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Global Migration Policy Associates

*An International research, policy development,
advisory services and advocacy group*

FREE MOVEMENT, LABOUR MOBILITY, REGIONAL INTEGRATION AND DEVELOPMENT: KEYS TO AFRICA MOVING IN THE 21ST CENTURY

**A *Global Migration Policy Brief* for the
*ROUNDTABLE ON INTRA-REGIONAL MIGRATION AND LABOUR
MOBILITY WITHIN AFRICA*
Kigali, Rwanda, 23-25 March 2015**

Global challenges: setting the context:

Migration is key to sustaining the world of work in the Twenty-First Century. Migration today is fundamentally about internationalized labour and skills mobility in a globalized world. As Ban Ki Moon (Secretary General of the UN) said, *we're in the age of mobility*.

Migration is about people. In a globalized world dominated by a capitalist mode of economic relations, governing migration is inevitably about protection of people, about decent work for all, about social protection and about fair development for all people whether they are working or not.

There are an estimated 232 million foreign-born people residing today in countries other than where they were born or held original citizenship.¹ The World Bank estimated that 31 million African people were living in countries other than their birthplace in 2010, with 77% of the 31 million originating from Sub Saharan Africa².

However, these figures are significant undercounts as they do not account for short-term, temporary migrants. Nor do they include cross-border traders –many in Africa—who spend much of their work life moving across various countries although remaining legally resident in their home country.

90 percent of migration today is bound up in employment outcomes and economic activity. ILO calculated that 105 million of the 214 million people –including including refugees – living outside their countries of birth or origin in 2010 were economically active.³ That is to say: employed, self-employed or otherwise engaged in remunerative activity. That represents nearly all of those of

¹ UN Department of Economic and Social Affairs *2013 Estimate* issued 1 October 2013. As noted in the estimate, “The estimates are based on official statistics on the foreign-born or the foreign population, classified by sex, age and country of origin. Most of the statistics utilised to estimate the international migrant stock were obtained from population censuses. Additionally, population registers and nationally representative surveys provided information on the number and composition of international migrants.”

² Bilateral Migration Matrix, World Bank, 2010

³ ILO, *International Labour Migration: a Rights Based Approach*, International Labour Office, Geneva, 2010, p. 1.

working age. Given an estimate of one accompanying dependent for each active adult, it is reasonable to estimate that 90 per cent of migration results in labour and employment outcomes.⁴

Migration today is key to the viability of labour markets worldwide. It is key to obtaining return on capital in a globalized economy. It is key to development. Indeed the very survival of the developed economies depends increasingly on migration.

Migration rejuvenates workforces, maintains viability of agriculture, construction, health care, hotel, restaurant and tourism and other sectors, meets growing demand for skills, and promotes entrepreneurship, all this across Africa as elsewhere. Migrant remittances, transfer of skills, investments, and expanded trade enhance development and well-being in many countries.

Migration represents growing portions of populations and, particularly, work forces in many countries across Asia, the Americas, the Caribbean, and Eurasia. Foreign born workers comprise 10% to 15% of labour forces in Western European countries and around 18% in immigration countries of Australia, Canada and the USA,⁵ and from 40% to 93% of work forces in member States of the Gulf Coordination Council (GCC) and Libya among MENA (Middle East and North Africa) countries. It is 10 to 20% across Eurasia (Russian Federation, Caucasus and Central Asia). While generally less in much of Africa, 25% of the workforce in Cote d'Ivoire (25%) is foreign born/foreign origin.

The irony is that this occurs as unemployment rises. The dichotomy is twofold: a significant proportion of unemployment is structurally inherent to jobless growth approaches by finance and industrial capital, while technological evolution in the world of work meaning that many workers either have skills and experience that is obsolete or do not have skills relevant to today and tomorrow's skills needs. This coupled with the fact that education and training in many countries lags behind evolving economic and labour market needs, both in numbers trained and in content of training.

Common terms that shape perceptions –South-North and South-South-- do not accurately convey the reality that most migration is taking place within regions –not between. 52% to over 60% of migration originating in Africa, Asia and Europe remains within those regions. Much migration today takes place within the twelve Regional Economic Communities that have formal regimes of free circulation of persons that involve a total of over 120 countries. 80% of migration originating in West Africa goes to other member states of the ECOWAS. It is 60% for the SADC region (Southern Africa Development Community), similar to proportions in the European Union and Mercosur.

Labour Mobility and Regional Economic Integration:

Free movement of persons has long been recognized as a key pillar of economic integration and development in Regional Economic Integration processes (commonly referred to as Regional Economic Communities -RECs- in Africa). Free movement of persons is the means to ensure availability of skills and labour where needed to spur investment and economic development by drawing on the full breadth and diversity of professional and technical competencies as well as labour power across the member States of RECs. It is the practical means for expanding free trade and commerce throughout the region, particularly of locally-produced goods and services.

Thirteen regional integration processes worldwide involving some 120 countries now include or are negotiating free or facilitated circulation regimes. These include Andean Pact, ASEAN, CARICOM, CEMAC/ECCAS, CICA (Central America), COMESA, EAC, ECOWAS, EU, Eurasian Economic Union, GCC, IGAD, and SADC. Migration in terms of free circulation should be an engine of development and integration for the entire African continent as it is for Europe with the EU and for

⁴ *ibid*

⁵ Recent figures for most EU countries and "immigration countries" mentioned are found in the OECD *International Migration Outlook: SOPEMI 2011 Statistical Annex*

South America with MERCOSUR. However, long experience shows that the potential of migration is only realized when it is effectively governed, properly regulated, and migrants' rights are protected.

Economic activity and employment considerations must also be taken into account in integration or reintegration of significant numbers of persons displaced by political or humanitarian emergencies. Intra-regional mobility and associated benefits represent a vital livelihood strategy for many Africans and their families, thus contributing significantly to the achievement of MDGs.

However, most of the literature, much of the discourse, and most institutional structures –nationally and regionally-- seem to miss entirely the crucial labour mobility-economic development-regional integration interdependency.

Economic activity will not occur without capital, labour power and skills/technology coming together. Development today will not advance without integrating the material and human resources, capital, technological capacities and larger markets across groups of states that only combined together can obtain: 1) the breadth of resources, 2) scale of production and 3) size of markets that guarantee viability in a highly competitive globalized world economy. Integration will not thrive without regulated freedom of movement of goods, services, capital, technology and labour at all skills levels.

These factors and conditions must be taken into account in revitalizing the domestication and implementation of existing free circulation regimes across Africa, and in negotiating viable regimes among RECs still lacking effective approaches.

Economic importance of migration

Recent figures indicate that the annual flow of remittances is more than 500 billion US dollars⁶. Some estimates exceed \$600 billion. That is considerably larger than total annual overseas development assistance (ODA - "foreign aid") and larger than total foreign direct investment (FDI). But remittances generally comprise less than 20% --at most-- of migrant earnings.

Nonetheless, a more comprehensive measure of value of economic activity by migrants to host countries may be at least 2.5 to 3 trillion dollars, measured by an extrapolation of aggregate direct earnings. That does not indicate the value added or created by migrants' labour not returned to workers in remuneration or benefits but that adds to the worth of employers, whether private or public, in formal and informal sectors. The acknowledged subsidy that undocumented migrant workers provide to the US Social Security system is estimated to be near 50 billion dollars over the last 5 years.

Remaining un-measured is the value of training and social reproduction cost transfers made by migrants moving usually from less to more developed countries. In aggregate terms, that represents a sort of *foreign aid* primarily from South to North. Assuming that each migrant with tertiary education represents \$40,000 in cost of usually State-financed higher education, migration of 100,000 skilled workers represents an aggregate transfer of educational investment equivalent to 4 billion US dollars. This figure is indicative, no research on costings and aggregate values has been widely done.

Greater mobility anticipated

Within 15 years, the majority of world's countries and populations will be in serious work force decline.⁷ Germany loses 5 million members of its work force in the next ten years, the Russian Federation has lost 10 million since 2000, with currently a rate of reduction of 1 million workers per year in its domestic labour force. The Japanese labour force will have shrunk by 37% in 2040 from

⁶ World Bank. "Migration and Remittances" September 2, 2014.

⁷ For a corporate view on the phenomena, see Ernst & Young online report: "Six global trends shaping the business world: Demographic shifts transform the global workforce" at <http://www.ey.com/GL/en/Issues/Business-environment/Six-global-trends-shaping-the-business-world - Demographic-shifts-transform-the-global-workforce>

what it was in 1990. A recent study says that Switzerland will need 400,000 additional workers by 2030. And there's the big one: China's work force may decline as many as 100 million people in the next 30 years.

Some 140 of 224 recognized countries and political territories are at or well below zero population growth fertility rates⁸. Examples from regions, starting with 5 members of SADC: Botswana, Mauritius, Namibia, Seychelles, and South Africa. Elsewhere in Africa: Libya, Morocco, Tunisia. Asia: Bhutan, Brunei, Hong Kong (SAR-China), Indonesia, both South and North Korea, Malaysia, Mongolia, Singapore, Sri Lanka, Taiwan («Province of China»), Thailand, Vietnam and others. Americas: Brazil, Canada, Chile, Colombia, Costa Rica, El Salvador, Nicaragua, Paraguay, Uruguay, USA, plus nearly all Caribbean states. Argentina, Mexico, Peru are 'almost there' with 2.25 fertility rates in 2013. All EU member countries. Eurasia: Armenia, Azerbaijan, Belarus, Georgia, Moldova, Russian Federation, Ukraine, Uzbekistan. Middle East: Bahrain, Iran, Lebanon, Qatar. Saudi Arabia is at 2.21.

Over coming years, all of these countries face increasing departures from the work force uncompensated by decreasing numbers of youth entrants. This means increasingly intense global competition for the most crucial economic resource of all today, trained skills at all levels. The likely consequence for many developing countries will be even greater drain of skilled and educated human resources. It also means looming crises for contributory-based social security systems as declining work force numbers face increasing numbers of retired workers.

Pressures for labour displacement and emigration from countries North and South remain intense; in some situations they have significantly intensified in the last five years. Particularly in Africa, the main factor remains the absence of jobs and decent work in countries with growing youth populations. Job creation remains consistently flat while youthful populations are increasing, adding millions of new workers each year to labour markets in which new jobs created only match numbers of jobs lost. Significant population growth is expected to continue over the next three decades across sub-Saharan Africa, with fertility rates and population growth gradually decreasing by mid-century. A major consequence will be millions more youth reaching working age with no prospects for employment and many with no training or qualifications to meet employer needs.

Meanwhile, financial crises and austerity measures that devastated national economies as well as social protection systems even in Europe have resulted in youth unemployment rates at or above 50% in several countries⁹. New waves of emigration, especially of young skilled workers, are departing from Greece, Ireland, Italy, Portugal and Spain.

Skills and training constraints

No country today can form or train the entire range and number of evolving skills needed to perform the ever more complex work performed on its territory. This drives a constantly increasing, international mobility of skills, competences, and labour at all skill levels.

The skills crisis is critical. A forecasting study by the McKenzie Global Institute estimated that the global shortage of high skilled and trained technical skills is projected to reach 85 million by 2020. 38-40 million skilled workers with tertiary education will be lacking, especially in developed countries. Another 45 million will be missing with needed technical, vocational and scientific skills, particularly in developing countries, notably across Africa. This within five years when employers and their associations around the world today –including in Africa-- complain that they cannot fill one in three jobs on offer with the needed level of skills.

⁸ This and following figures drawn from the on-line *CIA World Factbook, Country Comparison: Total Fertility Rate(s)* at <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2127rank.html>. 2.1 to 2.2 children per woman is considered the 'replacement rate' of zero population growth, below which population will decline.

⁹ Eurostat. Table 1: Youth Unemployment Figures, 2011-2013 Q4.

Africa as a whole faces a huge mismatch in both numbers and quality. The needed skills largely do not 'exist;' far too few people are being prepared with the needed and appropriate skills for today's or tomorrow's needs. It is widely observed that institutions and educational systems across this continent are producing graduates with inappropriate, inadequate or obsolete skills and knowledge. At the same time, educational, vocational and technical training systems are not accessible to many youth seeking employable skills and qualifications.

The development cost for Africa is huge, skills are absent where they are needed to spur investment and support economic and infrastructure development. Impediments to mobility and absence of recognition of skills and experience compound the lack of training for current and future needs.

Convergence and contention between economic actors

Capital, managed today mostly by private sector employers and *labour* represented by worker trade unions, are incontestably the core actors of economic activity. They are the operational pillars for advancing –or simply maintaining-- development. They are thus the key actors to advancing regional integration, certainly in the fundamental economic dimensions. They are the primary beneficiaries of liberalizing international circulation of capital, goods, services, technology and labour. They most immediately suffer the losses engendered by restrictions on circulation –whether of capital or people. And they are, in some cases together, the proponents and beneficiaries of free circulation of persons. Participation of these actors, referred to as the *social partners*, is thus essential in any process on liberalizing circulation of labour.

However, migration is a key terrain of contention between capital and labour: between the employers/private sector versus workers/especially organized unions. It is where the division of wealth is fought out-- how much of what is generated is returned to capital versus how much goes to working people as remuneration and to and populations as public services. Migrants are also vectors of contention over conditions of work and investment in safety and health protections versus lowering costs to obtain higher returns on capital.

Migration poses the question of whether working people remain organized to defend their interests. Migrant workers are key to whether and how workers freely associate and organize to collectively bargain for fair remuneration and decent work conditions. They are making or breaking unionization in industrialized countries.

In the context of promoting freer circulation of people –of labour, '*social dialogue*' among the social partners is especially important to facilitate agreement on common positions and cooperation across their diverging interests. This to find workable approaches that engage both employers and workers and to bring to bear the strength of a common front to ensure that government and parliamentary approaches take full account of their role and perspectives. That is ultimately essential to making free movement work to advance integration and development.

Protection

Exploitative conditions commonly experienced by migrants are structurally driven. For many enterprises in many countries, for entire economic sectors, low cost foreign labour is the only ticket to survival. Labour dependent agriculture would not be viable in Europe nor in North America nor in South Africa --nor could a part of the population afford to eat-- without cheap immigrant labour. Health, home care and schooling for children and care for populations of ageing people increasingly depend on migrants in all regions –including Africa –as do hotel, restaurant and tourist sectors in many countries. Global competition, free trade, and the race to the bottom phenomena push against costs of labour and provision of social services; they challenge the very social function of States.

Keeping some migrants cheap, docile, flexible and removable without social costs-- becomes not just highly desirable. It becomes imperative to keep jobs at home and economies afloat, no matter what

those jobs are and who is doing them. Despite rhetoric about controlling migration, migrant workers remain in irregular situations, tolerated because they provide that cheap, flexible labour needed to sustain enterprises, employment and competitiveness.

An excerpt from the executive summary of a report on the UK sums up features consistent with data from many other developed, industrialized countries:¹⁰

“Migrants, especially those from outside the EU15 who have limited access to social security provisions, face the paradoxical position of being welcomed by businesses and the state due to their high flexibility and minimal utilisation of the welfare state on the one hand, whilst facing increasing unease and hostility from anti-immigrant groups, the same state that welcomes them, and large numbers of the general public on the other.

The highly unregulated and flexible economy has allowed many migrants to easily find work and businesses to remain competitive whilst simultaneously creating the conditions for widespread exploitation and producing divisions amongst workers, both between (native) born/migrant and between different groupings of labour migrants.”

Attention to protection of human and labour rights and of decent work is thus an essential pillar of any approach to international labour mobility. In particular, the application of international labour standards and their domestication to all workplaces –formal or informal, especially those where migrants are employed.

Social Protection

Migrants are today unwitting players in a vast global redefinition of social protection: who is responsible for it, who is covered and with what benefits. The intent in international law is universal coverage, certainly of a 'social floor.' But this author has heard assertions that social protection for migrants is today a question of finding a median between two “extremes,” one being full coverage, the other none at all, implying that the coverage laid out in ILO Convention 102 is an 'extremist' position.

Effective social security systems provide income security, prevent and reduce poverty and inequality, and promote social inclusion and dignity. Social security enhances productivity and employability and supports sustainable economic development, contributing to decent living conditions for all and making extension of social security coverage for migrants vital to workers, the economy and society.

Although migrant workers contribute to the economies of both destination and origin countries, they are not usually taken account of in national social security schemes. Migrants often lose entitlement to social security benefits in their country of origin due to absence. They face restrictive conditions or non-access to social security in the country of employment. Even when they can contribute in host countries, their contributions and benefits often are not *portable* to origin countries.

Progressively extending social security to migrant workers across Africa is imperative to ensure welfare and social cohesion across the region. However, it can only be achieved with political will to obtain necessary legislative acts, administrative mechanisms and practical measures.

Gender Specificity

The feminization of migration is less about the gender proportions of migration. Female participation has been above 45% for decades and is nearly 49% today¹¹. The difference is that today most if not nearly all women migrants are economically active. They often migrate on their own rather than as dependents. This is generally true in all regions including Africa.

¹⁰ Ian M. Cook, *Hierarchies of Vulnerability: Country report United Kingdom; Labour migration and the systems of social protection*, Multikulturni Centrum Praha, Czech Republic, 2011, page 4

¹¹ United Nations Population Fund. “Population Facts” No. 2013/2. September 2013.

In a context of stratification of employment and segmentation of labour markets, women migrants hold particular appeal for employers as they are sought after for 'women's work' that, not coincidentally, is usually low paid and unprotected: domestic work, healthcare, agriculture, hotel and restaurant, semi-skilled manufacturing in export processing zones. Common across these sectors is that while some workplaces may be highly socialized they are not organized, meaning no unions or associations for mutual defense and solidarity, nor any bargaining power to press for decent work conditions.

In Southern and Western Africa, women predominate among the large numbers of mobile commercial and trade workers who circulate regularly across different countries. This group of mobile persons is poorly documented and most are not counted as 'migrants' in statistics. However, their livelihoods are based on international mobility and many spend more time 'on the road' in other countries than their country of established residence.

Women and girl migrants face high risks of sexual and gender based exploitation as well as violence, both in the migration process and in destination countries, across Africa as elsewhere. Adoption of ILO Convention 189 on Decent Work for Domestic Workers has brought attention to a sector of activity almost entirely comprised of women workers. Attention to the risks faced by migrant domestic women workers should be a springboard to highlight the generalized lack of effective protection faced by women migrant workers in agriculture, in textile sweatshops and elsewhere. Testimony abounds of women working in these sectors subject to exploitative working conditions, sexual harassment, unprotected exposure to dangerous pesticides or chemicals, and other risks.

The clear and present danger of xenophobia

A burning concern is the recognized generalized rise in both discriminatory practices and of racist, xenophobic behaviour against migrants. Hostility towards migrants is being manifested worldwide. Reported incidents in all regions suggest increasing intensity: shootings of groups of migrant workers at or near workplaces, commonplace individual or mob attacks on and killings of migrants, and in some cases police round-ups and mass detention of migrant workers in concentration camps. Reports from Africa have indicated that in some situations of domestic unrest and civil conflict, foreigners have been explicitly targeted with sometimes deadly hostility.

The concern is aggravated by the absence, with one or two exceptions, of vigorous responses by governments to anticipate, discourage, prevent manifestations of racist and xenophobic hostility against foreigners, and to prosecute perpetrators. It is further aggravated by discourse and action by some governments that engage in public brutality and violent repression against migrants.

Social cohesion can only be maintained by deliberate legal, institutional and practical measures. Demonstrable proof is that in a few countries such as Ireland where discrimination and xenophobia have been vigorously discouraged by government and civil society, there have been few or no racist killings of migrants nor burnings of businesses, homes or places of worship of foreigners and where anti-immigrant politicians and political parties have gained no traction.

The governance framework

Despite the considerable academic literature and discourse to the contrary, there is indeed a comprehensive international framework for governance of migration. Much of it is designed to support good governance and administration at the national level, where most responsibilities and issues lie.

This framework comprises a broad set of complementary international legal standards in several areas of law. It comprises supportive mandates and responsibilities in a range of international and regional agencies and organizations. It also includes globally applicable policy recommendations elaborated in formal, authoritative international conferences over the last two decades.

The legal framework is provided by 1) the nine main Human Rights Conventions; 2) all up-to-date International Labour Standards; 3) the 1951 Convention and 1967 Protocol on the Status of Refugees,

4) the Vienna Convention on Consular Relations; and 5) the two Protocols on trafficking in persons and smuggling of migrants to the Convention against transnational organized crime.

At the core of the global legal regime for migration governance are three complementary, sequential instruments on international migration: ILO Convention 97 on Migration for Employment (1949), ILO Convention 143 on migrant workers (Supplementary Provisions) of 1975, and the 1990 International Convention on the Protection of All Migrant Workers and Members of Their Families (ICRMW).¹² All three contain norms for governance and administration of migration and for international dialogue and cooperation as well as specific standards recognizing and protecting the rights of migrants.

Protection of migrants rights cannot be realized nor enforced without recognition in national law and practice. Ratification of these instruments is the essential foundation for migration law, policy and practice. In reality, 87 countries have ratified at least one of these three instruments, including 26 in Africa and nearly all countries in Central and South America. Counting additional signatories of the ICRMW, 98 countries worldwide including 30 in Africa are legally committed to uphold international standards governing migration and protecting rights of migrants.

Fitting for a large global population present in many countries, the international institutional structure mirrors the multitude of concerns of governing large populations, whether within a particular state or spread across many. A number of specialized international institutions address relevant aspects of migration in their mandates, competencies and activity, whether labour and employment, health, security, development, education, human rights, criminal justice, etc. No single migration agency could possibly address the range of concerns of governing populations, each requiring specialized knowledge, law, competencies and functions. No more than any government could abolish its 12 to 20 plus ministries addressing specific areas of governance to instead operate with a sole super-ministry.

Restructuring Governance: redefining a new regime for labour?

The governance structure for migration –as well as ideology and practice of governance of migration – is changing in both old and new immigration countries. The locus of migration governance in immigration/migrant receiving States over previous decades was generally in labour and employment ministries. This designation reflected the primacy of needs to regulate labour markets and protect workers as well as oversee employment relations and social dialogue. Those ministries retained vital competences in labour market administration, in supporting and mediating negotiation between social partners, and in taking account of interests of the key migration actors: employers –public and private –and unions –the latter representing workers both native and migrants. Those ministries also supervised the vital regulatory and administrative functions of labour inspection and social security.

Security and control institutions of States now widely predominate in managing migration and controlling migrants. Ministries of interior or home affairs now hold lead responsibilities on migration in many countries in all regions. Consolidation of home affairs' lead responsibility for migration is coincident with a broad redefinition of conditions for labour. The treatment imposed on a substantial migrant component of work forces can and does influence treatment of the work force more broadly. Administration of increasing foreign components of work forces by control institutions has consequences in shifting emphasis of law enforcement regarding work from labour standards to immigration enforcement and in imposing policing solutions to labour conflicts at the expense of social dialogue.

Coincidentally, enhanced and generalized border and movement control measures within regional economic community spaces have large implications in impeding and slowing as well as raising costs contrary to facilitating free and flexible movement of labour and skills as well as goods and services. The plethora of control posts along land routes across Africa, each with obligatory inspections and payment of 'fees,' does not facilitate circulation of goods, services, or people.

¹² Texts, ratification status and related information available respectively at: <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:1:0> and: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx>

Movement control measures also undermine exercise of freedom of association rights in internationalized labour markets and employer chains. Tightened control on movement facilitates tightened control on workers and work forces, restricting realization of rights to change employers or workplaces to escape exploitative, oppressive conditions –or to organize across sectors, industries and production chains that are increasingly organized across borders.

Meanwhile, advocates of expanded 'circular migration' (a generic misnomer for short term, temporary, and seasonal migration regimes) characterize it as the solution to both employment needs and to protecting 'national cohesion and cultural integrity' of nation states needing foreign labour. Many contemporary temporary migration regimes in fact offer explicitly restricted labour rights, notably exclusion of freedom of association, while permitting reduced application of labour standards.

The price of rights

A justificatory discourse associated with these initiatives posits that the level of rights protections for migrants is negotiable. The terminology of *rights versus numbers* and *the price of rights* is used to show the advantages of trade offs where wider access by migrant workers to higher wage labour markets would be obtained by accepting reductions in application of labour rights. The argument that lowering wages instigates creation of more jobs is not infrequently invoked.

A fundamental premise in this discourse –and often in policy initiatives-- is that foreigners are not equal, nor are they equally entitled to protection or inclusion under law or ideology of the nation State. In practical terms, the popularized notion stresses that limiting rights of migrant workers will incentivize greater opportunities for migrant access to labour markets in higher income countries, and consequently, greater “development gains” through more jobs created at lower wages and more financial and skills remittances returned to migrant origin countries.

Anchoring discourse and program on a development starting point ultimately facilitates a rights **versus** development discourse. The rights versus numbers argument explicitly poses that less rights for migrant workers will generate more employment in higher income situations and thus more development.. Setting *development* as the main reference point in a deregulatory environment easily permits posing equality of treatment as a constraining conditionality. Development discussion anchored in economic indicators risks perceiving migrants first and foremost as agents of development rather than first and foremost human beings, regardless of utility to development.

15 law, policy and practical challenges for governance of migration

Key concerns for migrants, especially migrant workers, and for governments, for economic viability, In Africa as well as elsewhere. The risk of ignoring or leaving any unaddressed is that what may be gained in action on one area is lost elsewhere.

- 1. Lack of legal protection, non-recognition of migrants; non-recognition of rights under law.**
- 2. Utilitarian instrumentalization of migrants and migration subordinating human rights**
- 3. Criminalization of migrants**
- 4. Prevalence of sub-standard, abusive employment relations and conditions of work**
- 5. Increasing xenophobic hostility and violence against migrants worldwide**
- 6. Systematic/structural discrimination and exploitation of migrant women**
- 7. Suppression of migrant worker organization and participation**
- 8. Lack of health care and OSH; denial of health rights.**
- 9. Absence of social protection and social security for many migrants**

10. Family disruption and decomposition

11. Increasing gaps between skills needs and numbers and types 'produced' worldwide

12. Non-implementation of free circulation regimes

13. Absence of explicit national policy frameworks on (labour) migration

14. Concentration of migration management responsibilities in internal security and policing institutions of States.

15. Absence of policy and administrative responsibility/capacity by labour and social protection institutions.

An Agenda for Action

An agenda comprising policy lines, political demands and practical actions for a rights-based approach to governance of labour migration derives from the review above. Its elements evolve from World Conferences in 1994, 1995 and 2001, the Plan of Action on Migrant Workers adopted by the International Labour Conference in 2004, and the ILO Multilateral Framework for Labour Migration¹³ as well as multiple trade union and civil society forums. All components are crucial.

1. Full recognition and legal protection of all migrants

- a) Promoting ratification and full implementation of the legal standards recognizing and protecting rights of all migrants: the **ICRMW, ILO C-97, ILO C-143 and ILO C-189**.
- b) Promoting and assisting in **regularization** of migrants in unauthorized situations.

2. Rights and people based discourse

- a) Identify migrants as rights-holders first and foremost
- b) Call for respect for four freedoms for all migrants: Freedom of choice; freedom of movement; freedom to stay; freedom of association and participation.

Normative references: Declaration of Philadelphia, UDHR, ICPCR, ICESCR, ICRMW, regional conventions and protocols.

3. Decriminalization of migrants, refugees, and migration:

- a) De-criminalization/non-criminalization of immigration law and infractions to it
- b) Non-detention/ending detention of migrants for non-criminal offences
- c) Treatment of minors according to best interests of the child
- d) Repeal of generalized migrant/traveller identify control, surveillance and restriction measures
- e) Lift border controls and eliminate in-country travel/transport inspection-control posts within established areas of regional, multi-country free circulation of persons

Normative references: UDHR, ICRMW, Regional treaties and executive decisions in ECA, ECOWAS, EU, Mercosur, etc.

4. Decent Work for all migrants: Vigorous enforcement of labour standards

- a) Adoption and application of International Labour Standards, particularly to places and conditions where migrants are working.
- b) Extend labour inspection to and in sectors and workplaces where migrants concentrated.
- c) Fully 'fire-walling' labour inspection from immigration control.

References: All International Labour Standards, ILO C-81 (labour inspection), ILO C-129 (labour inspection in agriculture), CEACR rulings.

¹³ ILO, *Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration*, International Labour Office, Geneva, 2006. Available at: http://www.ilo.org/public/libdoc/ilo/2006/106B09_343_engl.pdf

5. Stop Xenophobia, racism and discrimination against migrants

- a) Repeal discriminatory legislation; reinforce non-discrimination/equality of treatment in practice
- b) Define and implement national action plans against racism, xenophobia, discrimination
- c) Denounce and repudiate any and all acts of xenophobic violence.
- d) Demand anti-racist, anti-xenophobia political discourse, media reporting and school curricula.

Normative references: ICERD, ILO C-111 (discrimination in employment, occupation), ICRMW, also 2001 Durban Declaration and Program of Action.

6. Support freedom of association participation of migrants in unions and associations

- a) Advocate for legislation ensuring freedom of associations rights for migrants
- b) Support migrant organizing in unions, by unions
- c) Conduct outreach to engage migrants in unions, associations, CSOs where they live and work.

Normative references: ILO C-87 (freedom of association), ILO C-98 (collective bargaining rights), ICPCR, rulings of ILO Committee on Freedom of Association

7. Gender-specific migration legislation and policy

- a) Ensure equality of rights, opportunities and protection for all migrant women and girls
- b) Obtain gender specific policy, measures and practices recognizing gender-based risks and ensuring equality in outcomes as well as intent.

Normative references: CEDAW, ILO C-100 (equal remuneration)

8. Health for all migrants (health is a right for all).

- a) Full access by migrants to health prevention and care services and facilities
- b) Elaboration of national public health and OSH policy on health for migrants
- c) Monitor occupational safety and health (OSH) protection for migrants in all workplaces

Normative references: UDHR, ICESCR, ILO C-155, 161, 187 on OSH plus over 30 other International Labour Standards on specific branches or specific risks

9. Social Security for migrants

- a) Immediate unilateral measures to extend social security coverage and portability to migrants in both origin and employment countries
- b) Incorporate and harmonize social security access in regional integration spaces.
- c) Wider ratification and implementation of ILO C-102 (social security) C-118 (portability)

Normative references: UDHR, ICESCR, ILO C-102, C-118; ECOWAS General Convention on Social Security

10. Family Unity and family support

- a) Demand family unity provisions in all immigration and migration regimes
- b) Ensure immigration law facilitates family reunification
- c) Measures to sustain socialization & education for children and adolescents remaining at home.

Normative references: UDHR, CRC, CEDAW

Policy administration agenda

11. Overcoming skills shortages; training youth for employment

- a) Reform, renovation and expansion of technical and vocational education and training
- b) Harmonize qualifications and training standards
- c) Implement circulation regimes, reduce barriers to labour and skills movement

Normative references: UNESCO Conventions; international occupational classifications

12. Promoting full adoption and implementation of free circulation regimes

- a) Advocate for political will by governments to realize and implement free circulation of people
- b) Advocate ratification of regionally agreed regimes by REC member States

- c) Promote national implementing legislation
- d) Harmonize labour codes in RECs
- e) Derogate legal, administrative and control measures that thwart labour circulation.

Normative references: REC treaties, protocols and executive decisions in Andean Pact, CARICOM, CEMAC/ECCAS, CICA, ECA, ECOWAS, EEC, EU, IGAD. MERCOSUR, SADC etc.

13. Establishing National policy frameworks on migration, in consultation across government and with social partners and civil society

- a) Obtain commitment to establish a (labour) migration policy framework/document
- b) Organize a fully consultative input and elaboration process
- c) Involve concerned government ministries/agencies/authorities at relevant levels, including legislators, social partners, and relevant civil society and migrant organizations.
- d) Address comprehensively concerns, issues, and challenges of international migration
- e) Designate responsibilities among stakeholders
- f) Propose implementation planning and time-lines
- g) Obtain endorsement of policy frameworks by stakeholders
- h) Expect approval and adoption at the highest level of government

Normative references: ILO Multilateral Framework on Labour Migration (non-binding); the African Strategic Migration Policy Framework; formal policies adopted by States in various regions

14. Consolidate policy & administrative responsibility, capacity, & coordination by labour institutions

- a) Assign labour migration governance responsibilities to labour/employment ministries
- b) Designate focal points or units in labour institutions on labour migration/mobility
- c) Encourage engagement of social partner organizations
- d) Training and capacity building for labour institutions and social partners.
- e) Tripartite policy consultation and coordination at national, regional and continental levels

Normative references: ILO C-143 (involvement of social partners in migration policy); ILO C-144 (Convention on Tripartite Consultations) and ILO C-150 (labour administration)

15. Obtain gender & age disaggregated data on migrant characteristics, situations, conditions.

- a) Adoption/utilization of international labour migration database indicators
- b) Application of international statistical standards to obtaining data on labour migration
- c) Establishing data sharing and coordination among national institutions concerned
- d) Interfacing data with relevant international labour market and labour migration databases
- e) Supporting provision of competencies, training, and appropriate hardware & software

Normative references: International Labour Statistics Standards; UN guidelines on international migration statistics

Summation

History tells that migration has always been an essential ingredient of development and human welfare. It is all the more so today, particularly for Africa. However, unless regulated by appropriate laws and policies, migration entails high costs in violations of rights of persons, in social disruption, in reduced productivity, and in lost opportunities for development. Migration must be governed under the rule of law with the involvement of key stakeholders across government, in parliaments, social partners, civil society, and migrants themselves.

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