



GOVERNANCE OF MIGRATION

A CONTEXT NOTE

*for reference in current national and international processes and discussions.
Prepared by Global Migration Policy Associates (GMPA), an international expert group*

Governance, migration governance, and global governance are frequently cited terms in today's world of international migration. Migration today affects every country, every major city, and local communities in all regions. The latest UN 2015 estimate indicates that 244 million people are residing in countries other than that of birth or citizenship. Untold millions more are short term, seasonal or temporary migrants and mobile commercial workers not counted in that figure. Increasing migration is driven by a rising international demand for labour and skills, coupled with the absence of decent work and sustainable living conditions for many people in many countries. Increased migration is also the consequence of the inability of States, individually and collectively, to address root causes of forced migration.

International migration has always been an essential ingredient of development and human welfare. It is all the more so today. However, unless governed by appropriate legislation, policy and practice under the rule of law consistent with international norms, migration entails abuse and exploitation at work, disruption of social cohesion, denial of social protection, family disintegration, reduced productivity and lost opportunities for development and prosperity. Restrictions on migration and the xenophobic rejection of migrants and refugees undermine sustainable economic growth, viable labour markets, and social cohesion in countries North and South. Thus, the governance of migration is today a global challenge. This brief outlines what migration governance is, the challenges it must address, and its key components.

What is Governance?

GMPA member experts understand governance concerning migration as the interdependent set of legal norms, policies, institutions and practices to administer, regulate, and mediate activity and relations within defined political-social entities, whether States, administrative regions, cities or corporate bodies.

At multiple jurisdictional and territorial levels, governance functions *inter alia* to regulate economic, social and political organization; provide for infrastructure; stimulate and regulate economic activity; ensure social protection, health, education, food, housing, transportation, utilities and services for concerned populations; uphold decent work; ensure public safety and order; mediate conflicting interests; provide for justice; and conduct relationships with and defend interests *vis à vis* external entities.

Key Concerns for migration governance

Migration governance must be responsive to the heterogeneity and complexity of migration factors as well as refugee and migrant situations, while always recognizing that the ultimate aim of governance must be to promote human well-being for all.

- * Nearly every government entity, national to local, is concerned with migrants and refugees.
- * International labour and skills mobility is more than ever key to development worldwide.
- * Migration is crucial for achieving regional economic integration sustaining development in 13 Regional Economic Communities involving more than 100 countries in nearly all regions.

- * Migration is essential for maintaining viability of developed, industrialized economies and labour markets.
- * Global demographic, economic and labour market trends, along with accelerating climate change and environmental degradation, indicate that migration will significantly increase in the next decades.
- * Many migrants face abusive and exploitative conditions at work, absence of labour and occupational and health protections, and lack of social protection
- * States and employers face mounting economic pressures to obtain less-protected migrants, providing cheap, docile, flexible labour.
- * Women and girls comprise nearly half of all migrants worldwide, and face particular risks for which social protections are often lacking.
- * Xenophobia, anti-migrant discourse, and rights-restrictive law and policies are surging in all regions.
- * Migrants and refugees worldwide face restrictions on human rights and social protection in law and practice.
- * Newcomer populations require public services and support for participation and integration such as schooling, healthcare, housing, transportation, police protection, and social security.
- * Employment, labour market integration, recognition of qualifications and training of migrants and refugees require attention by governments, employers and worker organizations.
- * Upholding family unity in migration and providing for protection and best interests of migrant and refugee children, particularly unaccompanied minors, demand governance attention
- * Countries of origin must address skill and labour deficits resulting from emigration, while targeted schooling, job training, social support and welfare services are necessary for children and youth whose parents have migrated.
- * Increased refugee flight is a consequence of foreign military interventions, international arms sales, and foreign support for armed groups and insurgencies in conflict situations, notably in the Middle East.
- * The sense of crisis generated by current migrant and refugee movements is exacerbated by the unwillingness or inability of many States, notably industrialized countries, to respond adequately with protection and humanitarian assistance to refugees seeking safe haven in their territories.

Governance Framework

A comprehensive international framework for governance of migration has been built up over the last century, designed primarily to support national governance of migration. The framework was developed through collaborative international processes to address the challenges listed above, many of which emerged and evolved over decades. The migration governance framework comprises international legal standards, institutional mandates across a range of UN and other international and regional inter-governmental organizations, a sequential set of internationally agreed policy frameworks, and a vast array of measures and practices to facilitate regular migration and the integration of migrants. This framework provides rules and internationally agreed standards for responsibility and accountability of government and other stakeholder actors; it provides policy guidance identifying what should be done by whom and when; it implicates mandates of institutions across the whole of government; and it provides a multiplicity of practical models on how effective migration governance is done in many different contexts.

The foundation for governance of migration is contained in International Conventions and international labour standards articulating specific norms for national legislation and international cooperation. Understanding the imperative of anchoring migration governance

in the rule of law, the first international treaties with provisions on legal and social protection for migrant workers were drawn up in the 1920s.

Subsequently, a range of instruments in several areas of international law established a comprehensive framework addressing specific areas of concern. These legal norms are contained in both migration specific instruments and in applicable provisions of other instruments. Most of the relevant provisions are found in five categories of international law:

- 1) The nine fundamental Human Rights Conventions;
- 2) All up-to-date International Labour Standards (which generally apply to all migrant workers with a very few specified exceptions);
- 3) The widely ratified 1951 Convention and 1967 Protocol on the Status of Refugees;
- 4) The Vienna Convention on Consular Relations; and
- 5) The Protocols on trafficking in persons and smuggling of migrants to the United Nations Convention Against Transnational Organized Crime.

At the core of the global legal regime for migration governance are three complementary, sequential instruments specifically on international migration: ILO Convention 97 on migration for employment of 1949, ILO Convention 143 on migrant workers (supplementary provisions) of 1975, and the subsequent 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW). All three contain complementary norms for governance of migration and provisions for international dialogue and cooperation, as well as specific standards recognizing the human rights of migrant workers and their families.

These three instruments, together with the 1951 Refugee Convention and its 1967 Protocol provide the four overarching principles of the normative framework for migration governance:

- Universal human rights apply to all migrants—including refugees—regardless of status;
- All migrants, including *immigrants* and *refugees*, are entitled to equal protection and non-discriminatory treatment on the same basis as nationals with respect to employment and work;
- The broad array of international labour standards applies to all migrant workers; and
- Persons fearing persecution or fleeing warfare and/or human rights violations are entitled to *international protection* and assistance as refugees.

The ICRMW now counts **51** ratifications plus 15 signatories pending ratification. Including States that also ratified one or both of the ILO Conventions regarding migrant workers, 100 States have ratified or signed the most relevant international standards as a foundation for national governance. That is a large proportion of countries for which migration is a significant economic, social and political governance concern. 148 States have ratified one or both the Convention and Protocol on the Status of Refugees.

In addition to universal instruments of international law to which many States are party, there are regional instruments on human rights, migrant workers, refugees, and trafficking established by the African Union, the Council of Europe, the European Union and the Organization of American States. These instruments provide additional normative guidance in their respective regions. Furthermore, thirteen regional economic communities in Africa, the Americas, Eurasia, Europe and MENA regions have formal treaties or protocols establishing and regulating regional *free movement* of persons, as well as rights to residence and establishment for nationals of member States throughout the **respective** communities. These instruments generally contain guarantees of equality of treatment among citizens of the respective member States as well as regulatory and administrative guidelines for free circulation, residence, and establishment of employment and business activity.

Policy Frameworks

The international framework includes complementary sets of policy recommendations directed to national governments, negotiated during international and regional conferences over the last twenty years. The 1993 World Conference on Human Rights in Vienna gave specific impetus to the application of the global human rights regime to all migrants and refugees. The 1994 World Conference on Population and Development in Cairo addressed both international and internal migration and development formulated a comprehensive policy agenda on migration. The 2001 World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban developed guidelines to prevent racism and xenophobia and to achieve equality of treatment for migrants, refugees and other foreigners. Then the 2004 International Labour Conference in Geneva laid the groundwork for the ILO Multilateral Framework for Labour Migration. In addition, the 1995 World Summit on Social Development in Copenhagen addressed the nexus of migration and social development, and the outcome agenda of the 1995 Beijing World Conference on Women outcome covers migrant, refugee and displaced women and girls. Many elements from these frameworks are incorporated into the UN 2030 Sustainable Development Agenda.

Several international forums, processes and dialogues subsequent to the world conferences noted above have addressed migration policy and migration governance. Notable among these are the Global Commission on International Migration (2003-2005), the UN General Assembly High Level Dialogue sessions in 2006 and 2013, the ongoing annual meetings of the «States owned» Global Forum on Migration and Development, and currently, the preparatory discussions for the proposed Global Compact on Migration. These processes represent the ever growing concern with migration. Some have also implicitly affirmed the validity of the world conference frameworks on migration by reinforcing many of their core components. However, their scope has generally been less comprehensive, and in some cases less normatively anchored, and has tended to narrow the discourse, agenda and resulting outcomes away from the broader, standards-based policy and practice accomplishments achieved during the international conferences of 1993 to 2004.

However, the UN 2030 Sustainable Development Agenda adopted in 2015 and the global New Urban Agenda adopted by a world conference in Quito in 2016 both implicitly and explicitly lay out broad rights-based and socially responsible agendas for “*whole of agenda*” governance of migration. A GMPA expert review shows that some 44 targets across 15 of the 17 Sustainable Development Goals (SDGs) are directly applicable to the situations of migrants and/or to addressing conditions compelling migration.

Institutional Mandates

Today, the concerns of migrants and refugees are generally relevant to every aspect of national and local government, calling on the competencies and attention of nearly all ministries and agencies. Similarly, at the international level, migration today calls on the specific technical mandates and competencies of most UN agencies and other international and regional organizations, as well as their support of national and local actors across the wide range of concerns. The participation of 22 UN specialized agencies and programs and UN related agencies in the Global Migration Group (GMG), is a manifestation of the imperative «*whole of government*» approach to migration governance action and coordination at all levels: international, national and local.

Practices

Hundreds of action initiatives, programmes, policy implementation measures, and activities can be identified worldwide for the good governance of migration. Many of these support the realization of effective legislation, as well as national and local policy, and are implemented

not only by concerned government institutions and agencies, but, crucially, by social partners, civil society stakeholders and by migrant and refugee community organizations.

While there is no formal criteria for 'good practice,' we suggest that key indicators for formulation, application and evaluation include: 1) consistency with international standards and national legislation; 2) deliberate implementation of international as well as national and/or local policy; and 3) involvement of stakeholders including concerned migrant and refugee communities.

Restructuring Governance

Despite clear international agreements on normative law, policy and *whole of government* institutional frameworks for governing migration, recent years have seen migration governance responsibilities consolidated within the State security institutions across all world regions. This is a dramatic shift, particularly in Western countries where key migration governance responsibilities were previously lodged in labour, employment and social protection ministries. This previous institutional architecture reflected the fact that migration has long been primarily about work and skills for the development and continued viability of national economies. This reality was reconfirmed by the recent ILO global estimate of 150 million economically active 'migrant workers' — within a global migrant and refugee population of 232 million in 2013. Abusive, exploitative treatment imposed on a substantial proportion of a country's workers influences the workforce more broadly. Informal, precarious employment with no labour or social protection, declining or non-existent enforcement of workplace labour and occupational safety and health (OSH) protections, deregulation of labour markets more broadly, and roll-back of social protections may affect migrant workers first, but these consequences of a deregulatory environment ultimately undermine decent work for all workers.

The shifting emphasis by states from the enforcement of labour standards to immigration enforcement has accompanied the policing of labour conflicts at the expense of social dialogue and protection of human rights. Reducing rights protections directly undermines regulated labour and employment relations, channeling migrants into informal, precarious, unprotected work, at lower cost to employers but high cost for migrants as well as for social cohesion.

A further concern is change in the architecture of international consultations on migration. The most substantive international dialogue on migration policy, practice and operational cooperation now occurs outside the UN multilateral system with its normative parameters, support for equity in relations among member states, and technical competencies on most aspects of migration. On the contrary, contemporary "states-owned" forums tend to be dominated by national security institutions rather than the «*whole of government*».

National and Local Governance Considerations

We believe several interrelated considerations are key to achieving effective and sustainable governance of migration, necessarily in the context of the above normative frameworks:

- 1) The responsibility of virtually every administrative branch of government must be engaged, according to a coordinated «*whole of government*» approach, with the understanding that the concerns of migrant populations are those of the whole society.
- 2) Cities, where migrants and refugees are concentrated in much of the world, are central arenas for migration governance. Local authorities often act more effectively than national governments with *whole of government* approaches.
- 3) The universalist concern across government requires putting in place targeted legislation and involving all stakeholders in the elaboration of a coherent national *migration policy* framework, also at regional and local levels.

- 4) Effective and coherent policy demands organized consultation, coordination and cooperation among all concerned stakeholders across government, as well as social partners (the *economic actors*), civil society, and migrant and refugee communities **in what can be referred to as a *whole of society* approach.**
- 5) Social cohesion derives from ensuring universal and equitable access for all non-citizens (as well as citizens) to human and social services, notably health care and schooling.
- 6) Labour market integration is facilitated by recognition of qualifications, education and training, and experience, as well as job matching.
- 7) The opportunities and costs of maintaining a viable work force and social cohesion must be reflected in the costs and budgets of government and its respective agencies.
- 8) Responsible and well-informed media is key to changing public attitudes.

In sum, migration only yields its social and economic benefits with governance that:

- Provides recognition and protection for all migrants in legislation, policy and practice.
- Decriminalizes migrants, refugees, and migration in law and discourse.
- Facilitates labour and skills mobility in response to real labour market and employer needs.
- Applies international labour standards for *decent work* conditions for all workers—national and foreign.
- Assures full protection for migrant and refugee women with gender sensitive law and policy.
- Guarantees social cohesion by preventing xenophobia and facilitating integration.
- Extends social and health protection, as well as social security access and portability for migrants.
- Enhances education, training and recognition of qualifications for the professional, technical and vocational skills needed today and tomorrow.
- Upholds family unity and ensures family support.
- Consults with and takes account of all concerned stakeholders across government, social partners, civil society, migrant and refugee communities.
- Bases legislation, policy and practice on evidence and reliable, comparable data.

Existing international legal norms, policy guidelines, institutional architecture and practice models provide foundations for local, national and international governance on these aspects of migration. What more is needed is political will to implement this governance framework..

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Useful resources

Guide to ratification of the International Convention on rights of migrant workers. Steering Committee, Geneva, 2009: Available in **English, French, Russian, Spanish**. English version at:

http://www.migrantsrights.org/documents/ICRMWRatificationGuide_December2009English.pdf

Handbook for Parliamentarians on Migration, Human Rights and Governance. IPU-Interparliamentary Union. Geneva. 2015. Available in **English, French, Spanish**: <http://www.ipu.org/english/handbks.htm>

Handbook on Establishing Effective Labour Migration Policies, Mediterranean edition. OSCE-IOM-ILO, Geneva & Vienna. 2007. Available in **Arabic, English and French**. English edition at:

<http://www.osce.org/item/28725.html> **CIS edition in Russian & English** (2006) available at:

<http://www.osce.org/resources/publications/Handbook%20on%20Establishing%20Effective%20Labour%20Migration%20Policies%2C?&solrsort=score%20desc&rows=10>

«Good Practices» Databases:

- ILO *Good practices database - Labour migration policies and programmes*
<http://www.ilo.org/dyn/migpractice/migmain.home>

- GFMD *Migration and Development Policy and Practice database* <http://www.gfmd.org/pfp/ppd>

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