GMPA

Global Migration Policy Associates

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

The Crux of the Matter:
International Migration, Rights, Social Protection & Governance: Key challenges to our common future

Keynote Address for the
SASPEN-FES[1] CONFERENCE

SOCIAL PROTECTION FOR MIGRANTS IN SOUTHERN AFRICA

JOHANNESBURG

29-30 October 2014

This address reviews the bigger picture, outlining what's going down and why. The world of migration is being transformed; migration is transforming the world. Those who defend a rights and social protection centred approach need to fully assess reality to know what to do, and do it right.

Introduction to migration today

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

90% of all migration –of all migrants-- is bound up in employment outcomes, in economic activity, meaning people who are either working or dependent on those who are.

Migration is about people, and in a world dominated by a capitalist mode of economic relations, governing migration is inevitably about protection of people, about decent work for all, about social protection and ultimately about justice in our societies, for all people whether they are working or not.

Migration today is key to the viability of labour markets worldwide. It is key to obtaining return on capital in a globalized capitalist economy. It is key to development yes, but especially, the viability, indeed the very survival of the developed economies depends on migration.

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[1] Southern Africa Social Protection Experts Network "SASPEN" and the Friedrich Ebert Stiftung (FES) foundation.

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

Migration should be an engine of development and integration for Southern Africa as it is for the EU, for MERCOSUR, for EAC, and for ECOWAS. However, long experience worldwide shows that the potential of migration is only realized when it is effectively governed, properly regulated, and migrants' rights and dignity are protected.

There are an estimated 232 million foreign-born people residing today in countries other than where they were born or held original citizenship.[2] ILO calculated that 105 million of the 214 million people living outside their countries of birth or origin in 2010 are economically active.[3] 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.[4]

The World Bank estimated that 31 million African people were living in countries other than their birthplace in 2010, with 77% of the 31 million from Sub Saharan Africa[5].

Migration represents growing portions of populations and, particularly, work forces in many countries across Asia, the Americas, the Caribbean, and Eurasia. Foreign born workers now comprise 10% to 15% of labour forces in Western European countries and around 18% in immigration countries of Australia, Canada and the USA.[6] In cities, it is considerably higher.

An illustrative example is quintessentially Austrian Vienna where 49% of the population is foreign born or has at least one foreign born parent. 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 the larger EU member countries including France, Germany and the UK.

From 40% to over 90% of work forces in member States of the Gulf Coordination Council (GCC) and several other MENA (Middle East and North Africa) countries, notably Libya. It is 10-20% across Eurasia (Russian Federation, Caucasus and Central Asia)..

The common terms that shape perceptions –such as South-North and South-South-- do not accurately convey the reality that most migration is taking place within regions –not between. And much of that is within regional economic communities or common market spaces. 52% to over 60% of migration originating in Africa, Asia and Europe remains within those regions. Much migration today takes place within the twelve Regional Economic Communities that have formal regimes of free circulation of persons that involve a total of some 120 countries. 80% of migration originating in West Africa

[2] 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."

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

[4] ibid

[5] Bilateral Migration Matrix, World Bank, 2010

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

goes to other member states of the ECOWAS. It is 60% for this SADC region (Southern Africa Development Community). This proportion is similar in the European Union and Mercosur.

Value of migration today?

The economic value of migration to the world economy may be on the scale of that of petroleum. Recent figures indicate that the annual flow of remittances is more than 500 billion US dollars[7]. (Some estimates exceed $600 billion. That is considerably larger than total annual overseas development assistance (ODA - "foreign aid") and larger than total foreign direct investment (FDI). But remittances generally comprise less than 20% --at most-- of migrant earnings.

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

What is measured even less or not at all is the value of training and social reproduction cost transfers made by migrants moving from origin to destination countries, usually from less to more developed countries. In aggregate terms, that represents a sort of *foreign aid* subsidy primarily from South to North. To give an idea, if we assume that each migrant with tertiary education represents at least $40,000 in cost of higher education, the movement of 100,000 skilled migrants represents an aggregate transfer of that educational investment adding up to 4 billion US dollars. This figure is merely suggestive, the research and documentation of costings and aggregate values has never been done other than a few sample studies.

Greater mobility anticipated

The world of work needs skills and labor where the action is. And we ain't seen nothin' yet.

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 its work force in the next ten years, the Russian Federation has lost 10 million since 2000, and the 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 may decline as many as 100 million people in the next 30 years.

Some 140 of 224 recognized countries and political territories are at or well below zero population growth fertility rates[9]. Examples from regions, starting with 5 members of SADC: Botswana, Mauritius, Namibia, Seychelles, and South Africa. Elsewhere in <u>Africa:</u> Libya, Morocco, Tunisia. <u>Asia:</u> Bhutan, Brunei, Hong Kong, Indonesia, both South and North Korea, Malaysia, Mongolia, Singapore, Sri Lanka, Taiwan, Thailand, Vietnam. <u>Americas:</u> Brazil, Canada, Chile, Colombia, Costa Rica, El Salvador, Nicaragua, Paraguay, Uruguay, USA, plus nearly all Caribbean states. Argentina,

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[7]   World Bank. "Migration and Remittances" September 2, 2014.

[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.

Mexico, Peru are 'almost there' with 2.25 rates in 2013. 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. Saudi Arabia is at 2.21.

Over the next 15 years, all of these countries face increasing departures from the work force uncompensated by the decreasing numbers of youth entrants. This means increasingly intense global competition for the most crucial economic resource of all today, trained skills at all levels. The likely consequence for many developing countries will be even greater drain of skilled and educated human resources. It also means looming crises for contributory-based social security systems as declining work force numbers face increasing numbers of retired workers.

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

Meanwhile, financial crises and austerity measures that devastated national economies as well as social protection systems in several European countries resulted in youth unemployment rates at or above 50% in several countries[10]. New waves of emigration, especially of young skilled workers, are departing from Greece, Ireland, Italy, Portugal and Spain.

Skills and training constraints

No country today can form or train the entire range and number of evolving skills needed to perform the ever more complex work 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. At the same time, educational, vocational and technical training systems are not accessible to many youth seeking relevant, employable skills and qualifications, in many parts of the world.

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[10] Eurostat. Table 1: Youth Unemployment Figures, 2011-2013 Q4.

Contention between economic actors

In economic actor terms, migration is a key terrain of contention between capital and labour: between the employers/private sector versus workers/especially organized unions.   It is where the division of wealth is fought out-- how much of what is generated is returned to capital versus how much goes to working people as remuneration and to and populations as public services.

Migrants are also vectors of contention over conditions of work and investment in safety and health protections versus lowering costs to obtain higher returns on capital.

Migration poses the question of whether – 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. They are making or breaking unionization in industrialized countries.

Migrants are also the unwitting players in a vast global game to redefine social protection: who is responsible for it and with what benefits. International law says it is universal. But this author has heard numerous assertions that social protection for migrants is today a question of finding a median between two "extremes," one being full coverage, the other none at all, implying that the coverage expected in ILO Convention 102 is an 'extremist' position.

Exploitative conditions commonly experienced by migrants are structurally driven. For many enterprises in many countries, for entire economic sectors, low cost foreign labour is the only ticket to survival. Labour dependent agriculture would not be viable in Europe nor in North America nor in South Africa --nor could a part of the population afford to eat-- without cheap immigrant labour. Health, home care and schooling for children and care for populations of ageing people increasingly depend on migrants in all regions - including Africa - as do hotel, restaurant and tourist sectors in many countries. Global competition, free trade, and the race to the bottom phenomena push against costs of labour and provision of social services; 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, 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:[11]

> "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."

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[11]   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

Gender Specificity

The feminization of migration is less about the gender proportions of migration. Female participation has been above 45% for decades and is nearly 49% today[12]. 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.

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 Southern and Western Africa for example, women predominate among the large numbers of mobile commercial and trade workers who circulate regularly across different countries. This group of mobile persons is poorly documented; most are not 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.

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 it has been made unacceptable.

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[12] United Nations Population Fund. "Population Facts" No. 2013/2. September 2013.

The governance framework

This meeting takes place because, at least implicitly, worker organizations have awoken to the fact that "governance" of migration is undergoing a massive restructuring in western countries and the rest of the world.

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

The legal framework is provided by 1) 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.

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).[13] 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.

Oft repeated propaganda notwithstanding that these instruments are irrelevant and poorly ratified, 87 countries have ratified at least one of these three instruments, including 26 in Africa and nearly all countries in Central and South America. Counting in not yet ratified signatories of the ICRMW, 98 countries are legally committed to uphold international standards governing migration.

Fitting for a large global population present in many countries, the international institutional structure mirrors the multitude of concerns that face a large population, whether within a particular state or spread in many. A number of specialized international institutions address relevant aspects of migration in their mandates, competencies and activity, whether labour and employment, health, security, development, education, human rights, criminal justice, etc.

Despite the growing clamour to designate or create a super agency, there is no way that one agency could possibly address the range of specific concerns of governing a population, each requiring specialized knowledge, law, competencies and functions. No more than any government could abolish its 12 to 20 or so ministries needed to deal with specific areas of governing a country and its population to instead operate with sole one super-ministry.

Restructuring Governance: redefining a new regime for labour?

The governance structure for migration –as well as the ideology and 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

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[13] 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

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. Those ministries also oversaw vital regulatory and administrative functions concerning migrant workers, in particular labour inspection and social security.

Security and control institutions of States now predominate in managing and controlling migration, and migrants. Ministries of the interior or home affairs now officially carry lead responsibilities on migration in most countries in nearly all regions.

Strikingly, this consolidation of home affairs' lead responsibility for migration appears 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 Africa. 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 control posts along land routes in numerous African countries, each with obligatory inspections and payment of 'fees,' do not facilitate circulation of goods, services, or people.

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.

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 regimes tend to offer explicitly restricted labour rights, in particular exclusion of freedom of association while subjecting migrants and their employers to reduced- or non-application of labour standards.

Abandoning multilateral norms and architecture

At the international level, the multilateral normative and institutional architecture is being abandoned. The roles of UN agencies as well as migration outcomes of World Conferences over the last 20 years have been diminished. The application of international 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, globally and in all regions.

While these are often defined as representing 'governments,' participation by delegates of interior ministries and state security agencies predominates. A parallel development of regional consultative processes has occurred at regional level, also outside existing multilateral institutions on migration regimes in Regional Economic Communities.

Along with the shift of governance from rule of law to rule of management control is shift of discourse even at the UN and ILO. Emphasis in policy documents starts with migrants as actors for development first, and subsequently as workers, as persons. Meanwhile, the core normative treaties

have been re-characterized as mere references or simply dismissed, rather than as binding foundations for governance that all states should ratify.

The price of rights

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

A fundamental premise implicit in this discourse –and in policy initiatives in many countries-- is that foreigners are not equal, nor are they equally entitled to protection or inclusion under law or ideology of the nation State.

In practical terms, the popularized notion stresses that limiting rights of migrant workers will incentivize greater opportunities for migrant access to labour markets in higher income countries. And as a consequence, greater development gains, resulting from:.

- More jobs created
- More jobs available for migrants
- More access by employers to needed skills and labour in host countries
- More remittances – financial, investment, skills enhancement, etc -- being returned to home countries of migrants.

The risk in anchoring discourse and program on migrants in a development starting point is ultimately facilitating the rights versus development debate. The rights versus numbers argument explicitly poses that less rights for migrant workers will generate more employment in higher income situations and thus more development.. Setting development as the reference point in a deregulatory environment easily allows for posing equality of treatment rights as a constraining conditionality, never mind that the development paradigm with its economic implications risks perceiving migrants first and foremost as actors and agents of development. Instead of migrant workers and their families as first and foremost human beings, regardless of their utility to development.

The real world manifestations of development contending with rights are profiled by some governments that have lauded their migrants as 'heroes' yet manifested a willingness to sacrifice protection abroad to ensure market access. Anecdotal reports abound that certain Gulf States effectively impeded ratification of migrant workers' rights instruments by Bangladesh and Indonesia for more than a decade with the threat of closure of their markets to laborers from those countries if they ratified. It appears that other destination countries have exercised similar 'market-based' pressures, albeit more subtly.

15 key challenges for governance of migration

All are key concerns for migrants, especially migrant workers. All are areas where governments are taking action, or not. All are areas where there is trade union and CSO activity, albeit in some cases minimal. The risk of ignoring any of these is that what may be gained in one area is lost elsewhere.

1. **Lack of legal protection, non-recognition of migrants; non-recognition of rights under law.**

2. **Utilitarian instrumentalization of migrants and migration, subordinating human rights**

3. **Criminalization of migrants**

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

5. **Increasing xenophobic hostility and violence against migrants worldwide**

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

7. **Suppression of migrant worker organization and participation**

8. **Lack of health care and OSH; denial of health rights.**

9. **Absence of social protection and social security for many migrants**

10. **Family disruption and decomposition**

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

12. **Non-implementation of free circulation regimes**

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

14. **Concentration of government migration management roles and responsibilities in internal security and police control institutions of States.**

15. **Absence of policy and administrative responsibility, capacity and coordination by labour and social protection institutions, notably unions.**

Agenda for Action

An agenda comprising policy lines, political demands and practical actions for a rights-based approach to governance of migration derives from the review above. Its elements evolve from World Conferences in 1994, 1995 and 2001, the Plan of Action on Migrant Workers adopted by the International Labour Conference in 2004, and the ILO Multilateral Framework for Labour Migration [14] as well as multiple trade union and civil society forums. All components are crucial.

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) Calling for, promoting and assisting in **regularization** of migrants in unauthorized situations.

2. **Rights and people based discourse**
    a) Identify migrants as rights-holders first and foremost

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[14] 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

b) Call for respect for four freedoms for all migrants: Freedom of choice; freedom of movement; freedom to stay; freedom of association and participation.

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

3. 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 offences
   c)   Treatment of minors according to best interests of the child
   d) Repeal of generalized migrant/traveller identify control, surveillance and restriction measures
   e) Lift border controls and eliminate in-country travel/transport inspection-control posts within established areas of regional, multi-country free circulation of persons

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

4. Decent Work for all migrants: Vigorous enforcement of labour standards
   a) 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 'fire-walling' labour inspection from immigration control.

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

5. Stop Xenophobia, racism and discrimination against migrants
   a) Repeal of discriminatory legislation and policy and reinforcement of non-discrimination/equality of treatment law and practice
   b) Defining and implementing 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.

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

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

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

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

8. Health for all migrants, health is a right for all.
   a) Ensure full access by migrants to health prevention and care services and facilities
   b) Demand elaboration of national public health and OSH 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

9. 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, C-118; ECOWAS General Convention on Social Security

10. Family Unity and family support

    a) Demand family unity provisions in all immigration and migration regimes

    b) Ensure immigration law facilitates family reunification

    c) 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

Policy administration agenda

11. Overcoming skills shortages; training youth for employment

    a) Reform, renovation and expansion of technical and vocational education and training

    b) Harmonize qualifications and training standards

    c) Implement circulation regimes, reduce barriers to labour and skills movement

Normative references: UNESCO Conventions; international occupational classifications

12. Promoting full adoption and implementation of free circulation regimes

    a) Advocate for political will by governments to realize and implement free circulation of people

    b) Advocate ratification of regionally agreed regimes by REC member States

    c) Promote national implementing legislation

    d) Harmonize labour codes in RECs

    e) Obtain derogation of legal, administrative and control measures that thwart labour circulation and migrant worker establishment, and employment.

Normative references: REC treaties, protocols and executive decisions in Andean Pact, CARICOM, CEMAC, CICA, ECA, ECOWAS, EEC, EU, IGAD. MERCOSUR, SADC etc.; international conventions C-97, C-143, ICRMW.

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

    a) Obtain commitment to establish a (labour) migration policy framework/document

    b) Organize a fully consultative input and elaboration process

    c) Involve concerned government ministries/agencies/authorities at relevant levels, 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 for product by stakeholders

    h) Expect approval and adoption at the highest level of government

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

14. Consolidate policy 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 to address labour migration/mobility
- *c)*   Encourage engagement of social partner organizations
- *d)*   Training and capacity building for labour institutions and social partners on labour migration.
- *e)*   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)

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

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

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

To sum up, 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 --unions especially - civil society, and migrants themselves.

Extending Social Security to Migrants [15]

Social Security for migrants in Southern Africa is a question with very big stakes. Getting social security right today is essential for economic progress, social well being and good governance.

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.

The landmark ILO Convention 102 identified nine hallmark areas of social security: 1) Medical Care benefit, 2) Sickness benefit, 3) Unemployment benefit, 4) Old-Age benefit, 5) Employment Injury benefits, 6) Maternity benefit, 7) Family benefit, 8) Invalidity benefit, and 9) Survivors' benefit. It also set minimum standards regarding: personal coverage, level of benefits, qualifying period, duration of benefits etc.

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[15]This section draws on a *Framework Guidance Document (FGD) on Social Security for Migrant Workers in Eurasia* prepared by this author for the International Social Security Association (ISSA) in 2012.

Seven principles of Social Security

Seven fundamental principles of social security provide guideposts for legislative and policy action to extend social security to migrant workers. These seven principles are established in international law and proven by practice in countries worldwide over more than 70 years. They are: 1) universality; 2) equality; 3) accessibility; 4) portability; 5) comprehensiveness; 6) credibility; and 7) sustainability.

- *Universality* means that everyone as a member of society has a right to social security.

- *Equality of treatment* means that migrant workers are entitled to the same rights, obligations and treatment as nationals regarding social security coverage.

- *Accessibility* means that social security enrolment, coverage, and disbursement of benefits are made aware to, open for, and obtainable by migrant workers as well as other vulnerable groups.

- *Portability* is the ability to obtain, preserve, maintain and transfer vested social security rights or rights in the process of being vested, independent of nationality and country of residence.

- *Comprehensiveness* is the aspirational principle of obtaining coverage to meet the risks of health, unemployment, old age, survivorship, sickness, injury, disability and maternity and family care.

- The principle of *credibility* means good governance and the effective and efficient management of social security systems.

- *Sustainability* means assuring the long-term social, political and financial sustainability of social security.

Challenges for extending social security to migrants

This SASPEN discussion is an affirmation of the urgency to extend adequate coverage and portability of social security for migrant workers. Although migrant workers fully contribute to the economies of destination and origin countries, they are not taken account of in national social security schemes in many countries. Migrants often lose entitlement to social security benefits in their country of origin due to absence. They generally face restrictive conditions or non-access to social security in the country of employment. Even when they can contribute to social security in host countries, their contributions and benefits often cannot be transferred to origin countries.

Impediments to extending social security to migrants in Southern Africa are similar to those elsewhere:

1) lack of implementation of existing social security agreements;

2) lacuna in legal regimes;

3) absence of social protection for those in informal activity, including migrantss;

4) lack of incentives to incorporate foreigners in social security;

5) lack of administrative mechanisms to extend coverage and portability;

6) inadequate data and lack of information exchange among countries; and

7) lack of a regional framework for social security cooperation.

Specific challenges include: absence of legislation on labour migration; absence or inefficiency of governing and regulatory mechanisms; informal employment relations; tax evasion; and absence of

social security provisions for migrant workers. The latter refers to absence of pension and health coverage for migrant workers and their families, non-calculated employment periods, and non-transferability of pensions and benefits.[16]

Specific mechanisms are required to recognize migrant workers' Social Security rights and to overcome restrictive conditions, in particular those based on territoriality and nationality. Although a number of countries recognize equality of treatment between national and non-national workers in social security legislation, some countries discriminate against migrant workers through national legislation that excludes specific categories of migrants or disallows portability. An agreed framework of common rules and mechanisms for cooperation among countries in SADC on social security has not yet been formally proposed, yet it would be a key guidepost to encourage extension of coverage and harmonization of approaches.

Experience elsewhere shows need for several specific tasks. Crucial immediate tasks are getting national systems to work efficiently, simplifying procedures to accommodate stationary as well as short-term migrants, and allowing migrants access to existing mechanisms for coverage. Social security agencies need to assess their existing coverage and identify actual compatibilities and contrasts between national systems. They would need to support generating political will to obtain inter-country agreements and to extend unilateral measures.

In addition, more precise data needs to be obtained and applied on migrant employment and economic activity –data essential for determining social security contributions and coverage. Social security agencies need to interface labour market data on migrants with their administration of social security. They would also need to encourage obtaining data on the often unrecognized migrant worker populations such as those in informal economic activity, the large numbers in seasonal agricultural labour, and those in irregular status situations.

Extending social security to migrant workers in Southern Africa requires a deliberate and strategic process. The complex, inter-related nature of the challenges requires several stages that are mutually reinforcing and progressively built.

A Roadmap Strategy and Plan

Following is a suggested *roadmap* comprising a *strategic action agenda* for action on extending social security to migrant workers. It is derived from successful experiences in different regions around the world. Most of these suggested measures can be –and have been-- initiated and implemented "unilaterally" within countries. While many of these measures do not require international agreements, international dialogue and cooperation is essential to enable portability of entitlements and benefits.

The *roadmap* shows five main action areas deriving from these principles. This strategic agenda urges a cooperative process incorporating key national stakeholders accompanied by the concerned international structures, namely the International Social Security Association (lSSA) and the ILO.

1. Assessment of social security systems and migrant populations,

2. Implementation of national and unilateral measures

3. Adoption of international standards on migrant workers and social security

4. Identification of existing compatibilities among national systems

5. Establishing mechanisms for regional Social Security cooperation

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[16]See report of ISSA- IAPSF Working Group on Migrant Workers in Eurasia, Nov 30-Dec 1 2011.

1. Social Security Country Profiles

A first step is mapping "Extending Social Security Country Profiles," summarizing law provisions, existing practices, relevant structures, and mechanisms addressing or able to address social security of migrants. This would complement statistical and qualitative data on migrants in the country and nationals abroad.

The second strategic stage is formulating and implementing measures and practices that incorporate migrant workers. These implement the Principles for extending social security. Specific measures will necessarily be determined according to each national context.

The third step is incorporating relevant international standards in national law and practice. ILO Conventions on Social Security and migrant workers ensure an appropriate legal foundation; ISSA offers guidance on operational performance and governance.

The fourth strategic stage is mapping existing compatibilities, convergences and divergences regarding migrants' coverage among national social security systems in Asia. A key component of this stage would be a survey analyzing compatibilities.

A fifth step is exploration of mechanisms of cooperation to facilitate national systems working together in the SADC regional situation.

2: Implementation of national 'unilateral' measures

Expert inputs and experience of social security administrators highlight an array of measures that can be implemented unilaterally and often rapidly within each country. These include:

- Establishment by the country of employment of *equality of treatment* between national and non-nationals regarding social security coverage and medical care as well as payment of benefits abroad.

- In the absence of formal portability arrangements, reimbursement of social security contributions to the migrant when he/she leaves the country.

- The country of origin provides social security coverage through a national scheme for citizens abroad when they are not covered in places of employment.

- Requiring recruitment agencies to include social security provisions.

- Establishing special social security options or voluntary social insurance for migrant workers based on voluntary contributions.

- Providing options for voluntary retroactive payment of contributions in to social security or pension schemes for periods abroad.

A key element is formulation and implementation of measures and practices that incorporate migrant workers particularly in countries of employment.

3: Adoption of international standards on migrant workers and social security

 The ILO Conventions on Social Security and the core international instruments on migrant workers[17] ensure a viable legal foundation for realization of social security. Domestication of the principles in ILO Conventions 102 and 157, along with C-118 is essential. Basic rights need to be defined in national law to set the foundation for "social security for all." Realizing access and full portability of contributory social security benefits requires explicit legal provisions while international cooperation

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[17] The three main 'migration governance' conventions are ILO C- 97 on migration for employment, ILO C-143 on migrant workers and the International Convention on rights of migrant workers, discussed on pages 8-9.

depends on a degree of compatibility among respective national legislations. International standards on social security provide the basis for credible, sustainable and effective implementation.

Political will is needed: Social Security Administrations can provide evidence and, together with Parliamentarians, make the case for extending social protection to migrants.

4: Identification of existing compatibilities and contrasts among national systems

The subsequent, fourth strategic stage on this roadmap --and the prerequisite for any discussion of regional cooperation-- is mapping the existing compatibilities, convergences and divergences regarding migrants among the national social security systems across SADC.

Key elements are **recognition of portability** and **maintenance of rights acquired and in course of acquisition.** Social security administrators have essential roles in determining applicability of existing legislation and international agreements, including conventions and bi- or multilateral agreements that provide means and mechanisms for ensuring portability in fact. Administrators should also identify mechanisms to account for periods of employment/contributions by migrant workers in their country.

5. Devising mechanisms for Social Security cooperation in SADC

The highway on this *roadmap* is regional cooperation on social security. Successful approaches elsewhere – in the European Union, in South America's MERCOSUR --demonstrate that obtaining social security portability requires a systematized framework and operational regime of cooperation. This comprises *techniques aimed at guaranteeing social security entitlements of migrating persons and their dependents by making national systems work together in transnational situations.*

Building cooperation in Southern Africa is best advanced by regular dialogue among social security administrations, building on comparative review of social security frameworks, identification of existing compatibilities, and resolving differences. A role SASPEN is uniquely positioned to facilitate.

In Conclusion

Progressively extending social security to migrant workers in Southern Africa is more than feasible; it is imperative to ensure welfare and social cohesion across the region. However, it will only be achieved by generating political will to obtain the necessary legislative steps, administrative mechanisms and practical measures. The *roadmap* indicates a viable way forward and can be a useful guide for parliamentary action domestically as well as in concert across SADC. This requires taking action and seeking harmony in your combined efforts across the region. SASPEN is uniquely and presently placed to take the initiative to move forward what needs to be done to ensure that social protection for all migrants in Southern Africa is indeed a viable aspiration. The ultimate beneficiaries will be your constituents, your respective countries and Southern Africa's place in the world.

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