GMPA

Global Migration Policy Associates

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

MIGRATION, DEVELOPMENT AND GOVERNANCE
Labour and Skills Mobility, International Standards and Comprehensive Migration Policy for Taiwan

**A paper for the Taiwan International Workshop
on Combating Human Trafficking[1]
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I. Setting the context: what migration is about

Migration is about people and it is fundamentally about internationalized labour and skills mobility in a globalized world. That mobility is key to sustaining the world of work in the Twenty-First Century: key to the viability of labour markets worldwide, to obtaining return on capital in a globalized economy, and key to development. Today, the very survival of developed economies depends on migration. This is now as true in Taiwan as anywhere.

Migration rejuvenates workforces, maintains viability of agriculture, construction, health care, hotel, restaurant and tourism and other sectors – in Taiwan the fisheries sector as well. Migration meets growing demand for skills, and promotes entrepreneurship in Taiwan as elsewhere. Migrant remittances, transfer of skills, investments, and expanded trade enhance development and well-being in many countries, including here.

There are an estimated 260 million people residing today in countries other than where they were born or held original citizenship.[3] However, this figure is a significant undercount as it does not include short-term, seasonal and temporary migrants, nor for cross-border traders moving across various countries although remaining legally resident in their home country.

That UN global estimate includes refugees and asylum/seekers – but does not include internally displaced persons (IDPs). Current UNHCR figures count 25.3 million refugees (19 million under UNHCR mandate and 5.3 million Palestinians registered by UNRWA, the UN Relief and Works Agency) and 3.1 million asylum-seekers.[4] UNHCR also counts 10 million stateless persons. Refugees and stateless persons comprise about 15% of the global migrant population. 57% of the world's refugees come from three countries: Syria (6.4 million), Afghanistan (2.6m), and South Sudan (2.4m).

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[1] This paper is a revised and expanded version of a keynote presentation to the Workshop.

[2] *The content does not necessarily reflect collective views of GMPA or of its member Associates.*

[3] Extrapolated from the UN Department of Economic and Social Affairs *2017 Estimate* issued December 2017. As noted in DESA estimates, "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."

[4] UNHCR Figures at a glance. 2018. http://www.unhcr.org/figures-at-a-glance.html

Migration and economic activity

Well over 90% of migration today – whether on the immediate admissions reasons of family reunification, immigration, labour mobility, studies abroad, or refugee flight – is bound up in employment and economic activity outcomes. ILO calculated that 150 million of the 232 million people – including refugees – living outside their countries of birth or origin in 2013 were economically active[5] – employed, self-employed or otherwise engaged in remunerative activity.

Migration represents growing portions of populations and, particularly, work forces in many countries across Asia, the Americas, the Caribbean, Europe and Eurasia. Foreign-born workers comprise 10% to 15% of labour forces in Western European countries and more than 18% in immigration countries of Australia, Canada and the USA,[6] and 40% to 93% of work forces in member States of the Gulf Cooperation Council (GCC). It is 10 to 20% across Eurasia (Russian Federation, Caucasus and Central Asia), and a growing proportion in several Asian countries including Hong Kong (SAR), Malaysia, Singapore, Taiwan and Thailand.

The irony is that this occurs as unemployment has risen in some 'old' industrialized countries. 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 results in many workers left with obsolete skills and experience or simply without skills relevant to employer needs today. This is coupled with education and training lagging behind evolving economic and labour market needs, both in numbers trained and in content of training.

Mobility, Development and Sustaining Development

Economic activity does not occur without capital, labour power and skills, and technology coming together.
Development today will not advance without integrating material and human resources, capital, technological capacities and larger markets that can obtain: 1) breadth of resources, 2) scale of production and 3) size of markets that assure viability in a highly competitive globalized world economy. Development is not sustainable without regulated international freedom of movement of goods, services, capital, technology, and labour at all skills levels.

Development is the catchword for 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 is:

> *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]

Freer movement of persons has long been recognized as a key pillar of economic integration and development, particularly in regional economic integration processes (commonly referred to as Regional Economic Communities - RECs). Free movement of persons is the means to ensure availability of skills and labour where needed to spur investment and economic development by

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[5] ILO. ILO Global Estimates on Migrant Workers. International Labour Office, Geneva, 2015.
http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_436343.pdf

[6] Figures for most EU countries and "immigration countries" mentioned are found in the OECD *International Migration Outlook: SOPEMI* Statistical Annex

[7] In "Rethinking Development and Migration; Some Elements for Discussion," online GMPA Working Paper by Patrick Taran, Global Migration Policy Associates. Available at www.globalmigrationpolicy.org

drawing on the full breadth and diversity of professional and technical competencies as well as labour power. 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, in Asia and in Europe remains within those respective regions. Much migration today takes place within the twelve Regional Economic Communities involving over 100 countries that have formal regimes of free circulation of persons. 80% of migration originating in West Africa goes to other member states of the ECOWAS –the Economic Community of West African States; the proportion is similar in the Eurasia Economic Union. It is 50-60% for the European Union, South America's MERCOSUR, and the SADC – Southern Africa Development Community region.

Economic importance of migration

Recent figures indicate that the annual flow of remittances in 2017 was more than 613 billion US dollars[8]. 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 around 20% of total migrant earnings. Assuming that an average of 20% of migrants' direct earnings are remitted abroad, the value of economic activity by migrants to host countries may be estimated at over 3 trillion dollars.

That does not indicate the value added or created by migrants' labour not returned in worker/employee remuneration but that is added to the worth of employers, private and public, in formal and informal sectors. Furthermore, migrants contribute to health of national social security systems, in some cases without ever obtaining benefits or use of their contributions. The acknowledged subsidy that undocumented migrant workers provide to the US Social Security system was 100 billion dollars over the 2004 to 2013 decade. A subsidy because "it is unlikely that they will be able to benefit from their contributions later in life."[9]

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.* 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 from origin to destination country. This figure is indicative, no significant research on costings and aggregate values has been done.

Greater mobility anticipated

Within 15 years, the majority of world's countries and populations will be in serious work force decline. Germany loses 6 million members of its work force over the next twelve years, Italy 3 million; the Russian Federation has lost 12 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 what it was in 1990. A recent study says that Switzerland will need 400,000 additional workers by 2030. China's work force may decline as many as 100 million people by 2050.

Some 140 of 224 recognized countries and political territories are at or well below zero population growth fertility rates[10]. That is here and now in Taiwan and across much of Asia. Examples from regions, starting with Africa: Botswana, Libya, Mauritius, Morocco, Seychelles, South Africa and Tunisia. Americas: Argentina, Brazil, Canada, Chile, Colombia, Costa Rica, El Salvador, Mexico,

[8] World Bank. "Bilateral Remittance Matrix 2017." (graph) April, 2018. Available at: http://www.worldbank.org/en/topic/migrationremittancesdiasporaissues/brief/migration-remittances-data

[9] VICE News. "Unauthorized Immigrants Paid $100 Billion Into Social Security Over Last Decade" by Roy Germano. August 4, 2014. https://news.vice.com/article/unauthorized-immigrants-paid-100-billion-into-social-security-over-last-decade

[10] 2.1 children per woman is considered the 'replacement rate' of zero population growth, below which population will decline. Country fertility 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.

Nicaragua, Paraguay, Peru, Uruguay, USA, plus nearly all Caribbean states. All <u>EU</u> member countries. <u>Eurasia</u>: Armenia, Azerbaijan, Belarus, Georgia, Moldova, Russian Federation, Ukraine, Uzbekistan. <u>Middle East</u>: Bahrain, Iran, Lebanon, Qatar and soon Saudi Arabia.

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 countries will be even greater drain of skilled and educated human resources.

Some economists are raising concerns that global workforce decline will diminish global growth. [11] Workforce decline certainly means looming crises for contributory-based social security systems as diminishing work force numbers face increasing numbers of retired workers, an already large challenge for Taiwan.

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 as well as Afghanistan, India and Pakistan, 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 and certain Asian countries, with fertility rates and global population growth 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 reaching 50% in several countries in recent years, [12] although now declining to 20-30%. New waves of emigration, especially of young skilled workers, continue to depart from Greece, 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 McKinsey 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. [13] Already today employers and their associations around the world complain that they cannot fill one in three jobs on offer with the needed level of skills.

This is already a significant issue for Taiwan.

"According to Ministry of Labor statistics, at the end of February 2017, 233,000 workers were needed by various industries in Taiwan. About 88,000 people were needed in manufacturing,

[11] Financial Tribune. "Decline in Workforce Will Diminish Global Growth" Finanacial Tribune-Iranian English Economic Daily, Teheran. May 28, 2018. https://financialtribune.com/articles/world-economy/87174/decline-in-workforce-will-diminish-global-growth

[12] Eurostat. Youth Unemployment Figures.

[13] McKinsey Global Institute. Jobs, pay, and skills for 3.5 Billion People. McKinsey & Company, 2012 http://www.mckinsey.com/global-themes/employment-and-growth/the-world-at-work

including 18,706 workers required in plants making electronic parts. Plus, there were over 43,000 vacancies unfilled in retail and wholesale businesses.[14]

It is widely observed that educational systems in many countries 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.

The development cost 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.

II. Challenges for Taiwan

"In March 2015, the Taiwanese government revealed that Taiwan's working population would reach its peak of 17 million in 2015; the number of workers would start shrinking by 180,000 annually in 2016. If nothing is changed, the **working population** will fall to 9 million in 2060, or just 50 percent of the total population. This trend poses a serious threat to national development. Relevant government agencies have been directed to reassess policy-making in the areas of education, industrial development, social services, and immigration.

"Immigration policy is one of the best ways Taiwan can revolutionize its workforce and simultaneously address both demographic and economic challenges. Until now, it has been underutilized by the Taiwanese government[15]."

In the last four years, the work force of Taiwan has likely declined by nearly the equivalent of the total number of migrant workers currently in the country, some 700,000. But the migrant stock is not increasing significantly, despite the projection that again next year, the 'native' work force will decline by another 180,000 workers. It appears that the total decline by the year 2020 will be in the neighbourhood of 1 million.

Meanwhile, the increase in the number of foreign workers remains modest, not compensating for decline in the overall workforce. That spells little short of a crisis for employers and the economy.

Native workers are disappearing from the work force as they reach retirement age, while ever fewer young people enter the labour market. However, foreign workers remain constrained from arriving and staying in the absence of immigration policy that recognizes labour and skills needs across the economy. At same time, foreign workers remain under-protected at best by application and enforcement of labour standards and regulation.

Exploitation versus Protection

There is no lack of news reports decrying indecent treatment of migrant workers in Taiwan. While Taiwan's ranking in the US State Department annual report on trafficking may look good, Taiwan looked not good in the 2017 US State Department Human Rights Report, issued April 20, 2018. As reported by Taiwan's own Taipei Times:

"Human rights reports issued by the US Department of State on Friday raised concerns about the working conditions of migrant workers in Taiwan, saying that they have been vulnerable to exploitation or abuse.[16]

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[14] Asia Times. "Taiwan 'needs more SE Asian workers' amid labor shortage". Asia Times online, 13 November 2017. http://www.atimes.com/article/taiwan-needs-se-asian-workers-amid-labor-shortage/

[15] The Diplomat. "Reforming Taiwan's Immigration Policy". By Sinclaire Prowse. 21 December 2016. https://thediplomat.com/2016/12/reforming-taiwans-immigration-policy/

[16] Taipei Times. "US details concerns about Taiwan migrant workers", 22 April 2018. http://www.taipeitimes.com/News/front/archives/2018/04/22/2003691780

Other national and international news coverage is not pretty and suggests there are real and serious problems with treatment of migrant workers in Taiwan, by employers, by authorities and by lack of decent policy.[17]

Exploitative conditions commonly experienced by migrants are structurally driven, in Taiwan and elsewhere. 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 could a part of the population afford to eat – without cheap immigrant labour.

An excerpt from the executive summary of a report on the UK sums up treatment of many migrants, consistent with data from other developed, industrialized countries:[18]

> "Migrants, especially those from outside the EU-15 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."

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 often fall into or remain in irregular situations, tolerated because they provide cheap, flexible labour needed to sustain enterprises, employment and competitiveness.

Attention to protection of human and labour rights and of decent work thus must be an essential pillar of any Taiwanese approach to international labour mobility. That means especially the national application of international labour standards, their domestication to all workplaces formal or informal especially those where migrants are employed, and their enforcement by effective labour inspection.

What's that got to do with trafficking?

These conditions are driving trafficking, making it both a profitable business and a part of maintaining a viable work force and needed skills in Taiwan. Never mind the human cost to victims.

Smuggling of migrants and trafficking in human beings are largely the consequence of disfunctional mobility regimes constraining labour and skills supply to meet demand in deregulated conditions.

Trafficking and smuggling exist because there is demand for labour – particularly for cheap unprotected labour, such as in agriculture, construction, domestic work, fishing, health care and more in Taiwan, where at same time mobility is restricted and there is no effective labour protection or inspection. This combination encourages the business of facilitating movement of people around those restrictions to work in situations that allow exploitation of labour with impunity.

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[17] See for example: BBC News. "Did Taiwan police and paramedics leave migrant worker to die?" 17 September 2017. https://www.bbc.co.uk/news/world-asia-41298076 ; Taipei News. "Welfare of migrant workers in Taiwan should be of utmost concern." By C. Rivera. 9 June 2018. https://www.taiwannews.com.tw/en/news/3452748

[18] 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.

To remain in existence, never mind competitive, business at all levels – from SMEs to giant corporations – needs workers, and the cheaper the better. That means a huge market for the business of filling that gap between demand and supply. Especially when the combination of strong demand, restricted supply and unsupervised working conditions privileges moving people into Taiwan *without inspection* and without protection. The workers come cheap, and even cheaper when they are apprehended and summarily deported.

Trafficking is business, it is driven by market demand and inspired by deregulated work and unprotected working conditions. Deregulated unprotected work fuels demand for cheap, unprotected workers provides the propitious environment for moving people across barriers and into exploitative employment situations. Arbitrary barriers on mobility, contradictory to modern mobility requirements of the economic system, completes the perfect combination for plenty of profit in getting labour supply to demand around, over or under those arbitrary barriers.

When circulation is freer, when employer access to labour and job-seeker access to jobs is unrestricted – but abuse of workers is controlled – smuggling and trafficking all but disappear. Which is the case within most regional economic communities, such as the European Union. A dramatic example of what free movement means vis-a-vis trafficking and smuggling is that trafficking to Western Europe from neighboring Central and Eastern European countries literally disappeared overnight in 2001 when visa restrictions on entry into the EU were dropped for nationals of the ten *accession countries*. People – young women in particular – from one day to next no longer had to seek "travel agents" and passers to get to Western Europe. In many cases, those agents and passers put women – and men – clients into exploitative situations, and in doing so met the definition of trafficking.

Smuggling is a more complex issue, especially in today's world of civil warfare, military conflicts, dictatorships and widespread violations of human rights. For many people in refugee and refugee-like situation, there is no escape except to pay for services to get away, and to get around military checkpoints and armed warfare. Many smugglers have nothing to do with trafficking, and many people smuggled across borders would be dead if they hadn't had help in transiting to safe haven.

In numerous countries employers desperate for the labour they need to stay in business recur to – discretely – allowing undocumented labour to arrive for work. It's a tough choice: do you close your business, go bankrupt –and contribute to your country's economic stagnation? Or do you allow for needed labour and skills to get to you 'without inspection'? That includes 'legitimate' employers who provide decent work and pay, not only those who use restrictive policies to exploit workers living in fear of apprehension so they can't complain and don't join unions to defend rights and decent work.

Two alternatives for Taiwan

A first option is to clamp down ever harder on traffickers and smugglers – without addressing the environment that sustains trafficking and smuggling – and improve the efficiency of counter-trafficking measures including prosecution. You may catch some traffickers. But this approach will put fuel on the fire for paid mobility services to circumvent control measures. It will raise costs for the primary actors –migrants and the destination entities that demand and benefit from their labour. But employers will continue to get needed workers – made unavailable by other ways. Workers will get employment, however terrible the conditions. And traffickers will get plenty of profit by continuing to bridge supply and demand in a repressive but deregulated context. The Taiwanese economy – at least some actors – will benefit despite high human and the opportunity costs. It will keep functioning. But the human and social costs will continue to rise.

Or, alternatively, Taiwan can focus on building an encouraging migration policy – responding flexibly and amply to measurable labour and skills demand combined with vigorous application and enforcement of decent work standards and occupational safety and health protections, and ensuring social protection. This combination, and *only* this combination will – mostly – eliminate demand for

smuggling by providing safe regular mobility and eliminate interest in trafficking because no space to exploit.

The approach doesn't work perfectly. But it has worked where it's applied: for example, in Switzerland, in an economy dependent on a work force that is 30% foreign-born, there is little trafficking nor smuggling by all accounts. In that free movement region, there is indeed little restriction, nor even control, of mobility within the EU and European Free Trade Association space that includes non-EU members such as Norway and Switzerland. In at least some of the member countries, there is rigorous inspection and enforcement of labour standards along with strong unions.

What does Taiwan need?

All the evidence suggests that Taiwan urgently needs and would greatly benefit from **comprehensive migration policy** and **comprehensive *decent work* practice**. This means:

1) close and careful measuring needs – not just demand – and flexible admission, indeed recruitment – focused on responding to those needs. The labour market will tell what's needed, with careful discernment.

2) a strong regulatory system in world of work: enforce decent work – a challenge where indecent work seen as enhancing profits. But *decent work* also regulates demand factors; it represses incentives for clandestine mobility that thrives on non-protective environments profiting from exploitation and exploitability of persons unable to claim protection nor unionize to collectively pursue protection.

In this case, the core of decent work is labour standards, their application, their respect by employers and their supervision by labour inspection and enforcement by labour justice – meaning enforcement of law and sanctioning of violators by labour court, labour law judiciary.

In contrast, the current situation is described by the press as "Taiwan's outdated, slow, and inhibiting immigration policy[19]." This is not just about inadequate or antiquated governance. It is about the very survival of Taiwan. Taiwan survives because it has a thriving economy. That economy depends on a thriving work force of both higher and lower skilled workers. In the next decade, the competition will get tougher. Already now there are not enough skills available in the world market.

III. The governance framework

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:

- the nine main Human Rights Conventions;

- all up-to-date International Labour Standards;

- the 1951 Convention and 1967 Protocol on the Status of Refugees,

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[19] The Diplomat. "Reforming Taiwan's Immigration Policy". By Sinclaire Prowse. 21 December 2016. https://thediplomat.com/2016/12/reforming-taiwans-immigration-policy/

- the Vienna Convention on Consular Relations;

- 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).[20] 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 – and prevention of trafficking – cannot be realized nor enforced without recognition and enforcement of their human and labour rights in national law and practice. Ratification of these instruments is the essential foundation for national law, policy and practice. In reality, 89 countries have ratified at least one of these three instruments, including 28 in Africa and nearly all countries in Central and South America and several in Asia.

Fitting for a large global population present in many countries, the international institutional structure mirrors the multitude of concerns of governing large populations. More than 20 specialized international institutions address 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.

IV. KEY ISSUES

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 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 the proponents and beneficiaries of free circulation of persons.

However, migration is a key terrain of contention between capital and labour: between the employers/private sector versus workers, especially those in independently organized unions. Migration is today a key arena 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. Migrant workers are also key to whether and how workers freely associate and organize to collectively bargain for fair remuneration and decent work conditions.

In the context of promoting mobility and 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 is crucial to find workable approaches that engage both employers and workers and bring to bear the strength of a common front to ensure that government and parliamentary approaches ultimately allow mobility to work to advance development.

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[20] 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

Gender Specificity

The feminization of migration is not about the gender proportions of migration. Female participation has been above 45% for decades and is over 48% today[21]. The difference is that today most if not nearly all women migrants are economically active. They often migrate on their own rather than as dependants. This is generally true in all regions, notably across Asia.

However, 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. 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. 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, in Taiwan as well.

Common across these sectors is that while some workplaces may be highly socialized they are not organized, meaning no unions or associations for mutual defence and solidarity, nor any bargaining power to press for decent work conditions.

Adoption of ILO Convention 189 on Decent Work for Domestic Workers 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, in services and elsewhere.

Social Protection

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.

Migrants are today unwitting players in a global redefinition of social protection: who is responsible for it, who is covered and with what benefits. International law calls for universal coverage, as laid out in ILO Convention 102 on social security.[22] The ILO and UN have now established the notion of a *social protection floor* as a universal expectation. But contention abounds that social protection for migrants is today a question of restricting coverage to a median between full coverage and none at all.

In contrast, progressively extending social security to migrant workers is imperative to ensure welfare and social cohesion across any country such as Taiwan. However, it can only be achieved with political will to obtain necessary legislative acts, administrative mechanisms and practical measures.

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[21] United Nations, *International Migration Report 2017 Highlights*. United Nations, New York, 2017. http://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport2017_Highlights.pdf
[22] ILO Social Security (Minimum Standards) Convention, 1952 (No.102). See: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312247

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 migrant workers, mob attacks on and killings of migrants, and police round-ups as well as mass detention of migrants in what can only be characterised as concentration camps. 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 of vigorous responses by governments to anticipate, discourage, and prevent manifestations of racist and xenophobic hostility against foreigners, and to prosecute perpetrators. It is further aggravated by discourse and action by some governments.

Social cohesion can only be maintained by deliberate legal, institutional and practical measures. Demonstrable proof is that in a few countries 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.

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 regulating labour markets and protecting workers as well as overseeing employment relations and social dialogue. Those ministries have 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, as well as in many countries facilitating and encouraging social dialogue.

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 mobility as well as raising costs – contrary to facilitating free and flexible movement of labour and skills.

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. However, contemporary experience around the world shows that it is not a viable solution either to meeting employment needs, nor to addressing social cohesion. Many temporary migration regimes in fact offer explicitly restricted labour rights, notably exclusion of freedom of association, while permitting reduced application of labour standards.

V. 15 main law, policy and practical challenges for governance of migration

A starting point for a coherent policy and practice framework is identifying the real challenges and problems and defining law and practice to resolve these, individually and together. The following points lay out generally common challenges everywhere, most apply to Taiwan.

1. Inadequate legal protection for migrants, non-recognition of rights under law for migrants in irregular situations;

2. Utilitarian instrumentalization and exploitation of migrants;

3. Criminalization of migrants and migration;

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

5. Xenophobic hostility and violence against migrants;

6. Systematic/structural discrimination and exploitation of migrant women;

7. Suppression of migrant worker organization and participation;

8. Inadequate health care and lack of occupational safety and health (OSH) protections for migrant workers;

9. Absence of access to and portability of social protection and social security for many migrants;

10. Family disruption and decomposition (adult migrants working abroad; children left 'at home');

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

In terms of policy and government practice:

12. Restrictive migration/immigration regimes unrelated to economic and labour force realities;

13. Absence of explicit, comprehensive national policy frameworks on migration;

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

15. Lack of policy and administrative responsibility by labour and social protection institutions.

National Governance and Policy, what model the GCM?

All of the above considerations must be addressed – and can only be addressed – by and with comprehensive and effective migration policy. That policy must be based on law and the rule of law to be effectively formulated and implemented in order to ensure good governance – and concurrent social harmony, economic development, and human welfare. These will also contribute largely to preventing trafficking.

Unfortunately, the draft Global Compact on Migration (GCM) does not offer an adequate foundation for what's really needed to establish proper and comprehensive law, policy and practice of national governance on migration. While ostensibly a guiding framework for national action and international cooperation on migration, it provides a non-binding, non-normative and non-legal framework, by definition dismissive of the necessary legislative foundation for effective governance.

In broad terms, the non-binding nature of the Compact and its *non*-reference to a *sina qua non* implementation of the existing normative conventions (except ironically those related to suppression

of criminal activity) trivializes the global framework of binding human rights and labour standards constituting the essential foundation for governance concerning people under the rule of law.

The GCM is in effect de-regulatory on application of rules for treatment of migrants as human beings and protection of human and labour rights of all migrants –notwithstanding numerous nominative references to human rights in its text.

Ironically, in contrast, it urges reinforcing the very migration control and restrictive measures that provide fertile ground for trafficking. In so doing, it effectively assimilates criminal law and notions into what should be a frameworks for civil and administrative legislation and policy. The consequences include: effectively collapsing distinctions between civil and criminal; articulating association – if not integration – of migration and criminalization; and binding criminal control and suppression to public policy and civil, labour and social administration concerning entire populations. This stands in contrast to the heretofore ideological and legal separation between criminal and civil-social in human rights law and in democratic, rule of law governance approaches.

The draft Compact usefully articulates current conventional political wisdom on an array of measures for *management* of migration, some of which provide useful guidance in setting national policy and practice. But this if and only when guided by national legislation in accord with relevant international normative conventions, namely those of the United Nations and International Labour Standards (ILO Conventions).

The draft GCM offers a broad and extensive agenda of 'commitments', practical measures and actions essential to managing if not governing migration. However, a considerable number of these negotiated advisory provisions fall short of realising existing internationally agreed normative standards and expectations in areas of: health; social protection; child welfare; gender; equality of treatment and non-discrimination; application of labour standards; freedom of association and collective bargaining rights; urban governance; and others. While covering a number of practical task areas, the list of commitments itself omits entire areas of governance key to effectively addressing major concerns of people, of populations, such as health.

The draft GCM provides for establishing a capacity building mechanism to assist in implementing the commitments, and for reorganizing existing mechanisms of cross-UN coordination and cooperation, putting all into a UN network on migration, for which the IOM will be coordinator and secretariat.

The UN General Assembly High-level Dialogue on International Migration and Development will be re-purposed into an "International Migration Review Forum". That forum will certainly serve as a useful place to listen and to exchange practice and experience, but not necessarily more useful than existing diplomatic talk forums, and certainly less useful than existing treaty bodies and special procedures of both global and regional multilateral institutions. These bodies provide authoritative interpretation of legal norms and expectations as well as expert advice to States Parties on proper legal and practical implementation of international standards. For Taiwan, it will be a forum no more or less accessible than other instances of the UN.

The agenda below would be more relevant and useful for structuring a policy – and law and practice – framework on migration for Taiwan. Of course, many of the practical measures identified in the GCM could be usefully addressed, but within a comprehensive and coherent approach relevant to Taiwan while consistent with the global normative construct.

VI. An Agenda for Policy Action

An agenda comprising policy lines, the legislative foundation, and practical actions for a rights-based, whole of government and whole of society approach to governance of migration is well established.

It derives from universal normative conventions on human rights and International Labour Standards; from the agreed Declarations and Programmes of Action of World Conferences on Population and Development, Social Development and Racism and Xenophobia in 1994, 1995 and 2001; from the Resolution and Plan of Action on Migrant Workers adopted by the International Labour Conference in 2004, and the ILO Multilateral Framework for Labour Migration.[23]

It has been echoed and reinforced by numerous national, regional and global employer and union conferences, by UN General Assembly Resolutions and conventions and resolutions by regional bodies including the African Union, the Council of Europe, and the Organization of American States.

1. **Full recognition and legal protection of all migrants**
   a) Promoting ratification and full implementation of the legal migration governance standards recognizing and protecting 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 people and rights-holders first and foremost
   b) Articulate values-based discourse and narrative, drawing on 'evidence-base' as well.
   c) Discourage and de-legitimize anti-migrant discourse and law and policy formulations.
   Normative references: 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) Disassociating migration in general from trafficking and smuggling.
   Normative references: UDHR, ICRMW, Regional treaties and executive decisions, eg ASEAN.

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, particularly ILO C-81 (labour inspection), ILO C-129 (labour inspection in agriculture), ILO CEACR -Committee of Experts on Application of Conventions and Recommendations- rulings.

5. **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), ICCPR, rulings of ILO Committee on Freedom of Association

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[23] 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

6. 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.

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), treaty body recommandations

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, C-161, C-187 on OSH, plus some 30 other International Labour Standards (ILO Conventions) on specific branches or specific risks

9. Social Security for migrants
    a) 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; regional instruments on social security.

10. Family Unity and family support
    a) Pro ide family unity provisions in 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

11. Overcoming skills shortages; training youth for employment; recognising qualifications
    a) Reform, renovation and expansion of technical and vocational education and training
    b) Harmonize qualifications and training standards internationally-supported
    c) Establish criteria and mechanisms to evaluate and validate foreign qualifications, training attainment and experience.
    d) Implement circulation regimes, reduce barriers to labour and skills movement
Normative references: UNESCO Conventions; international occupational classifications.

12. Establishing a National *policy framework 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

13. Consolidate migration policy and administrative responsibility, capacity and 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)

14. 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

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

Conclusion

History tells that migration has always been an essential ingredient of development and human welfare. It is all the more so today, in every region of the world. However, unless regulated by appropriate laws and policies – in Taiwan as elsewhere – 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 a deliberate, comprehensive policy framework. That framework will only be effective when elaborated and implemented with the involvement of stakeholders across government, in parliament, social partners, civil society, and migrants themselves.

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