



GMPA

Global Migration Policy Associates

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

**AU-RECs CONSULTATIVE MEETING
ON A LABOUR MIGRATION GOVERNANCE PROJECT FOR AFRICA
ADDIS ABABA
16 December 2013**

GLOBAL MIGRATION CONTEXT ASSESSMENT NOTE

Key Issues, Situations and Responses

This text presents a global contextual background review for a consultative meeting among representatives of African regional economic communities (including COMESA, ECCAS, ECOWAS, IGAD and SADC), the African Union Commission, the International Labour Organization, the International Organization for Migration and the UN Economic Commission for Africa with participation also by UNESCO and UNAIDS. The purpose of the event was to compile an Africa-wide assessment of challenges, needs and policy priorities to elaborate a regional programmatic approach on governance of labour migration.

This expanded text incorporates concerns raised at the meeting. The assessment herein of challenges for governance and the identification of policy responses are anchored in perspective shared at the meeting on 16 December at the African Union Conference Centre in Addis Ababa.

Outlines:

1. Migration is here to stay; 90% of migration today has labour/employment related outcomes.
2. Migration is about development and about maintaining development
3. Free circulation is key to Regional Integration and Development
4. International labour and skills mobility will increase significantly in coming decades
5. Other 'push factors' are evolving: impoverishment, conflict and environmental degradation
6. Structural and systemic factors produce widespread exploitation, abuse of migrant workers
7. Migration and exploitation are gender specific
8. The dangerous rise in discrimination and xenophobia towards migrants
9. A comprehensive global legal and institutional framework for governance of migration.
10. Shift of migration governance to arbitrary control and security mechanisms
11. Fifteen contemporary challenges needing governance action and alternatives in Africa
12. Action lines for effective governance of labour migration with decent work & social protection.

1. Migration today?

There are an estimated 232 million foreign-born people residing today in countries other than where they were born or held original citizenship.¹ ILO calculated that 105 million of the 214 million people living outside their countries of birth or origin in 2010 are economically active.² That is to say: employed, self-employed or otherwise engaged in remunerative activity. That represents nearly all of those of working age. Given an estimate of one accompanying dependent for each active adult, well over 90 per cent of migration today is bound up in labour and employment outcomes.³

However, these figures do not register the millions more people around the world in short-term, temporary situations where they are not counted as residents, an especially large phenomena in Africa where many people circulate regularly often over multiple borders across regional spaces as commercial traders and artisans – without establishing residence or being counted outside their country of origin or citizenship.

Most international migrants are of working age (20 to 64 years) and account for 74 per cent of the total UN figures. Globally, women account for 48 per cent of all international migrants. In some countries and regions, women predominate, with well over 50%. The feminization of migration is less about proportion, it has been above 45% for decades; today it is that most if not nearly all adult women migrants are economically active.

Africa

UN population data indicates over 29 million people considered international migrants across Africa –referring to foreign-born persons residing outside country of citizenship or origin. A World Bank survey estimated 31 million living outside countries of origin in Africa in 2010, 3% of total population.⁴ While official figures count low rates of emigration for most countries in the region, Cape Verde, Equatorial Guinea, Lesotho, Mali, Sao Tome and Principe, and Seychelles all count more that 10% of populations abroad.

Regional data shows that well over half of all migration originating in Africa goes elsewhere within the region, and 50% to 90% of migration in sub-Saharan Africa takes place within the distinct Regional Economic Community (REC) spaces.⁵ Immigration and emigration figures for West African states show that as much as 90% of migration originating in the ECOWAS region goes to other West African countries.

Migrants are critical to the viability of certain sectors such as petroleum extraction and higher education. Several countries have high proportions of foreign origin populations such as Cote d'Ivoire with 25%, or large proportions of working-age population abroad, such as Lesotho.

However, a major challenge is the paucity of statistical data and research on the extent, characteristics and conditions of migration and mobility in the region.

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.”

²ILO, *International Labour Migration: a Rights Based Approach*, International Labour Office, Geneva, 2010, page 1.

³ *ibid*

⁴Bilateral Migration Matrix, World Bank, 2010

⁵ Abebe Shimeles, *Migration Patterns, Trends and Policy Issues in Africa*, African Development Bank Group, Working Paper No 119 - December 2010

2. Migration and Development

What is migration about? It is often said to be about development. As much as for developing nations and regions, it is about saving development in industrialized countries. Foreign born workers now comprise 10% to 15% of labour forces in Western European countries, around 18% in immigration countries of Australia, Canada and the USA.⁶ As former mayor Ken Livingston once said, London would not make it to breakfast without migrants. Taking account of offspring of recent immigrants gives 20% or more of work forces “issue de l’immigration” in some European countries. It also represents growing portions in many countries across Asia, the Americas, the Caribbean, and Eurasia. And from 50% to over 90% of work forces in several member States of the Gulf Coordination Council (GCC).

Development is the catchword for contemporary discussion of migration. Development is often simplistically equated with growth of GDP --increased economic growth measured by domestic production of goods and services. However, a more adequate understanding of development would be:

the elaboration of productive means, forces, capacities and output that provide goods, services, technology and knowledge to meet human needs for sustenance and well being.

Development comprises building the material means for: extraction and transformation of resources; for production of goods, services and technology; for constructing infrastructure required for producing, transporting and distributing resources, goods, and services; for reproducing capital and labour; and for providing human welfare/well-being in terms of housing, nutrition, healthcare, transportation, education, and culture in its broad sense.⁷

Elaborating and maintaining these material means requires developing the labour force and its skills to do all this as well as to continue expanding technology, knowledge, and capital itself.

Evolution and diversification of technology along with transformations and relocations of industrial processes and changes in the organization of work itself are constant characteristics of the world of work today. This constant evolution requires accelerating complexity, diversity and specialization in the competencies and skills of work forces in each and every country worldwide.

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 done on its territory. This drives a constantly increasing, international mobility of skills, competences and labour at all skill levels.

The skills crisis is getting 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. 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 in seven 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.

It is a huge challenge of mismatching 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. In Africa, it is widely observed that institutions and educational systems across the continent are producing graduates with inappropriate, inadequate or simply obsolete skills and knowledge.

⁶ Recent figures for most EU countries and “immigration countries” mentioned are found in the OECD *International Migration Outlook: SOPEMI 2011* Statistical Annex

⁷ In “Rethinking Development and Migration; Some Elements for Discussion,” online GMPA Working Paper by Patrick Taran, Global Migration Policy Associates.

At the same time, educational, vocational and technical training systems are not accessible to many youth seeking relevant, employable skills and qualifications, especially in Africa. National educational systems are not training the scientific, vocational and technical skills needed today or anticipated in the near term future. The globalized mismatch between the numbers and types of skills that are trained versus what are needed undermines viability and competitiveness of enterprises and economies worldwide. It also leaves many youth unable to find employment either at home or abroad.

Paradoxically, migrants with acquired skills and working experience commonly face non-recognition of educational credentials and training and experience qualifications in countries of employment. The result is 'deskilling' where they obtain jobs at far below their level of qualifications. Not infrequently, this relegates skilled migrants to less skilled, precarious and poorly paid work. This represents an appalling 'brain waste' at a time in which skilled workers are lacking.

3. Regional Integration and mobility

In Africa, migration is about making, or breaking, development that is dependent on achieving through regional integration viable economies. Economies able to meet peoples needs and compete, should I say survive, in competitive global economy dominated by giant economies of competitive scale, whether the United States, China, or the European Union (EU).

Alone, small, even big countries won't make it. They certainly are not in Africa, where most countries are farther and farther behind advanced countries and regions in technology, economic infrastructure, education and human development indicators. Regional integration among groups of countries means obtaining larger economic spaces that obtain economies of scale, broad and diverse resource bases, and extensive, diversified human resources. The European Union and the awakening South American giant MERCOSUR have shown the way.

In Africa, the need to facilitate international labour and skills mobility as a core function of regional integration and development has long been recognized in several Regional Economic Communities. The Economic Community of West African States (ECOWAS-CEDEAO, with 15 members) and the Economic and Monetary Community of Central Africa (CEMAC -6 members) established regional Protocols on free circulation of persons in the late 1970s, and subsequently regarding access to residence and to labour markets in member countries by citizens of other member countries. The East Africa Community Treaty established the principle of free circulation; the EAC Common Market put into effect in January 2012 incorporated a regulatory regime for circulation of people among its five member countries. Subsequently, the Kenyan, Rwandan and Tanzanian heads of State adopted further measures to facilitate circulation that come into effect in January 2014.

The 15 member Southern Africa Development Community (SADC) engaged in intense debates and adopted a protocol for a free movement regime in the 1990s. It has subsequently debated a more restrictive circulation regime at the insistence of three countries that did not adhere to the original protocol. COMESA, the Community of Eastern and Southern Africa has established an as yet un-ratified protocol for a free circulation regime among its 19 member countries (its membership overlaps with EAC and SADC). Discussions on developing a free circulation regime have also been initiated in the Indian Ocean Council that involves several AU member States.

The existing African REC legal frameworks for circulation of persons are largely consistent with international standards regarding migrant workers. Most were initially inspired by the European Economic Community (now European Union) legal and policy frameworks for circulation of persons among member states that evolved from the Treaty of Rome in 1965.

4. Greater international mobility coming.

Within 15 years, the majority of world's countries and populations will be in serious work force decline.⁸ Germany loses 5 million members of work force in next ten years, the Russian Federation has lost 10 million since 2000, and rate is now some 1 million workers less per year in its domestic labour force. The Japanese labour force will shrink 37% over the next 25 years. A recent study says that Switzerland will need 400,000 additional workers by 2030. And there's the big one: China's work force will decline by at least 126 million people in 20 years.

Some 127 of 224 recognized countries and political territories are at or well below zero population growth fertility rates⁹. Examples from regions: Africa: Libya, Mauritius, Morocco, Seychelles, 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 rates in 2013. All EU member countries. Eurasia: Armenia, Azerbaijan, Belarus, Georgia, Moldova, Russian Federation, Ukraine, Uzbekistan. Middle East: Bahrain, Iran, Lebanon, and Qatar; Saudi Arabia is at 2.21.

Over the next 15 years, all of these countries face increasing departures from the work force uncompensated by entrants. This means increasingly intensified global competition for the most crucial economic resource of all today, labour and all levels of trained skills. A likely consequence for Africa as a whole will be even greater incentives drawing out of Africa its skilled and educated human resources.

Meanwhile, 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 so called 'developing' countries with still rapidly growing youth populations. Job creation has remained consistently flat while youthful populations continue growing significantly, adding millions of new workers each year to labour markets in which new jobs created often 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 in Africa or elsewhere.

Financial crises and austerity measures that devastated national economies as well as social protection in several European countries have produced youth unemployment rates ranging from 30% to 50% and, consequently, widely reported new waves of emigration particularly of young skilled workers from Greece, Ireland, Italy, Portugal and Spain.

5. Other evolving 'push' factors

Impoverishment of populations, political-military conflicts and environmental degradation particularly climate change impacts are factors that portend continuing if not significantly increased internal and cross border displacement.

⁸ 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>

⁹ 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.

There is no established framework providing for legal or social protection for persons displaced across borders by environmental or climate change impact. Despite predictions that tens of millions of people may be displaced in the coming decades by consequences of climate change (rising sea levels, massively devastating storms, desertification, etc), no coherent process has been undertaken to determine human rights protections applying, appropriate policy responses, or how to accommodate displaced populations who will be unable to return to unlivable homelands.

Meanwhile, the global refugee protection and assistance regime has been and remains under pressure, manifested in States' led efforts narrow the scope of refugee protection, to undermine application of refugee and asylum determination standards and to reduce support for refugee assistance.

6. Abuse and exploitation structurally defined

When people do move as they often must, they are often subject to abuse, exploitation and draconian repressive measures. Those who suffer most are the many persons simply obeying –often with little choice—the laws of supply and demand of the globalized capitalist market economy. In this situation, the basic dignity and rights of migrants as workers and human beings are undermined, especially those in irregular situations.

Exploitative conditions commonly experience by migrants are structurally driven. This is particularly the case for women. 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, indeed 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, docile, 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 other EU 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.

Exploitation is linked to a hierarchy of vulnerability with the rights and entitlements guaranteed or not by a migrant’s legal status, the legal provisions between the UK and a migrant’s ‘home’ country, unionisation, racism, contract type and flexibility all affecting this vulnerability hierarchy.”

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

Unfortunately, such assessments of conditions of migrants in African countries are still close to non-existent. But a wealth of anecdotal evidence suggests that conditions and living conditions for migrant workers and their families across the continent are in many cases similarly worse than for natives.

Migration is a key zone of contention between labour and capital today. 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 – not just to what extent-- working people remain organized to defend and advance 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.

Migrants are also the unwitting players in a vast global game to redefine social protection: who is responsible for it and with what benefits. The law says it is universal. However, arguments are being advanced that social protection for migrants is now a question of finding a median between two extremes, one “extreme” being full coverage. The other is none at all.

7. Gender Specificity

The feminization of migration is less about the gender proportions of migration, female participation has been above 45% for decades. The difference today is that most if not nearly all women migrants are economically active. They often migrate on their own rather than as dependants. This is generally true across Africa.

In a context of stratification of employment and segmentation of labour markets, women migrants hold particular appeal for employers as they are sought after and recruited 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. What's common across many of these 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 Africa, women predominate among the large numbers of mobile commercial and trade workers who circulate regularly across different countries as their economic activity. This large group of mobile persons is poorly documented; most are apparently not be counted as 'migrants' in statistics that register as such those who have established residency in a country other than that of citizenship.

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. 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.

8. *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. Not only are manifestations generalized across many countries in all regions including Africa, numerous reported incidents

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-- there have been almost no racist killings of migrants nor burnings of businesses, homes or places of worship of foreigners. Anti-immigrant politicians and political parties have gained no traction and no prominence. Discrimination against foreigners may be manifested there. But is expressly made unacceptable.

9. The governance framework

There is indeed a comprehensive international framework for governance of migration, designed to support good governance and administration at the national level where most of the responsibilities and issues lie. This framework comprises a broad set of complementary international legal standards in several areas of law, supportive mandates and responsibilities in a range of international and regional organizations, and globally applicable policy recommendations elaborated in formal, authoritative international conferences.

The elaboration of national and international systems of government over the last century recognized that the economic processes of capitalist industrialization clearly required normative regulation to provide protection and decent conditions for persons engaged in work. Regulation was also essential to support employment, to ensure social protection, and to invoke social dialogue to resolve contentions between the main economic actors: employers and workers.

International concern for protection of workers outside their own countries was explicitly established in the Treaty of Versailles of 1919. The first international conference on migration took place in 1923, in Bologna, Italy, convened by the Italian government under ILO auspices to press the destination countries of the day to reduce the terrible abuse of migrants. The first international treaties with provisions on legal and social protection for migrant workers were drawn up in the 1930s. Subsequently, a range of instruments in five areas of international law established a comprehensive framework of legal norms for governance. These are:

The nine main Human Rights Conventions; 2) all up-to-date International Labour Standards; 3) the widely ratified 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.

Specific 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 provide further normative guidance in their respective regions. As well, normative frameworks for free circulation of people, access to work, residency and social protection and specific rights guarantees have been or are being established in a number of regional economic communities in Africa, the Americas, Asia, Eurasia and Europe.

The ECOWAS treaty regime significantly advanced the international legal scope of *non-discrimination* and *equality of treatment* on grounds of nationality as well as *freedom of movement* rights by explicitly establishing

the normative rights of entry, stay and work in any member country of ECOWAS by nationals of any other member State.

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 (of 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).¹¹ All three contain norms for governance and administration of migration and provisions for international dialogue and cooperation as well as specific standards recognizing and protecting the rights of migrant workers and their families.

87 countries have ratified at least one of these three instruments, including 26 in Africa. Counting in not yet ratified signatories of the ICRMW, 98 countries –30 in Africa-- have committed to uphold international standards in protecting migrants rights and governing migration.. It can be said that two-thirds of all countries for which migration is a significant governance concern have committed to putting national migration legislation, policy and practice within the framework of international standards.

10. Governance shift; redefining a new regime for labour?

The governance structure for migration –and the ideology as well as practice of governance of migration-- is changing in both old and new immigration countries. The locus of migration governance in immigration or migrant receiving States over previous decades was generally in labour and employment-concerned 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 the vitally important competences not only in labour market administration, but also in supporting and mediating as needed dialogue and negotiation between social partners, the employers and the unions representing the collective voice of workers—including migrants. This reflected the reality that then and now, regardless of migrant motivations whether seeking employment, refugee flight, family reunion, environmental displacement, or pursuing studies, some 90% of migration results in employment outcomes or is directly dependent on those who are economically active.

Security and control institutions of States now increasingly predominate in managing and controlling migration, and migrants. This appears to be 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 the increasing foreign component of work forces by interior or home affairs ministries has significant consequences in shifting emphasis of law enforcement affecting workplaces from labour standards to immigration enforcement. Similarly, in imposing policing solutions to labour conflicts at the expense of social dialogue.

Coincidentally, movement monitoring and control measures have been strengthened worldwide, notably in this region. Enhanced and universalized border and movement control measures within regional economic community spaces have large implications in impeding, slowing and raising costs of free and flexible movement of labour, skills and commerce. The five or more control posts every hundred kilometres on land routes in numerous African countries, each with obligatory inspections and usually with payment of 'fees,' do not facilitate circulation of goods, services or people.

Movement control measures also can undermine exercise of freedom of association rights in internationalized labour markets and employer chains. More generally, tightened control on movement facilitates tightened control on workers and work forces, restricting realization of rights to change employers or employment areas in order to escape exploitative or oppressive conditions –or to organize across sectors and industries.

¹¹ Texts and related information available respectively at www.ilo.org/ilolex and www.unhchr.ch

Another redefinition is aggressive promotion of short term, temporary, and seasonal migration regimes, often under the generic misnomer “circular migration.” Advocates of expanded 'circular migration' characterize it as the solution to both employment needs and to protecting 'national cohesion and cultural integrity' of nation states demanding migrant workers. 'Circular migration' temporary migration regimes tend to offer explicitly restricted application of labour rights, such as exclusion of freedom of association while subjecting migrants and their employers to reduced- or non-application of labour standards and prevailing levels of remuneration.

A justificatory discourse in promotion of such temporary regimes posits that the level of rights protections 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 in this discourse.

At the international level, the existing multilateral institutional architecture is being abandoned. The roles and competences of the relevant UN agencies as well as specific migration outcomes of World Conferences over the last 20 years have been diminished. The promotion and application of international normative standards on migration is explicitly reduced. Instead, closed intergovernmental “*States' owned*” platforms for consultation and deal-making on migration have been built outside the UN system. While these are often defined as representing 'governments,' predominant participation is by delegates of interior ministries and state security agencies. This has also occurred at regional level, outside existing multilateral/inter-governmental institutions responsible for migration regimes in regional communities of States.

11. Fifteen contemporary challenges for governance of migration

Including issues not elaborated in the preceding narrative. Salient characteristics of widely documented or reported problematic phenomena applying in Africa are listed under each point, including those in Africa identified at the AU-RECs consultative meeting in Addis Ababa on 16 December.

1. Non-law, non protection, non-recognition of migrants

- Absence of ratifications of Conventions, **non-recognition of rights** under law
- Explicit regimes applying lesser rights (such as for migrants under temporary regimes)
- Diminishing respect for and implementation of **Refugee protection, access to asylum**
- Absence of effective supervision of relevant law where applicable in nation-states.
- Absence of existence/access to revindication and redress mechanisms

2. Non-implementation of free circulation regimes

- Lack of political will to realize and implement
- Non-ratification of regionally agreed regimes by some REC member States
- Absence of national implementing legislation
- Non-existence of requisite labour administration and labour code measures
- Prevalence of inspection posts and fee-taking along land transportation routes in Africa
- Application of legal, administrative and control measures that objectively thwart circulation, establishment, and access to employment, commercial or business activity

3. Paucity of disaggregated data on characteristics and conditions of labour migrants.

- Inability to obtain valid and reliable data describing labour migration and outcomes
- Absence of labour market needs assessment and forecasting
- Non-identification of data *categories* and *indicators* relevant to labour migration
- Absence of sharing and coordination of relevant data among concerned institutions

- Non-obtention of internationally comparable data
- Absence of capacity, technical competences and equipment for data collection
- Non-application of relevant data to policy making, implementation and practice.

4. Increasing gaps between skills needs and numbers and types 'produced' in Africa and worldwide

- Acute global shortages: the predicted worldwide deficit of 45 million technical-vocational skilled in developing countries by 2020 will largely affect Africa.
- Existing training commonly provides people with inappropriate, obsolete or inadequate skills and qualifications
- Restrictions on mobility, circulation impede linking existing skills to markets, employers in need
- Non-recognition, non-equivalencies of skills, educational and experience qualifications wastes existing potential.

5. Absence of explicit national and regional policy frameworks on (labour) migration

- Absence of appropriate and coherent national policy and practice on labour migration
- Competition, overlaps and gaps in roles and responsibilities among government institutions and social partners.
- Non-action on issues of critical importance for national and regional economic viability
- Non-response to needs and demands of business, investors, social partners

6. Criminalization

- Expansion and extension of discourse, legislation and practice of criminalization of migrants, foreigners in general, and migration.
- Changing legal regimes to criminalize immigration related infractions.
- Generalized shift of migration governance to internal security and police control institutions of States.
- Establishment of a systematized international regime of identity, location and movement tracking with no legal standards, judicial supervision, nor democratic political oversight..

7. Prevalence of sub-standard, abusive employment relations and conditions of work

- Generalized high rates of discrimination excluding migrants from formal employment
- Concentration of migrant workers in 3-D jobs and/or informal work without protection
- Absence of labour inspection, or inspection 'neutralized' by immigration enforcement
- Absence of unions and other mechanisms for self- and collective defense
- Generalized deregulation denying, withdrawing or diminishing OSH, working conditions and employment relations protections in general, and to migrants in particular.

8. Lack of migrant organization and participation, particularly as workers

- working conditions and isolation impeding or preventing organization
- legal prohibitions on participation by migrants/unauthorized migrants in trade unions
- direct repression, detention, deportation of migrant organizers
- outlawing of and/or repression of migrant worker unions
- hostility or disinterest by existing worker unions to recruit and organize migrant workers
- promotion of 'alternative' non-union forms of organization for migrant workers
- formal or informal restrictions on migrants ability to form or join associations, civil society organizations/NGOs

9. Increasing xenophobic hostility and violence against migrants

- Prevalent political discourse of *othering*, exclusion and expulsion of migrants
- Reinforcement of *identity* based on place of origin and associations with racial-ethnic-religious markers

- Direct violence, attacks and killings of migrants reported in all regions including Africa
- Specific violence at or around workplaces, including killings of migrant workers
- State violence against migrants in police round-ups and detention –sometimes in concentration camp type facilities.
- Collective, arbitrary expulsions, deportations

10. Lack of health care

- Absence of public health policy to meet needs of an important population present in most countries
- Restrictions on access by migrants to health care and prevention services, including to emergency care
- Imposition of immigration control measures on access to health services
- Non-existence of health facilities in areas of concentration of migrants

11. Absence of social protection and social security for many migrants

- Non- or restricted access to participate in countries of employment
- Non-portability of contributions and earned benefits
- Discourse and policy initiatives of reduced rights and entitlements for migrants
- Privatisation of coverage for migrants; conversion to investment-tied providence fund systems

12. Systematic/structural discrimination and exploitation of migrant women

- Tracked into and concentrated in low paid, low- or unprotected workplaces
- High risk of gender-based sexual harassment, abuse
- Commonly subjected to precarious immigration conditions and status
- Absence of policy and practice extending protection, decent work and equality of treatment
- Subject to trafficking, and forced labour outcomes, in particular in compelled sex work.

13. Family disruption and decomposition

- Family separation frequently compelled by restrictive immigration regimes prohibiting family accompaniment or reunion.
- Extended separation of parents, and of parents from children
- Marriage breakdown resulting from extended separation, often with little or no possibility for regular conjugal visits
- High rates of school leaving, delinquency, anti-social behaviour, inability to integrate in adult life, and deaths among children remaining in homelands when one or both parents migrate abroad.

14. Instrumentalization of migrants and migration

- Migrants characterized firstly as economic 'actors of development'
- Migrants private earnings characterized as collective 'development resources' and subject to differential (unequal) treatment in State policy intervention and taxation
- De facto off-shoring *divestment* of social reproduction costs and training investments for labour force by recipient countries to origin countries.
- Inserting 'natural persons' into framework of negotiated international trade regimes- where human and labour rights considerations are excluded from conditionalities.

15. Absence of policy and administrative responsibility, capacity and coordination by labour institutions

- Lack of involvement of labour/employment concerned ministries in labour migration policy and administration
- Non-existence of focal points or units in labour institutions to address labour migration/mobility
- Non-engagement of social partner organizations

- Absence of capacity and competence in labour institutions and social partners to assume roles and activity
- Absence of mechanisms for tripartite policy consultation, coordination and practical cooperation at national, regional and continental levels

12. Policy Action Agenda

Key policy lines, political demands and practical lines for a rights-based approach to governance of migration deriving from the review above are proposed below. Several of these were evoked in World Conferences in 1994, 1995 and 2001, in the Plan of Action on migrant workers adopted by the Ministerial level International Labour Conference in 2004, and in the ILO Multilateral Framework for Labour Migration¹²

Main components of an agenda for action and oversight by governments in cooperation with trade unions and employers and interlocutors in international organizations and civil society follow. International and Africa regional instruments providing normative parameters are identified for each component.

1. Campaigning for full recognition and legal protection of all migrants

- a) Assertively campaigning for/promoting ratification and full implementation of the specific legal standards recognizing and protecting rights of all migrants: the **ICRMW, ILO C-97, ILO C-143 and ILO C-189**.
- b) Engaging in dialogue and advocacy towards a law and policy framework for **recognition and protection for environment- and climate change displaced persons**
- c) Upholding and promoting full implementation of the refugee protection and assistance regime, based on the **1951 Convention and 1967 Protocol on the Status of Refugees** and the Africa Refugee Convention.
- d) Calling for, promoting and assisting in **regularization** of migrants in unauthorized situations.

2. Promoting full adoption and implementation of free circulation regimes

- Advocating for political will by governments to realize and implement
- Advocating ratification of regionally agreed regimes by all REC member States
- Promoting and advising on national implementing legislation
- Establishing national labour administration for labour migration, and harmonizing labour codes in RECs
- Obtaining derogation of legal, administrative and control measures that objectively thwart circulation, establishment, and employment, commercial or business activity

Normative references: Existing/emerging REC treaties, protocols and executive decisions in CEMAC, ECA, ECOWAS, IGAD. SADC etc.; international labour migration conventions C-97, C-143, ICRMW.

3. Obtaining gender and age disaggregated data on characteristics, situations and conditions of migrants.

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

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

¹² 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

4. Overcoming skills shortages; training Africa's youth for employment

- Obtain commitments at regional and national government levels for reform, renovation and expansion of technical, vocational and scientific education and training
- Obtain commitments to harmonize qualifications and training standards
- Convene consultative processes with regional and national educational/training standards and accreditation entities regarding process and content of reform, renovation
- Establish processes and institutional responsibilities for determining harmonized or compatible educational and qualifications standards
- Propose and facilitate dialogue, exchange and cooperation among training institutions and actors within and among RECs
- Accelerate implementation of circulation regimes, reduce barriers to labour and skills movement

Normative references: UNESCO Conventions; international occupational classifications

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

- Obtaining commitment to establish a (labour) migration policy framework/document
- Organizing a fully consultative input and elaboration process
- Involving concerned government ministries/agencies/authorities at relevant levels, legislators, social partners, and relevant civil society and migrant organizations.
- Addressing comprehensively concerns, issues, and challenges of international (labour) migration
- Designating responsibilities among stakeholders
- Proposing implementation planning and time-lines
- Obtaining endorsement for product by stakeholders
- Expecting 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 African and Asian countries

6. Obtaining 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 offenses
- c) treatment of minors according to best interests of child
- d) repeal of exceptional generalized migrant/traveler 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.

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

- a) Promotion of adoption and application of International Labour Standards, particularly those applying to places and conditions where migrants are working
- b) Extending and providing capacity for labour inspection in sectors and workplaces where migrants concentrated.
- c) Fully 'firewalling' labour inspection from immigration control.

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

8. 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.
- d) Support migrant entrepreneur participation in employer organizations

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

9. Stop Xenophobia, racism and discrimination against migrants

- a) Call for repeal of discriminatory legislation and policy and reinforcement of non-discrimination/equality of treatment law and practice
- b) Propose and support definition and implementation of national action plans against racism, xenophobia, discrimination
- c) Denounce and call for political and public repudiation of 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.

10. Health for all migrants, health is a right for all.

- a) Ensure full access by migrants to health prevention and care services and facilities
- b) Demand and support elaboration of specific national public health policy on health for migrants
- c) Advocate for and monitor adequate 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

11. Social Security for migrants

- a) Advocacy for immediate unilateral measures to extend social security coverage and portability to migrant workers in both origin and employment countries
- b) Support for regional efforts to incorporate and harmonize social security access in regional integration spaces.
- c) Promote wider ratification and implementation of ILO C-102 (social security) C-118 (social security portability)

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

12. 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 specific gender-based risks and ensuring equality of outcomes as well as intent.

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

13. Family Unity and family support

- a) Demand family unity provisions in all immigration and migration regimes
- b) Ensure immigration law facilitates family reunification
- c) Call for government and other support measures to sustain socialization and education for children and adolescents remaining at home while one or both parents are abroad.

Normative references: UDHR, CRC, CEDAW

14. 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, ECOWAS protocols

15. Consolidating policy and administrative responsibility, capacity and coordination by labour institutions

- Assignment of labour migration governance responsibilities to labour/employment concerned ministries
- Designate and resource focal points or units in labour institutions to address labour migration/mobility
- Encourage engagement of social partner organizations
- Provide training and capacity building for labour institutions and social partners on labour migration.
- Establish mechanisms for tripartite policy consultation and practical 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)

Areas of urgent need for research and documentation:

A few among a number of the issues identified above that require substantive and pioneering research to define and describe issues and identify potentially effective policy response lines and actions.

1. *Free circulation regimes*: assessing prospects and problems to enable and defend them, contesting impediments to implementation; obtaining realization and respect for rights and freedom of regional mobility; ensuring access to employment; questioning imposition of enhanced border and movement control regimes within regional communities; etc.
2. *Discrimination and Xenophobia*: documenting the real extent and character of manifestations; identifying underlying conditions and incentives; determining viable and effective means to impede, prevent and repress; etc.
3. *Environmental degradation and climate change induced displacement*: characteristics and forecasting scenarios; actors and stakeholders concerned: elements towards defining a legal and social protection framework; addressing containment efforts; etc.

Concluding Note:

History tells that migration has been an essential ingredient of development and human welfare. 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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16 December 2013

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