trade Organization provisions on border cooperation, which include the streamlining of the number of border agencies operating at the border; (c) standardization of border operating hours; and (d) nomination of customs agencies as the lead border agency.

While there are subtle differences between IBM and CBM approaches, both focus on a three-pillared coordination approach to increase border efficiency and effectiveness, which includes the following: (a) intra-agency cooperation, which refers to internal cooperation within a border agency; (b) inter-agency cooperation, which refers to cooperation among national border agencies; and (c) cross-border/international cooperation, which includes bilateral cooperation and international cooperation. Both approaches also place emphasis on risk identification and risk management approaches.

⁶⁹ Malawi, Zambia and Zimbabwe have introduced single-payment points at some of their BCPs as precursors to the introduction of a national single window system. The single payment systems, however, do not cover all the BCPs, and neither do they cover all the agencies at the border posts where the systems are already operational mainly due to differing levels of computerization and connectivity.

⁷⁰ Drawn from the text of the Draft African Union Strategy for Enhancing Border Management in Africa (2015). The title of the strategy has subsequently changed to incorporate the concept of border governance.

⁷¹ The World Customs Organization defines coordinated border management (CBM) as “coordinated approach by border control agencies, both domestic and international, in the context of seeking greater efficiencies over managing trade and travel flows, while maintaining a balance with compliance requirements” (See www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/tools/safe-package/cbm-compendium.pdf?la=en (accessed 3 April 2019)).

From an immigration and human mobility perspective, both CBM and IBM approaches need to be pursued at national and BCP level. Whereas CBM focuses on customs coordination, emphasis is also required on coordination on immigration and human mobility issues, including the six pillars that are outlined in this document, which are facilitation, health, protection, capacitation, humanitarian responses and security.

Key to an IBM approach includes addressing irregular migration, as well as putting into place border control measures comprising of border checks and surveillance, cooperation with neighbouring countries, bilateral agreements, establishing working mechanisms, exchange of information and putting into place measures with a broader range of international stakeholders that include border security measures.

Malawi, Zambia and Zimbabwe are developing national approaches on IBM/CBM. It is currently to be determined whether development of national migration policies will include details of the IBM approach being developed.

In 2017, IOM supported the Government of Zimbabwe to undertake awareness-raising on the IBM concept with senior government officials from all relevant border agencies. The Government is currently in the process of developing its IBM approach. IOM has continued to provide its support through the drafting of a policy brief on IBM in Zimbabwe and complementary study on IBM.⁷² In Malawi, with assistance from the World Bank,⁷³ efforts are underway to develop a Coordinated Border Management approach. The Government of Malawi has already issued a cabinet directive to reduce the number of agencies at the border to five.⁷⁴

As IBM/CBM approaches are being put into place, there are already indications of possible challenges and need for greater harmonization. As previously indicated, in the absence of regional guidance, each State is pursuing its own IBM/CBM approach. In some countries, IBM and CBM approaches are being pursued concurrently. Customs is usually the lead agency at the border, and most commonly CBM approaches are being pursued. Immigration agencies, while consulted on CBM approaches, do not always sufficiently articulate their needs or challenges. Customs agencies tend to be better equipped than immigration in terms of resources, infrastructure, equipment and automation. There is also an assumption that there are no changes required to immigration practices with the introduction of streamlined CBM processes at BCPs; while in reality, issues to address may include outdated or incomplete immigration legislation and regulations, lack of BMIS coverage and specific migration-related procedures required at OSBP, which are not necessarily considered in the analysis of CBM requirements.

Moreover, there is frequently a lack of understanding by border agencies, at all levels, as to what IBM/CBM implies with insufficient awareness-raising undertaken. In some contexts, there is a mistaken belief held by some officials that immigration agencies are no longer required at the borders, with other agencies taking up their functions. Moreover, even where streamlining and restructuring of border cooperation takes place, in the longer term, this requires a much greater level of trust between border agencies to ensure effective coordination and cooperation.

⁷² The policy brief draws from the Promoting Migration Governance in Zimbabwe study, commissioned by the Government of Zimbabwe with the technical support of IOM, with a grant from the European Union under the Eleventh European Development Fund.

⁷³ In the framework of the World Bank Trade Facilitation Support Program.

⁷⁴ Administrative Reforms on Doing Business, Ministry File Number: INV/22, 9 April 2013.

Points of consideration

- States are encouraged to include IBM/CBM provisions within their migration policies and related trade policies to ensure standardization and harmonization at the national level.
- COMESA, under its Trade Facilitation Programme, will be providing States with IBM/CBM guidance that can assist with national policy development.
- States to consider developing more detailed policy provisions on Integrated Border Management that outline IBM principles, pillars and approaches.
- States are encouraged to undertake awareness-raising at all levels on the agreed-upon IBM/CBM approaches developed at national level.
- Based on national IBM/CBM policy provisions, States are encouraged to develop adequate operational guidance for border officials on existing regulations and procedures, as well as on their respective rights and obligations.
- Border communities, local authorities and traders to consider being informed about changes brought about by IBM/CBM introduction at BCP level.

5.1.5. One-stop border posts⁷⁵

The OSBP concept promotes a coordinated and integrated border management approach to facilitating trade, the movement of people and improvement of security. The concept eliminates the need for travellers and goods to stop twice to undertake border crossing formalities, calling for the application of joint controls to minimize routine activities and duplications. It therefore reduces the journey time for transporters and travellers and shortens the clearance time at border crossing points.

OSBP must tackle human mobility challenges that are common to traditional national border controls that also require much deeper bilateral coordination and engagement, including the standardization and compatibility of the legal/regulatory framework, institutional structures, procedures and processes, infrastructure and equipment, information and communications technology (ICT) and capacity strengthening.⁷⁶ This section focuses on the experience of Chirundu OSBP and Mwami–Mchinji, which is in the process of becoming an OSBP.

In 2017, the *One-Stop Border Post Sourcebook*⁷⁷ was launched, with contributions from IOM. The source book provides guidance on how to design and operationalize the OSBP concept, including legal and institutional frameworks, simplification and harmonization of procedures, as well as ICT and data exchange and hard infrastructure. While focusing predominantly on trade and customs related procedures, it also includes some basic provisions regarding immigration formalities, including IT requirements.

OSBP require both hard and soft infrastructure components. As with other BCP, the OSBP design –including roads, bridges and other supporting infrastructure – is often designed to speed up the flow of goods rather than of people. Donor support is frequently aimed at hard infrastructure measures but may not integrate issues that are relevant in the cross-border movement of people (see points of consideration that follow).

⁷⁵ This section draws heavily from the following IOM reports: Updated Rapid Border and Migration Management Report (BMMA) on Chirundu One Stop Border Post (OSBP) (2019) and Rapid Border and Migration Management Report (BMMA) on the Needs and Requirements of Mwami–Mchinji as a Future One Stop Border Post (OSBP) (2019).

⁷⁶ The six key OSBP elements reflect the six areas of cooperation set out in the Guidelines for IBM in European Commission External Cooperation.

⁷⁷ New Partnership for Africa's Development Planning and Coordinating Agency and partners, *One-Stop Border Post Sourcebook*, 2nd edition (2016). Available at www.tralac.org/documents/resources/african-union/1682-osbp-sourcebook-2nd-edition-may-2016/file.html (accessed 29 March 2019).

The design and layout are crucial to the success of the OSBP as a badly designed OSBP will lead to bottlenecks and delays. A human rights approach to the design of OSBP (and BCP) considers border communities as integral to their operations. The process of developing OSBP (and BCP) operations, therefore, should also include consultations with border communities through their representatives at the community level.

IOM is currently implementing a project, funded by the European Union under the Eleventh EDF in the Great Lakes region, to increase CBT and reduce intercommunity tensions between Rwanda and the Democratic Republic of the Congo through the construction and capacity-building of an OSBP between Rusizi II (Rwanda) and Bukavu (Democratic Republic of the Congo). Focus is placed on human mobility elements including health into the OSBP design and operations. IOM works closely with TradeMark East Africa (TMEA), with TMEA providing the hard infrastructure and IOM the soft infrastructure components.⁷⁸

Soft infrastructure including bilateral agreements, national legislation and operational coordination guidance are critical, but are more frequently overlooked or only temporarily sustained, including by the donor community.

The legal and regulatory framework is the most important aspect of an OSBP, as it involves the extraterritorial application of laws. An OSBP requires a bilateral agreement between the two countries that are operating it. The bilateral agreement should set out how to operate the OSBP, the controls to be exercised within the common control zone (CCZ),⁷⁹ the agreement also: (a) defines the sequencing of controls and the powers of officers in the host State; (b) defines the immunities of foreign officers; (c) establishes the handling of offenses in the CCZ; and (d) sets out the management and maintenance of the OSBP facilities. National legislation is also required, which is accompanied by States obligations in international law, set out procedures to be followed, inter alia, in most immigration situations.

A successful OSBP requires close inter-agency and cross-border collaboration and cooperation, with comprehensive institutional structures in place to ensure that issues or problems are addressed quickly to ensure the smooth running of the border. Such institutional structures are required at various levels, including ministerial committees and joint steering committees, which include top government officials, as well as technical-level committees.

Operational and procedural guidance is required on a range of issues, including the following: (a) sequencing of the controls; and (b) handling of irregular migrants, including victims of trafficking (VoTs) and smuggled migrants as well as OSBP specific policy, such as in the detention of migrants. Operational guidance is also necessary in relation to defining where foreign officers can exercise their powers, legal protections afforded to officers operating on foreign soil, officers' responsibilities within the OSBP, codes of conduct and any limitations in the functions of the border officer role on foreign soil, as well as OSBP facility maintenance. Routine training and capacity-building will be required on all legislative and operational matters for border officials to effectively implement their duties.

In 2018, IOM undertook a rapid BMMA of the Chirundu OSBP⁸⁰ and BCP at Mwami–Mchinji. The purpose of this assessment was to analyse the OSBP functioning at Chirundu, prepare for OSBP operations at Mwami–Mchinji and improve border management effectiveness through addressing human mobility concerns in the context of small-scale traders at these two BCPs.

⁷⁸ In 2017, IOM and TMEA signed a memorandum of understanding to establish OSBPs and border management processes that address customs clearance and other standards for more efficient border crossing of goods and sellers in East Africa.

⁷⁹ The concept of a common control zone (CCZ) is sometimes conflated with that of a security area; these are two different concepts, although they are often applied together. A CCZ enables an officer to operate on foreign soil.

⁸⁰ This followed a more comprehensive BMMA undertaken at 10 BCPs in Zimbabwe, including Chirundu, which was undertaken by IOM in 2016.

In 2009, Chirundu was the first BCP to become an OSBP at the border between Zimbabwe and Zambia. Mwami–Mchinji and Kasumbulesa are in the process of becoming OSBP. In 2007, Zambia and Zimbabwe signed the Bilateral Agreement on the Establishment and Implementation of the OSBP at Chirundu, which was supported by COMESA in the framework of a project funded by the Government of Japan. Member States were supported to develop legal instruments to permit OSBP implementation. The OSBP is further underpinned by OSBP specific legislation, namely the Zimbabwe OSBP Control Act No. 21 of 2007, the Zambia OSBP Control Act No. 8 of 2009 and the bilateral Approved Procedures for OSBP Operations (2010). Zambia and Malawi have signed the Bilateral Agreement Concerning the Establishment and Implementation of a One-Stop Border Post at Mwami/Mchinji. Malawi has yet to put into place OSBP specific legislation that would mirror the Zambian OSBP Act.

The rapid BMMA found that while national legislative provisions apply in the majority of immigration scenarios, there is a need for specific and different provisions at OSBP where in-country rights of appeal apply,⁸¹ applications for asylum and potentially regarding the detention of migrants on foreign soil.

While providing detailed recommendations, one of the most important findings of the rapid BMMA is related to the limited functioning of the relevant committees that are in place to ensure smooth operations, as well as the lack of procedural implementation including outdated and underutilized or non-existent standing operating procedures (SOP). At Chirundu, it was identified that SOPs, which were drafted in 2010, have not been implemented. It was also identified that there is a considerable need for joint operations and joint training at both inter-agency and cross-border level. For Mwami–Mchinji, which has yet to become an OSBP, the need for increased cross-border cooperation and joint meetings was identified.

Points of consideration

- COMESA is encouraged to promote the use of the *One-Stop Border Post Sourcebook* as a continental standard on the development and operationalization of OSBP in the region.
- Stakeholders engaged in the *One-Stop Border Post Sourcebook* are encouraged to consider the integration of further guidance on immigration and border management in the next update of the Sourcebook, as well as targeted capacity guidance to operationalize the Sourcebook.
- COMESA, States and partners may consider integrating more focus on immigration issues in the design of OSBP including the following:
 - Dedicated passenger queues for SSCBT;
 - Adequate sanitary facilities (in particular for women) and basic medical facilities;
 - Border security including perimeter walls and CCTV;
 - Screening facilities for vulnerable groups including VoTs and unaccompanied minors;
 - Secondary interview rooms and document examination;
 - Temporary holding facilities for individuals who do not meet immigration requirements;
 - Facilities and structures to accommodate (as relevant) large-scale mass movements of people at borders; and
 - Develop gender-sensitive infrastructure especially catering to the needs of women (such as breastfeeding and changing room for babies), who make up the majority of SSCBTs.

⁸¹ As outlined in the Rapid Assessment on Chirundu (IOM, 2019): “Where travellers are processed before the border (in a one country OSBP model or one of the two juxtaposed OSBP models), this will affect any in-country rights of appeal as the traveller will not be on sovereign territory. So, for example, if the category of a person seeking entry to study attracts an in-country right of appeal in a traditional border post, that will no longer apply in an OSBP as they are not in the country that they are applying to”.

- States are encouraged to ensure the necessary national legal and regulatory basis in the formulation of their OSBP Acts that mirror the provisions of neighbouring OSBP States.
- States are encouraged to ensure that specific measures are in place to address immigration considerations that are specific to OSBP (including right of appeal, detention and asylum applications).
- COMESA and States may wish to examine good practice models relating to human mobility and health integration into OSBP operations, such as those being considered at Ruzizi II at the border between Rwanda and the Democratic Republic of the Congo.
- States and partners are suggested to provide greater emphasis on ensuring operational guidance is provided to border officials on the OSBP operations including capacity development and SOPs.

5.1.6. Border residency arrangements and provisions for cross-border traders

Border residency arrangements have the potential to reduce the cost of CBT by providing a framework between two countries that facilitate the movement of persons, while providing low-cost travel documentation to cross-border traders that can be used for multiple crossings over borders.⁸² Border residency arrangements are generally put in place between two countries for whom a visa is required, or in cases where a border residency card can be recognized as a valid travel document instead of a passport or ID card.

Nevertheless, there are several challenges with border residency arrangements in a CBT context including the following: (a) lack of standardized/incomplete legal arrangements; (b) limited cross-border cooperation; (c) differences in the border pass (including type of border pass, categories included, different validities and costs); (d) lack of data capture mechanisms; (e) lack of security mechanisms and (f) disparities in policies; for example at the Chirundu border posts, one country issues border passes while another does not (the difference mainly being that on the Zimbabwean side, there is a national park next to the border, while on the Zambian side, the case is different).

Cross-border traders may not fall within the definition of a border resident or be entitled to the specific provisions set out within a border residency arrangement. In many cases, border residents are defined as those who cross the border for social, cultural or family ties, rather than individuals who cross the border for economic purposes and income generation.

Some countries lack specific provisions within their national legislation or a MoU/agreement with a neighbouring State that details the border residency arrangement and how it is applied. Where agreements do exist, there is inconsistency of and discretion at the border regarding application. There is also a lack of regional standardization in the definition of a border resident, and the definition of a border resident/distance from the border may vary from border to border and country to country.

Countries with border residency arrangements often put into place border residency passes (also known as cards or permits)⁸³ to enable mobility of border residents according to the conditions set out in the border agreement. Countries in the COMESA region have several types of passes, permits and cards in use with different durations, validity and costs. There are also differences in the geographical scope (the width of the border area) of the border pass. The border passes are usually valid for a radius of at most 20 km from the BCP, although this is frequently loosely defined.

There is a lack of accurate and up-to-date information regarding the number of community members/traders who cross the border. Data regarding cross-border traders is generally not entered into BMIS. For most countries in the COMESA region (where border residency arrangements exist), border passes are frequently paper based and (when) registered, are manually in book ledgers. As the movement is not registered within BMIS, there is often no record of the nature or frequency of cross-border trader movements.

⁸² The AUFMP in Article 12 includes provisions relating to the free movement of residents of border communities. No reference is made to traders as a specific category.

⁸³ For the sake of consistency, this report refers to *border passes*.

Moreover, paper-based border cards rarely include security features and may be subject to fraud or falsification, and there can be abuse of the system; individuals crossing the border may not use the pass for the purposes that it is intended. Enrolment and issuance procedures can be problematic in contexts where travellers lack basic identity documents (either a birth certificate or a national ID). Authorities also lack the capacity to electronically verify identity and determine eligibility of the person presenting a border pass.⁸⁴

In the context of the countries of the study, it was found that all the countries that share borders with Zambia accept the border passes as a travel document.⁸⁵ Zambian local community members can travel on border passes for which they pay an equivalent of USD 1. At Mwami, they pay ZMK 3 for the border pass, which is generated by the new Zambia Immigration Management System (N-ZIMS) BMIS. The validity of the border pass is different for each border; along the Zambia–Zimbabwe border, a border pass is valid for three months. Along the Malawi–Zambia border, it is valid for one round trip and is surrendered at the BCP on return. Along the Zambia–Zimbabwe border (Chirundu, Kariba and Victoria Falls border posts), the border passes are handwritten and not machine readable. At Mwami, the border pass is system-generated from the ZIMS. At Kasumbulesa, on the Democratic Republic of the Congo side, Immigration authorities issue a *jeton*, which is valid for one day. There are limited inspections of those presenting their border pass; lack of pass (Kasumbulesa) individuals can be arrested, detained and sent back across the border.

The Kasumbulesa BCP is a special case in point as one of the busiest BCPs for SSCBT in the COMESA region; it is said that more than 6,000 SSCBT cross the border each day, although exact figures are unknown as data is not captured by the BMIS on respective sides of the border.⁸⁶ Zambian border residents who wish to trade in the Democratic Republic of the Congo can access a daily border pass, which is free of charge. Middlepersons and touts sell *jetons* (a paper-based pass) on the Democratic Republic of the Congo side. Cross-border traders include individuals from the local community to as far as Lumbumbashi in the Democratic Republic of the Congo. A border pass can be obtained by a small cross-border trader taking his/her national registration card and a document that proves residency (usually a utility bill) and presenting it to Immigration. The Zambian border pass has a validity of 30 days.

As part of the COMESA-managed Eleventh EDF project, IOM is supporting the development of an “e-jeton” system to be piloted at Kasumbalesa BCP to capture data on exit/entry movements of SSCBT at the Kasumbalesa BCP. The pilot project is expected to put in place an electronic travel document (currently being described as an e-jeton) for local border trader communities, to formulate a system for the issuance of the travel document that is robust and not open to abuse, which includes the use of biometrics, as well as facilitate movement of local traders through Kasumbalesa BCP.

Points of consideration

- COMESA is encouraged to provide a definition of a border resident in line with the Visa Protocol and FMP provisions. Consideration should be made of whether border residents include cross-border traders as a specific category.
- COMESA is encouraged to consider providing specific guidance or a regional framework for States on border residency arrangements (in line with Article 12 of the AUFMP).
- Countries are encouraged to review existing bilateral agreements on border residency arrangements to ensure consistency in scope and application.

⁸⁴ For example, being able to cross-check identity claims with centralized ID or civil registration databases to verify the claim or even leverage identity information to support the issuance processes. In some cases, this is impossible because civil registration records are also paper based (IOM, *Kasumbalesa Baseline Report*).

⁸⁵ Except for Botswana that, as previously indicated, only recognizes as a valid travel document a passport as a MRTD.

⁸⁶ As identified in IOM, *Kasumbalesa Baseline Report*.

- COMESA countries are encouraged to develop bilateral agreements to facilitate the cross-border movement of border residencies, which include consideration of cross-border traders as a specific category of border residents.
- COMESA, Member States and IOM should share lessons learned and good practices in the introduction of the “e-jeton” at Kasumbalesa.
- IOM should undertake a review of existing schemes that facilitate cross-border movement of persons and traders, as foreseen in the Eleventh EDF project.

5.1.7. Increasing cross-border trader knowledge and information provision regarding immigration procedures and formalities and health requirements

An array of tools, instruments and platforms have been designed to address gaps in knowledge on trade formalities and procedures that can lead to trade informality and irregularity, which increases the cost of trade. Traders and border officials alike often have limited awareness of their respective rights and obligations, with traders being particularly vulnerable to law enforcement agents sometimes taking advantage of their lack of knowledge.

Arguably, the lack of knowledge and available information regarding immigration formalities, including travel documentation and visa requirements, as well as health formalities (such as the requirement for a yellow card) could also hamper the cross-border movement of people and the goods that they move with, in particular in times where there are cross-border disruptions. However, this hypothesis still needs to be tested, as to date, no studies have examined this.⁸⁷ In the absence of studies, information obtained from entities such as the CBTAs indicate that a lack of knowledge regarding formalities encourages the movement of persons outside of gazetted border posts. Information can serve not only to inform cross-border traders but also to empower and protect them.

Trade tools platforms and portals that do exist do not include information on immigration and health-related formalities and procedures. National trade information portals have been established in Malawi, and in Zimbabwe traders are allowed to access all relevant trade rules, regulations, procedures, fee schedules and forms from all border management agencies through a single user-friendly website. At regional level, COMESA has also established a trade portal that mainly focuses on providing data on trade (exports and imports) including intra- and extra-COMESA trade.

For SSCBT who are unlikely to have access to information provided on websites or other electronic portals, trade information desk (TIDs), as well as trade information desk officers (TIDOs) have been deployed to provide information on the relevant formalities. The capacity of TIDs has varied widely across BCPs, and they are frequently under-resourced.

CBTAs (and similar organizations such as women in business associations) exist in all four target countries, which are non-governmental bodies representing and defending the interests of SSCBT by informing and advising traders about their rights and obligations. However, CBT are often weak, poorly equipped, have low membership, are not formally registered and face human and financial resource constraints.

A SSCBT charter has also been formulated with the support of the World Bank. The charter enshrines a basic set of rights and obligations for traders and officials to address lack of awareness, the mutual distrust

⁸⁷ Nevertheless, consultations undertaken by COMESA, with the financial assistance of the African Development Bank, suggest that a lack of awareness among stakeholders concerning COMESA instruments related to human mobility is one of the challenges that affect human mobility.

and the inaccurate information that induce the traders to choose informality. At present, COMESA has piloted the use of the charter at the Mwami–Mchinji BCP, but it has yet to be fully implemented or rolled out to other BCPs.

Points of consideration

- States are encouraged to regularly update their immigration websites to provide up-to-date information on immigration, visa and other traveller formalities.
- COMESA, States and other stakeholders are suggested to integrate/provide links on immigration procedures and formalities into trade-related portals, information platforms and information providers (including CBTA) regarding immigration requirements and travel documentation.
- CBTA should be strengthened to provide relevant advice and guidance to cross-border traders including on relevant human mobility considerations.
- TIDs and TIDO are recommended provide information to SSBT on immigration formalities and valid travel documentation, as well as the consequences of irregular cross-border mobility.
- COMESA and States are encouraged to ensure the full implementation and roll-out of the SSCBT Charter at all BCP.

5.2. Pillar 2: Health, trade and cross-border population mobility⁸⁸

Border health practices have the potential to disrupt the transborder flow of people and goods, if poorly managed. Delays in crossing due to inefficient health screening, refusal of passage due to inadequate health documentation (vaccination or “yellow” card) and cumbersome data recording methods, as well as public health threats including uncontrolled disease epidemics that result in the closure of borders all have the potential to disrupt trade and impede on the economic well-being of cross-border traders and national economies. Recent outbreaks in the COMESA region of Ebola, cholera, yellow fever and hepatitis are examples of seasonal public health threats that affect cross-border communities and markets. The impact of the West Africa Ebola outbreak in 2014–2016 on trade and the resulting burden on national economies⁸⁹ is a pertinent example.

Trade facilitation measures generally do not focus on human health. Current measures have focused on sanitary and phytosanitary (SPS) aspects in order to protect humans, animals and plants from diseases, pests or contaminants. SPS measures place focus on food safety and animal and plant health measures, rather than on health and safety of travellers and the capacity of border officials in managing efficiently the risks of human-to-human disease transmission.

From a public health and global health security perspective, the significant increase in population mobility through BCPs and congregation of visiting traders at populated major border trading areas such as markets has the risk of increasing the transmission of communicable disease, including diseases such as cholera, HIV, tuberculosis, Ebola, malaria and cholera, which are prevalent in the region. The nature of trade in the region means that traders may travel long distances for transactions, interacting with local communities and traders along the way, often with interrupted or limited access to essential health services that help to prevent as well as treat infections in a timely manner, contributing to public health risks.

International standards related to the cross-border traveller health exist. The World Health Organization’s International Health Regulations (IHR, 2005) is a binding legal instrument to which all COMESA Member States are signatory to. The IHR aims to “prevent, protect against, control and provide a public health

⁸⁸ Special thanks to Kit Leung, Senior Regional Thematic Specialist Health for IOM in Southern Africa in for her substantial inputs to this section.

⁸⁹ C. Huber, L. Finelli and W. Stevens, “The economic and social burden of the 2014 Ebola outbreak in West Africa”, *The Journal of Infectious Diseases*, 218(suppl_5): S698-S704 (2018).

response to the international spread of disease in ways that are commensurate with and restricted to public health risks, and which avoid unnecessary interference with international traffic and trade”.⁹⁰

According to IHR, Member States are required to develop a core set of surveillance, detection and outbreak response capabilities, with specific provisions of requirements at designated BCPs (“designated points of entry”). These core capacities ensure public health measures required to manage a variety of public health risks are conducted in a way that protects the rights and dignity of travellers and minimizes disruption of travel and trade, including avoidance of border closures.⁹¹ These capacities include the following: (a) access to appropriate medical services (with diagnostic facilities); (b) services for the transport of ill persons; (c) trained personnel to inspect transport vehicles; (d) maintenance of a safe environment; (e) a programme and trained personnel for the control of vectors and reservoirs; (f) a public health emergency contingency plan; and (g) capacities for responding to events that may constitute a public health emergency of international concern, including disease screening and facilities for the quarantine of suspected cases.

A series of evaluations assessing compliance to the IHR have been completed for Member States in the COMESA region in recent years.⁹² Across several countries in the region, scores for attainment of core capacities related to points and entry were suboptimal, scoring on average between 1 and 2 out of 5 in the attainment score. While international airports were generally evaluated well, ground crossings and water ports lacked capacities to routinely apply standardized procedures and demonstrated limited to no readiness to respond to public health threats such as epidemics. The failure of points of entry to respond to public health threats can both jeopardize the health of cross-border traders, local communities and national economies.

IOM has initiated a series of projects in Burundi, Democratic Republic of the Congo, Madagascar, South Sudan and Uganda, together with immigration and health authorities, for the development of national SOPs for designated points of entry and develop infrastructure and capacitate port health and border authorities to ensure that national as well as international standards are upheld. However, there remains a number of gaps, including the need to geographically expand support and ensure capacity-building of officials is sustained and evolve, as public health threats change.

Broader health infrastructure and health-related behaviours found at busy ground crossings in the region also add to health vulnerabilities at and around BCPs. In 2013, IOM undertook the *Rapid Assessment of Access to Healthcare at Selected One Stop Border Posts in East Africa*.⁹³ The report found that health and social problems at OSBP extend beyond infectious and non-infectious diseases. Shortage of safe water and unhygienic sanitary conditions, as well as poor housing settlements exacerbate the already precarious socioeconomic status of communities at BCP. The barriers encountered while accessing health services include the following: (a) long distances to health facilities and the inability to afford the cost of basic health care; (b) inadequate medicines, health supplies and human resources at the existing health facilities; (c) unavailability of health services at some border posts; (d) stigma and fear to access health services; (e) limited knowledge on how to access health care; and (f) policy variations among countries affecting access to health, particularly regarding access to anti-retroviral therapy for HIV. Other studies examining trader health in the region have highlighted the lack of sanitation facilities and unhygienic conditions at BPC areas as being a particular public health risk, and to which is particularly detrimental to women traders.⁹⁴

⁹⁰ See www.who.int/ihr/about/10things/en/ (accessed 26 March 2019).

⁹¹ Annex 1 of the International Health Regulations (2005).

⁹² See www.who.int/ihr/procedures/mission-reports-africa/en/ (accessed 19 June 2019).

⁹³ IOM, *A Rapid Assessment of Access to Health Care at Selected One Stop Border Posts (OSBP) in East Africa* (IOM Regional Office for East and Horn of Africa, Nairobi, 2013). Available at www.iom.int/files/live/sites/iom/files/Country/docs/IOM-OSPB-Report-2013.pdf

⁹⁴ For example, United Nations Conference on Trade and Development (UNCTAD), *Borderline: Women in informal cross-border trade in Malawi, the United Republic of Tanzania and Zambia* (United Nations, Geneva, 2019). Available at https://unctad.org/en/PublicationsLibrary/ditc2018d3_en.pdf

Lastly, there are opportunities for increased cooperation between port health and other border agencies. Port health authorities, which are generally mandated by the ministries of health, generally do not routinely share information with other border agencies. Collection of data is generally conducted separately, and to an extent in parallel; for example, place of intended stay, origin and basic biodata can be collected by both port health (using traveller health declaration cards) and immigration authorities. At ground crossings, where the use of traveller health declaration cards may be less frequent, port health may have even less access to traveller population data that could be useful in understanding flows and related risks that support public health planning and threat preparedness. Where BCPs are exploring the use of electronic cards for passage, similar IT infrastructure could also benefit port health authorities and travellers themselves, as screening and processing times may be reduced and analytic capabilities are increased.

Points of consideration

- States are encouraged to ensure that relevant legal and operational frameworks exist to enable the adherence to IHR requirements.
- In conjunction with ministries of health, conduct health and health facility assessments to evaluate capacity to detect, prevent and provide responses to public health disease concerns.
- Stakeholders are encouraged to conduct pilot innovations that allow both health and immigration data to be collected in a streamlined and safe manner and support improved analysis of public health risks in border areas.
- COMESA, Member States and partners are encouraged to capacitate TIDs and TIDO's to include information for traders on IHR provisions.

5.3. Pillar 3: Mainstreaming gender and protecting vulnerable groups including cross-border traders

Harassment, corruption, bribery, gender-based violence and physical assault are regular features of CBT, particularly for women. Traders also may be requested to provide sexual favours that may increase the possibility of STDs and spread of HIV.

Women traders are among the most vulnerable groups, and compared to their male counterparts, they suffer disproportionately from the various constraints, challenges and risks related to CBT. Women experience trade barriers differently from men due notably to established social norms and differences in domestic and professional responsibilities. Moreover, border agency staff including Immigration Officers are mainly men. Women are also more vulnerable to abuses from officials when crossing borders, including bribes, sexual and physical abuse, as well as extortion and the confiscation of goods.

The Eleventh EDF project envisions specific interventions to address the abuse, mistreatment and marginalization that traders face are addressed through measures, such as training, sensitization and information activities, strengthening reporting instruments, infrastructure development and promotion of good practices at the borders from a gender perspective. The project also envisions building the capacity of CBTAs (and similar associations such as women in business associations) to sensitize and increase their female membership, strengthened monitoring concerning gender disaggregation of data and research/analysis and knowledge on the challenges and needs faced specifically by women traders. IOM, in conjunction with COMESA and International Trade Centre (ITC), will support the implementation of these measures.

From a migration and human mobility related perspective, BCP not only need to address abuse and harassment faced by cross-border traders, but also to provide protection to other groups of vulnerable migrants and mobile populations including refugees, “prima facie” refugees, trafficked persons and unaccompanied children.⁹⁵

⁹⁵ Other groups of individuals need to be correctly identified and referred to the relevant authorities, such as victims of gender-based violence, persons with disability and other vulnerable groups.

In the target countries, IOM provides support to States to address protection concerns, including assistance and referral to relevant authorities, the development of legislation and regulations, operational guidance, as well as capacity-building for border officials on issues such as protection of VoTs and unaccompanied migrant children. In three of the target countries, Malawi,⁹⁶ Zambia and Zimbabwe⁹⁷ have put into place a national referral mechanism and SOPs for the identification, referral, protection and safe return of VoTs.

Cross-Border Migration Management Stakeholder (CBMMS) Forums, with support from IOM, have been established to increase bilateral coordination between States to seek sustainable solutions to irregular migration challenges, including a wide range of stakeholders such as governments and non-governmental and international organizations. Cross-border forums currently exist at various BCP in Malawi, Zambia and Zimbabwe including at Chirundu OSBP. In 2017, Malawi put into place the first Cross-Border Migration Forum with Mozambique.⁹⁸ The Chirundu CBMMS Forum has provided opportunities to discuss protection of unaccompanied migrant children, stranded children and vulnerable migrants. In November 2018, within the framework of the CBMMS, a draft district cross-border plan was developed on addressing mixed, irregular and human trafficking.

Points of consideration

- States may consider mainstreaming gender into all CBT approaches, including capacitating border officials on gender-sensitive approaches and addressing gender in institutional structures and coordination mechanisms.
- States are encouraged to consider the development of gender parity policies in human resource policies for border agencies, including immigration departments and the development of gender-sensitive training curriculum for border officials.
- CBTA could be trained to detect and assist individuals who have been subject to harassment, bribery, corruption, gender-based violence and gender mainstreaming.
- Stakeholders may wish to consider strengthening and broadening the focus of the CBMMS forums to include other relevant human mobility considerations including those relating to cross-border traders.
- States are encouraged to consider drafting district cross-border plans to address mixed, irregular and human trafficking.

5.4. Pillar 4: Empowering and capacitating cross-border traders

The focus of this think piece is predominately on the removal of migration- and human-related barriers to trade at borders. While not directly connected to border formalities and the reduction of NTBs, increasing the capacities and expertise of traders, and in particular SCCBT to engage in CBT, is an important means of ensuring that traders are able to contribute to formal economic development and ensure livelihood generation.

Capacitating cross-border traders may also contribute to decreasing the informality of CBT. Studies have yet to be undertaken in the COMESA region that examine the contribution that migrant and diaspora traders can contribute to maximizing CBT.

⁹⁶ In 2018, IOM provided the Government of Malawi with technical support to finalize the National Action Plan and National Referral Mechanism on Mixed and Irregular Migration.

⁹⁷ The Government also developed and adopted a national referral mechanism for vulnerable migrants in Zimbabwe, which included SOPs to guide front-line responders in identifying potential trafficking cases. IOM has provided training for border and law enforcement officials on victim identification and interview techniques (United States Department of State, 2018 Trafficking in Persons Report – Zimbabwe, 28 June 2018. Available at www.refworld.org/docid/5b3e0a344.html (accessed 2 April 2019)).

⁹⁸ The objective of the forum was to enhance cooperation between the two countries and strengthen bilateral coordination on prevention, investigation and prosecution of trafficking committed against people with albinism. In 2018, a CBMMS Forum was established at Karonga district at the border between Malawi and United Republic of Tanzania.

To increase income-generating possibilities, traders may require further assistance on entrepreneurship, business set-up and opportunities for CBT. For traders as mobile populations, who may work and reside in both countries of origin and destination, the focus of entrepreneurship and business skills may also include the need for financial literacy, skill certification or accreditation to increase skill recognition and portability of benefits,⁹⁹ leveraging remittances and harnessing the contribution made by diasporas to CBT. IOM has expertise in all these areas and can also play an important role in fostering these linkages and bringing partners across the supply chain.

Points of consideration

- Stakeholders may wish to undertake studies in the COMESA region that examines the impact of migrants on trade and economic development.
- States and other stakeholders are encouraged to consider undertaking analysis of the capacity needs of cross-border traders and work with agencies such as the CBTA to provide targeted training and capacity-building.
- COMESA and States may wish to consider the development of more structured capacitation programmes for SSCBT on business set-up and entrepreneurship.

5.5. Pillar 5: Humanitarian response – Facilitating cross-border trade in times of migration crisis

Natural and man-made disasters have the potential to significantly disrupt the functioning of BCP, when accompanied by a mass influx of persons crossing borders. Such disruptions may create blockages to CBT, as borders may be closed, or routine checks, patrols and surveillance suspended to facilitate the mass movement of persons.

There is a need for appropriate border management responses at times of humanitarian crisis to ensure that border management practices can adapt to the needs of specific groups, including CBTs. The recent outbreak of Ebola in the Eastern Democratic Republic of the Congo, demonstrates that changing cross-border mobility may be affected by health epidemics, requiring the integration of effective health into these humanitarian responses.

Broadly defined, humanitarian border management (HBM)¹⁰⁰ is a term conceptualized and developed by IOM that denotes border operations before, during and after humanitarian crises, which arise from both natural and man-made disasters and which trigger mass cross-border migration. The goal of HBM is to manage borders in a way that protects crisis-affected migrants and guarantees their human rights and interests, while respecting national sovereignty and security.¹⁰¹

HBM activities aim to improve humanitarian preparedness and responses to protect those who cross borders in emergencies, as well as ensure the continued maintenance of border security affected by migration crisis. Therefore, border management agencies – including immigration, police, customs, quarantine and armed forces – need to be equipped with rapid operational mechanisms to respond to change and often-escalating movement patterns. HBM approaches can also be relevant to integrate into national and BCP contingency planning.¹⁰²

⁹⁹ Noting that this is more relevant in the case of cross-border service provision than goods.

¹⁰⁰ IOM also promotes a health and humanitarian border management (HBM) approach that focuses on responses to health-related mobility crisis.

¹⁰¹ HBM is sometimes also referred to as “crisis border management”, “emergency border management” or “emergency preparedness”.

¹⁰² IOM has developed guidance on how to integrate HBM into contingency planning, which is available to States.

The African Union Migration Policy does not include provision on HBM, and COMESA has not provided States guidance. Countries identified as part of this paper have not yet put into place HBM policies, legislation or operational procedures, although limited training and identification of needs have been undertaken several years ago at select Democratic Republic of the Congo BCP.

Points of consideration

- States are encouraged to undertake HBM assessments to assess their susceptibility to emergency mass migration movements, including infrastructure in the border area, human resources and (specialized) equipment for use in both everyday and emergency situations.
- States may wish to integrate provisions in national migration policies and legislation to cover cross-border mass migration movements within an HBM approach, which includes provisions to facilitate open borders in the event of a crisis and undertake relevant training and capacity-building.
- Partners are encouraged to integrate HBM measures into trade facilitation programming and planning, in particular at borders susceptible to large-scale cross-border human mobility.
- States may consider integrating HBM into relevant BCP contingency plans.
- States are encouraged to undertake inter-agency contingency planning¹⁰³ at the appropriate level that includes HBM provisions.
- States may wish to consider capacity-building of border officials including the development of SOPs for dealing with mass influx to allow for inter-, intra- and cross-border cooperation.

5.6. Pillar 6: Security at borders– Ensuring the bona fide movement of goods and persons

It is often misconstrued that border security implies more restrictive controls and closed borders, while trade facilitation reduces security measures and opens borders. Border security is relevant and necessary for the legal and safe movement of both goods and people and is articulated within the COMESA FMP and AUFMP.

States face challenges to ensure harmonized procedures, information mechanisms and cross-border cooperation and coordination that can facilitate CBT and human mobility, while ensuring human rights standards are upheld, and effectively addressing transnational crimes and security risks. As with customs risk management procedures and practices, immigration risk management is needed for passenger movement to ensure that those who are targeted for additional checks are individuals who pose a threat.

Informal CBT¹⁰⁴ may be linked to the irregular movement of persons including informal traders and SSCBT, while illicit trade, including contraband and counterfeit goods may be linked to forms of (transnational) organized crime, including the smuggling and trafficking of persons, criminals and terrorists. Security measures need to be tailored to the severity of the risks and threats posed, while upholding human rights standards.

COMESA is moving towards a common market that requires a common approach to security in the movement of people, goods and services. With the COMESA FMP, Article 8 stipulates provisions for States to cooperate among themselves in the prevention and fight against crime and to prevent criminals from abusing free movement provisions.¹⁰⁵

¹⁰³ IOM have developed the Guidelines on Integrating Humanitarian Border Management (HBM) into Contingency Planning for use by governments and other counterparts in Southern Africa.

¹⁰⁴ Informal CBT is defined by UNCTAD as trade in legitimately produced goods and services that operates outside of government regulatory frameworks avoiding certain taxes and formalities. See UNCTAD, 2019.

¹⁰⁵ Article 8.2 states that the COMESA Council shall adopt guidelines for the exchange of information on suspected criminals and extraction arrangements.

Most countries in the COMESA region have in place legislation and mechanisms to counter the trafficking of persons. Attention has primarily focused on the protection of VoTs rather than strengthened border cooperation between border agencies.¹⁰⁶ Most States do not have national provisions in place to address the crime of migrant smuggling, although most have signed and ratified the Palermo Protocols.¹⁰⁷

Border security measures are also linked to prior passenger checks. With the removal of visa provisions in line with the Visa Protocol and FMP, States are encouraged to ensure that BMIS are in place in all priority BCP, with relevant connectivity to INTERPOL databases and national and international watchlists.

State border security measures are frequently not disclosed and are confidential. Examining specific responses by States in border security is not the focus of this section, although it is noted that all BCP included in the study have in place border security committees that meet on a regular basis to address issues of common concern. However, suffice to say that further efforts are required to strengthen cross-border security measures by considering both the movement of goods and persons.

Cross-border collaboration and cooperation can take place within an integrated/coordinated border management approach, requiring the engagement of various border agencies including law enforcement, immigration, customs, police and other specialized law enforcement agencies. Cross-border and inter-agency cooperation on security measures can include the need for surveillance, joint controls, operations and patrols. It may also require engagement with the border communities through control and policing. Border management operations need to be grounded in intelligence risk profiling and risk analysis to use resources for targeted actions.

Border security measures also require States to ensure the integrity and security of travel documentation used by traders, prevent such documents being forged, counterfeited or fraudulently obtained, and ensure that the document belongs to the person presenting it. States must also examine document issuance processes, including breeder documents¹⁰⁸ to address the issue of fraudulently obtained genuine travel documents as a means of combating transborder crime.

Points of consideration

- COMESA may consider the development of a common security policy on border management in line with the FMP objectives once the FMP comes into force.
- States are encouraged to ratify and put into place smuggling legislation to domesticate the Palermo Protocol and investigate human smuggling and trafficking networks.
- States may wish to consider the need for surveillance, joint controls, operations and patrols as a means of reinforcing border controls.
- States may evaluate managing risk through enhanced intelligence of all agencies, resulting from enhanced sharing of information and intelligence.
- States may wish to consider engagement with border communities through control and policing.
- States are encouraged implement BMIS at all primary BCP, including connections to INTERPOL and other related watchlists and databases.
- States are encouraged to pursue the integrity and security of travel documentation used by traders including the issuance processes.

¹⁰⁶ Article 11 of both the Trafficking in Persons Protocol and the Smuggling Protocol states that States parties are required to strengthen border controls to the extent possible and, in addition to measures pursuant to Article 27 of the Organized Crime Convention, to consider strengthening cooperation between border control agencies, including the establishment of direct channels of communication.

¹⁰⁷ The Palermo Protocol is the UN Protocol Against the Smuggling of Migrants by Land, Sea and Air. Zimbabwe is not a signatory to the Palermo Protocol, which could possibly result in disputes in any joint enforcement operation, such as border patrols or raise tensions over investigations into smuggling networks.

¹⁰⁸ Breeder documents are the fundamental physical evidence accepted by national authorities to establish a prima facie claim to an identity; they are also used by identity thieves and fraudsters to obtain (or breed) new security documents such as a passport.



6. Conclusion

This think piece argues that there is a need for greater integration between trade facilitation measures and approaches and human mobility and border management considerations to increase cross-border efficiency, reduce the time it takes to cross borders and the corresponding cost of CBT. RECs, Member States and donor interventions, on the whole, have focused mainly on customs and trade actors without fully integrating immigration and human mobility actors and their considerations. Facilitating the movement of goods and persons is two sides of the COMESA regional integration agenda, which is central to economic growth in the region.

IOM stands ready to support COMESA and its Member States in promoting the trade/migration nexus and enabling a better understanding of these related phenomena. IOM has been working closely with COMESA and in 2003 signed an MoU on areas of mutual interest. This partnership has grown over the years with COMESA's various organs, especially the Ministers Responsible for Immigration making concrete recommendations for joint initiatives on migration-related issues. The launch of the Migration Dialogue for the COMESA region, also known as MIDCOM, is a platform started in 2013 to bring together COMESA Member States to discuss migration issues that are relevant to the region in an informal and non-binding manner. This platform can also serve to advance discussion over the points of consideration proposed in this document.

The trade, border management and human mobility nexus has still to be fully explored in the COMESA context, and further attention is required to ensure legislative, policy and operational coherence in both the trade and migration/human mobility domains. An important step will be achieved with the implementation of the Eleventh EDF project and through greater engagement with COMESA, States and other stakeholders.



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