Regional mobility, freedom of movement and integration: integral to sustainable development and governance worldwide;

Contemporary political-economic challenges, contentions and responses

A work in progress prepared for the
University of Geneva Regional Migration Governance Workshop
21-23 June 2018

by Patrick A. Taran

"*For Central Asia, the key to development is building economic, political and social cooperation. Migration is one of the fundamental pillars for such essential cooperation. This means freer circulation of labour in larger markets to better link capital and labour.*"

This paper-in- progress reflects two decades of technical cooperation and advisory experience with regional mobility regimes and institutions in Africa, the Americas, Europe, Eurasia and MENA countries. It draws on research policy work, in particular preparation of the AU-ILO-IOM-ECA *Joint Labour Migration Programme for Africa* in consultation with all eight African Regional Economic Community formations: CEN-SAD,.COMESA, EAC. ECCAS, ECOWAS, IGAD, SADC and UMA. This edition is a provisional work in progress, additional components and citations to be added.

Structure
The paper is structured to provide an overview, a critical assessment, contextual perspective, and elements of a *way forward* on governance considerations of regional mobility, integration and development.
1. Overview: the mobility components of regional integration regimes.
2. Regional mobility::global advances on rights, freedom of movement and governance
3. Regional integration, development and mobility
4. International migration and development, the context
5. Greter regional mobility anticipated
6. Governance challenges concerning migration
7. The governance framework for migration
8. Regional governance approaches
9. Danger of destructuring mobiliity governance
10. An agenda on regional mobility and freedom of movement

1. Overview

The major portion of international migration worldwide takes place within regions, much of that within Regional Economic Communities.

Global figures show that over 50% of migration in most regions is within the region, in Africa, the Americas, the Caribbean, Europe, and indeed the large majority within Eurasia. Asia is an exception only because of the significant migration-mobility of Asian workers (at all skills levels) to the Middle, East, there mainly to GCC member countries.

More pertinently, a large majority of global migration takes place within established regional economic communities, 50% to over 80 % of migration in sub-Saharan Africa takes place within the distinct Regional Economic Communities of EAC, ECOWAS, ECCAS and SADC, over 80% of migration originating in West Africa goes to other ECOWAS member counties. This is similar to figures for the Eurasian Economic Union and for MERCOSUR. In the past, the majority of migration into EU member states was from other EU countries, the current proportion remains close to 45%.

Ten formal regional migration-mobility-circulation governance regimes are operational

These are: the Andean Pact (in western South America); CARICOM (Caribbean Community); ECCAS (Economic Community of Central African States); SICA (Sistema de la Integración Centroamericana/Central American Integration System); COMESA (Common Market of Eastern and Southern Africa); East African Community (EAC); ECOWAS (Economic Community of West African States); EU -European Union; Eurasian Economic Union (EAEU); and GCC (Gulf Cooperation Council);

These RECs and their respective migration-mobility components incorporate 92 countries in formal functional regional «migration governance» systems.

In process or under discussion are potential circulation regimes in ASEAN (Association of South East Asian Nations); CEN-SAD Community of Sahel-Saharan States; IGAD (Inter-Governmental Authority for Development, SADC (Southern Africa Development Community); Union du Maghreb Arab, UMA.

The migration-mobility components of most of the operational regimes represent a significant ideological, conceptual and legal advance in freedom of, and recognized rights to, international mobility, including regarding entry, residence and establishment in other countries.

The ECOWAS and EU treaty regimes, and subsequently to a greater or lesser –but substantial-- degree, those in Andean Pact, CICA, EAC, ECCAS, GCC, and MERCOSUR significantly advanced the international legal scope of *non-discrimination* and *equality of treatment* on grounds of nationality as well as *freedom of movement* rights by explicitly establishing **normative rights of entry, stay and work and/or establish business activity in any member country by nationals of any other member State of those Communities**. In particular, they establish in binding international legal instruments rights to entry/movement acorss borders, residence and establishment –referring to both employment, self-employment and/or establishments of business activity.

Regional mobility rights and regimes are integral components of generally comprehensive regional inter-State formal governance cooperation and integration systems. These systems comprise in nearly all RECs concerned: constitutional treaty foundations, legal normative instruments binding on member States, institutional structures for executive implementation, coordination and administration, parliamentary legislative bodies and institutional mechanisms for judicial review, treaty and law interpretation, conflict resolution and enforcement.

Regional governance systems are substantially operational in eight regional communities; seven of which have comprehensive regional circulation rights and mechanisms components. In brief, Andean Pact, CARICOM, CICA, EAC, ECOWAS, EU, GCC, and MERCOSUR have comprehensive legal normative regimes in place approved by most or all MS and are operational to significant degrees in general, and specifically regarding circulation/mobility components. The mobility regimes of all but one can be said to be comprehensive for all citizens of community member countries, whereas the CARICOM mobility regime entitlements apply for persons of identified skill categories and educational attainment.

The mobility components of all these entities comprise operational rules, regional institutional structures and greater or lesser harmonization of multiple complementary systems to regional mobility circulation. These complementary measures include harmonizing and/or ensuring compatibility and cooperation across member state social protection regimes, labour codes and documentation such as common passports (EU, ECOWAS) and/or standardized mutually recognized national identity documents. In most cases, significant progress is being achieved towards common regional educational, training and accreditation standards and region-wide harmonization and recognition of professional, technical and vocational qualifications.

Three other regional communities have adopted legal frameworks including specific components on circulation and mobility of people to some extent functional, ECCAS, COMESA, and EAEU.

Two of these are operational, at least in part, the a, are of these partially operational, the majority of ECCAS members having adopted the legal instruments and tackling implementation. The updated ECCAS framework built on the CEMAC free movement protocols in place since the 1970s and partially implemented by several Francophone Central African countries.

The Eurasian Economic Union has established a framework agreement on mobility agreed among its six member countries, to a significant degree following on the visa-free mobility space of the onetime 12 member Commonwealth of Independent States comprising the « post-Soviet space. » The EAEU is currently engaged in arduous negotiations over the regulatory terms and the modalities of implementation.

COMESA formally adopted a comprehensive legal framework in 2015, but awaits ratification by a majority of member countries to enter into force.

Four other regional communities are engaged in some level of negotiation or re-negotiation of formal circulation-mobility regimes: ASEAN, CEN-SAD. IGAD, SADC. However, tensions among member countries, internal conflicts in certain countries and a prevalence of «security» concerns are impeding rapid progress beyond general statements of principle or intent in these regional processes.

Two other regional integration projects bear mention because the have had on the table proposals or negotiations for facilitation of regional mobility among member countries SAARC and UMA/AMU.. However, it is fair to say that serious progress is stalled or thwarted, either in elaborating an agreed regional mobility regime or in implementing any agreements 'in principle':

In both cases, significant political-diplomatic contentions between certain member countries have impeded agreement, or even sustaining negotiations, the India-Pakistan conflict impeding SAARC advances and longstanding Algeria-Morocco tensions relegating the UMA to immobility.

Nonetheless, the notion of regional circulation, in many cases with formalized freedom of movement rights, is in place or at least on the table in formal regional communities of States concerning some 130 countries

2. Framing Free Movement

Free circulation, regional regimes integral and essential for integration foundation for development in globalized economy of competitive capitalism.

All formal regional regimes recognize, not only recognize but constructed on common market integration –in larger spaces-- of capital, goods, services, technology, infrastructure...and people – notably of labour, skills, as well as producers, consumers and agents of distribution.

Migration governance as a term and concept may not be helpful; as highlighted above, all regional regimes are integral part and parcel of comprehensive regional intergation systems of governance.

In context, migration law does not exist as a distinct category. Much of international law concerning migration is found as components of and within several globally defined legal categories or arenas: human rights, international labour standards, refugee instruments, consular law, elements of international law on organized crime, and regional law, the latter as regional law among defined groups of States. Other legal principles and standards relevant to migration are found in law and specific international instruments addressing health, law of the sea, and statistical standards, among others.

There is, to date, no separate, distinct 'autonomous' area of *migration law*, despite wdiely disseminated but unfounded assertions to the contrary. The current effort to establish an international «compact» on migration raises profound concerns about removing migrants and migration from full application and implementation of existing standards and legal regimes, particularly the universal human rights normative and institutional regime and its explicit coverage of all migrants..

Further to framing the issue, it can be categorically stated that the regional integration regimes with their migration components are not free trade agreements, nor are they comparable. Similarly, they are not and indeed are far from mere visa free or visa waiver agreements.

Framing: regional circulation regimes not distinct but integral components to regional governance for economic development and, in theory at least, social progress in welfare of entire populations.

The EU, for example, does not have distinct regional migration governance, rather mobility rights and modalities for member country citizens across the union are defined within and as part of the foundational treaties of the Union. It has a single economic and, to a large extent, social space. Notably, it has no general legal or policy agreement collectively addressing migration concerning non-EU citizens, «third country nationals.»

Rather, its purpose and agenda is to deliberately allow, spur and regulate market, resource, capital, and infrastructure integration in the single no-barriers space --well beyond a «common market» space, within which mobility is a core component. It has advanced as well in harmonization of standards, common regulatory regimes, and policy and practical integration in such arenas as education, health, labour, social protection, transportation and other areas. Indeed, law, policy and administration of migration and mobility cannot be independent from law, policy and practice on such governance areas of social security, decent work, occupational health and safety, professional and vocational standards, equality of treatment and non-discrimination, etc.

This assessment refers to governance of migration and «migration governance» with caution, to underline that in the reality of government entities from local to international, migration concerns are almost universally imbedded in and part of «whole of government», «whole of society» approaches, in law, policy and practice.

Social Security cooperation and coordination on migrant access and portability
(To be elaborated)

EU

ECOWAS General Convention on Social Security

MERCOSUR relatively more advanced with an operational, integrated regional superstructural system, with a unified administrative system and institution in place and operating.

3. Regional Integration and mobility

In Africa, much of Asia, in Europe, in Eurasia, in the Caribbean, Central America and South America, migration is about making, or breaking, development that is dependent on achieving or maintaining viable economies and work forces. Regional integration is, for many countries, the sold means of participating in economies of scale that are able to meet peoples needs and remain sustainable in an increasingly «globalized» context dominated by giant economies of scale, namely China, the United States, Japan, and indeed through effective regional integration, the European Union.

Alone, small --even larger—countries won't make it. They are not thriving in Africa, where most countries are increasingly far behind advanced countries in technology, economic infrastructure, education and human development indicators.

Regional integration among groups of countries means assembling larger economic spaces that obtain economies of scale, broad and diverse resource bases, and extensive, diversified human resources.

The need to facilitate international labour and skills mobility as a core function of regional integration and development has long been recognized as a pillar of construction of Regional Economic Communities since the emergence of the concept after World War II in Europe and since the 1970s in much of Africa, South America and the Caribbean. The need for and benefits of regional economic integration were in fact driving factors underlying construction of the Soviet Union from the 1930s.

The Economic Community of West African States (ECOWAS-CEDEAO – 15 members) and the Economic and Monetary Community of Central Africa (CEMAC – 6 members) established regional Protocols on free circulation of persons in the late 1970s, and subsequently regarding establishment and access to labour markets of member countries by citizens of other member countries. The East Africa Community Treaty established the principle of free circulation; the EAC Common Market operationalized in January 2012 incorporated a regulatory regime for circulation of people among its five member countries; Kenya, Rwanda and Tanzanian heads of State adopted further measures to facilitate circulation that came into effect in January 2014.

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

The existing African REC legal frameworks for circulation of persons are largely consistent with

international standards regarding migrant workers; most were initially inspired by the European Economic Community (now European Union) legal and policy frameworks for circulation of persons among member states.

Excerpts from Cental Asia Tripartie Symposium on Regional Mobility and Integration in Central Asia
Astana, Kazakhstan, May 2011.

Government, employer and trade union executives from Kazakhstan, Kyrghiz Republic, Tajikistan and the Russian Federation called today for a harmonized approach to regulate labour migration in Central Asia. They agreed on coordinated action to bring law and practice on migration into line with modern standards and practices at the conclusion of a three day regional 'tripartite' symposium held in Astana.

Trade union federations of three Central Asian countries signed a historic joint agreement on cooperation to enhance protection and support for migrant workers of all nationalities. Employers' organizations of three countries signed a joint memorandum of intent to expand their cooperation regionally.

"Extending social security and health coverage to all migrant workers was agreed as urgent priority to reduce social costs of migration and maintain public health for all. Delegates agreed that achieving social protection requires developing legislation in line with international norms, harmonizing social security regimes among cooperating countries, and establishing viable systems to collect contributions and disburse benefits. ILO is asked to facilitate regional consultations to develop a Central Asian regime of cooperation on social security protection for migrant workers."

---

4. The Context: Migration Today and Development

There are approximately 258 million people residing today in countries other than where they were born or are citizens; the latest official figures were 244 million in the UN 2015 estimate.[1] ILO calculated that 150 million of the 232 million people living outside their countries of birth or citizenship in 2013 were economically active,.[2] employed, self-employed or otherwise engaged in remunerative activity. That represents very high proportions of those of working age. Regardless of admissions categaries or asssumed motivations for migration, and taking into account accompanying are following dependents, it is indisputable that well over 90 per cent of migration today is bound up in labour and employment outcomes.[3]

However, the UN global migrant estimates do not register the millions more people around the world in short-term, temporary or seasonal foreign work situations, or permanent international itinerant work where they are not counted as residents. The latter is an especially significant phenomena in Africa where hundreds of thousands of people circulate across borders in regional spaces in Central, Eastern, Southern or West Africa as commercial traders and artisans –without establishing residence outside their country of origin or citizenship but often spending much of their working lives outside their country of citizenship..

To elaborate on the logic, migration is about development. As much as the migration-development nexus is attributed to developing nations and regions, it is also about "saving" development in

---

[1] UN Department of Economic and Social Affairs *2013 Estimate* issued 1 October 2013

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

[3] ibid

industrialized countries. Foreign born workers now comprise 10% to 15% of labour forces in Western European countries, around 18% in immigration countries of Australia, Canada and the USA.[4] As former mayor Ken Livingston once said, London would not make it to breakfast without migrants. Taking account of offspring of recent immigrants gives 20% or more of work forces "issue de l'immigration" in some European countries. It also represents growing portions in many countries across Asia, the Americas, the Caribbean, and Eurasia, and from 50% to over 90% of work forces in member States of the Gulf Coordination Council (GCC).

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

> the elaboration of productive means, forces, capacities and output that provide goods, services, technology and knowledge to meet human needs for sustenance and well being. Development comprises building the material means for: extraction and transformation of resources; for production of goods, services and technology; for constructing infrastructure required for producing, transporting and distributing resources, goods, and services; for reproducing capital and labour; and for providing human welfare/well-being in terms of housing, nutrition, healthcare, transportation, education, and culture in its broad sense.[5]

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

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

Skills and training constraints

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

The skills crisis is 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[6]. 40 million lacking with tertiary eduction in developed countries, and 45 million more missing with needed technical, vocational and scientific skills in developing countries. This when employers around the world today 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 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

---

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

[5] In "Rethinking Development and Migration; Some Elements for Discussion," online GMPA Working Paper by Patrick Taran, Global Migration Policy Associates.

[6] *The world at work: Jobs, pay, and skills for 3.5 billion people.* McKinsey Global Institute. June 2012 | by Richard Dobbs, Anu Madgavkar, Dominic Barton, Eric Labaye, James Manyika, Charles Roxburgh, Susan Lund, Siddarth Madhav. See http://www.mckinsey.com/insights/employment_and_growth/the_world_at_work

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

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

5. Greater Regional Mobility Anticipated.

Within 15 years, the majority of world's countries –and populations-- will experience significant work force decline and population ageing.[7] Germany will lose 5 million members of its work force in the next fifteen years.[8] The Russian Federation workforce declined by some 10 million workers since 2000 and the government anticipated in 2013 that the working-age population will decline by eight percent to nine percent –about 8 million people – between then and 2020[9] while experts estimate a shortage of 14 million appropriately skilled workers by 2020[10]. By 2050, the Japanese labour force will be 40% less than what it was in 1995, about 52 million from a peak of 87 million[11]. Employer and union federations predict that Switzerland will need 400,000 additional workers by 2030[12][13].

Qatar authorities project bringing in 1 million more migrant workers before 2020, in addition to the approximately 1.5 million comprising 90% of the current work force. China's working-age population decreased by 3.45 million in 2012.[14] Recent forecasting indicates that China's work force will decline by some 126 million people in the next 20 years. The United States' workforce is also declining; the labour force participation rate is projected to be three percent lower by 2020 than 2012, with "Roughly two-thirds of the decline (is) due to the ageing of the labour force."[15]

Some 127 of 224 recognized countries and political territories are at or well below zero population growth fertility rates[16]. Examples from regions: <u>Africa:</u> Libya, Mauritius, Morocco, Seychelles,

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

[8] "Germany faces up to problem of ageing workforce" By Larry Elliott and Julia Kollewe. The Guardian, London. 17 March 2011. http://www.theguardian.com/world/2011/mar/17/new-europe-germany-retirement-pensions-exports

[9] Interfax (2013) "Russia's working-age population to decline by 8%-9% by 2020 - deputy minister." Interfax Service, Moscow. February 28, 2013. http://www.interfax.com/newsinf.asp?id=399564

[10] The Atlantic (2011) "In Russia, a Demographic Crisis and Worries for Nation's Future." Ben W. Heineman Jr. (Harvard University). The Atlantic. Oct 11 2011. http://www.theatlantic.com/international/archive/2011/10/in-russia-a-demographic-crisis-and-worries-for-nations-future/246277/

[11] The Economist (2010) "The future of Japan: the Japan syndrome" The Economist. London Nov 18th 2010. http://www.economist.com/node/17522568

[12] Credit Suisse (2013) "Valentin Vogt: 'We Depend on Immigration." By Michael Krobath. Credit Suisse Magazine. Zurich. 10 December 2013. https://www.credit-suisse.com/sites/mobile-website/en/magazine.article.html/content/articles/pwp/news-and-expertise/2013/12/en/valentin-vogt-we-depend-on-immigration.html

[13] The Local (2011). "Swiss trade union calls for more immigration." The Local, Switzerland edition. Geneva. Published: 26 Oct 2011. http://www.thelocal.ch/20111026/1577

[14] China Digital Times (2013) "Shrinking Workforce Underlies Family Planning Issues." By Scott Greene. China Digital Times. January 22, 2013. http://chinadigitaltimes.net/2013/01/shrinking-workforce-underlies-family-planning-issues/

[15] Federal Reserve Bank of Chicago (2012). "Explaining the decline in the U.S. labor force participation rate" By Daniel Aaronson, Jonathan Davis, and Luojia Hu. Chicago Fed Letter, Number 296. March, 2012. http://chicagofed.org/digital_assets/publications/chicago_fed_letter/2012/cflmarch2012_296.pdfb

[16] This and following figures drawn from the on-line *CIA World Factbook, Country Comparison: Total Fertility Rate*(s).

Tunisia. <u>Asia:</u> Bhutan, Brunei, China, Hong Kong SAR, 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, 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 entrants. This means increasingly intensified global competition for the most crucial economic resource of all today, labour and all levels of trained skills.

Meanwhile, pressures for labour displacement and emigration from countries North and South remain intense; in some situations they have significantly intensified. Beyond the highly visible warfare devastating a number of countries across the MENA regional and elsewhere, a key factor remains the absence of jobs and decent work in so called 'developing' countries with growing youth populations. Job creation has remained consistently flat while youthful populations continue growing significantly, adding millions of new workers each year to labour markets in which new jobs created often only match numbers of jobs lost.

Financial crises and austerity measures that devastated national economies as well as social protection in several European countries since 2008 have resulted in youth unemployment rates ranging from 30% to 50% and, consequently, new waves of emigration particularly of young skilled workers from Greece, Ireland, Italy, Portugal and Spain, both to other EU countries and to Africa and the Americas.

6. Governance Challenges and Issues

Migration is increasingly recognized as a ***whole of government*** and ***whole of society*** concern. Recent work by GMPA has highlighted that migration is fundamentally both ***whole of development*** and ***whole of governance.*** A GMPA team worked through the UN 2030 Agenda on Sustainable Develement, identifying --so far-- 44 targets across 16 of the 17 «SDGs» that concern migrants, refugees, migration and situations compelling displacement. Migration concerns are fully mainsteamed throughout the New Urban Agenda adopted last year at Habitat III in Quito and subsequently endorsed by the UN General Assembly.

Following is a working identification of issues and challenges for governance at all levels particularly concerning migrants and migration. However, as is self-evident, all of these are concerns for the whole of society.

1. Prevalence of sub-standard and often abusive employment relations, working conditions and precarious work
- Generalized deregulation denying, withdrawing or diminishing OSH, working conditions and employment relations protections in general, and to migrants in particular.
- Absence of labour inspection, or labour inspection 'neutralized' by immigration enforcement
- Absence and/or repression of unions and other mechanisms for self- and collective defense
- Generalized high rates of discrimination vis a vis women (see also point 2), racial-ethnic ethnic minorities and in particular migrants from stable, formal employment with adequate protections.

- Concentrations of women, racial-ethnic ethnic minorities and migrant workers in 3-D jobs and/or informal work without protection

2. Systematic/structural discrimination and exploitation of women, with intensified impact on migrant women
- Tracked into and concentrated in low paid, low- or unprotected workplaces
- High risk of gender-based sexual harassment, abuse
- Absence of policy and practice extending protection, decent work and equality of treatment
- Migrant women commonly subjected to precarious immigration conditions and status
- Subject to trafficking, and forced labour outcomes, in particular in compelled sex work.

3. Lack of health care
- Absence of public health policy to meet needs of important population
- Increasing restrictions on access by migrants, including to emergency care
- Imposition of immigration control measures on access to health services
- Non-existence of health facilities in areas of concentration of migrants

4. Absence of social protection and social security
- A generalized lacuna in most countries of the world.
- Compounded for migrants by non- or restricted access to participate in countries of employment and/or non-portability of contributions and earned benefits
- Discourse and policy initiatives of reduced rights and entitlements for all or for large population groups, with in many situations targetting of migrants.
- Privatisation of social security coverage; conversion to investment-tied social insurance with disastrous consequences in some situations.

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

6. Increasing xenophobic hostility and violence against migrants
- Prevalent political discourse of *othering*, exclusion and expulsion of migrants
- Reinforcement of *identity* based on place of origin and associations with racial-ethnic-religious markers
- Direct violence, attacks and killings of migrants reported in all regions
- Specific violence at or around workplaces, including killings of migrant workers
- State violence against migrants in police round-ups and detention in concentration camps
- Collective, arbitrary expulsions, deportations

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

8. Absence or withdrawl of policy and administrative responsibility, capacity and coordination by labour, social protection, welfare, education and other State institutions in implementing social functions of States and normative standards, in particular for migrants.

- Absence, denial, reduction of capacity and competence in labour, health, social protection, family and child protection and other such institutions to effectively assume roles and activity
- Downsizing State social functions, institutions and services in name of austerity.
- More particularly, absence of legal and regulatory dispositions, policy formulations, specific measures, institutional focal points to provide necessarily targeted coverage, outreach and accessible services to migrant populations.

Exploitation of migrants structurally defined

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

Exploitative conditions commonly experience by migrants are structurally driven. This is particularly the case for women. For many enterprises in many countries, for entire economic sectors, low cost foreign labour is the only ticket to survival. Agriculture would not be viable in Europe nor in North America, nor in Malaysia --nor would a part of the population afford to eat-- without cheap immigrant labour. Health, home care and schooling for children and care for increasing populations of ageing people depend on migrants. As do hotel, restaurant and tourist sectors in many countries. Global competition, free trade, and the race to the bottom phenomena push against costs of labour and provision of social services, indeed they challenge the very social function of States.

Keeping some migrants cheap, docile, flexible –and removable without social costs-- becomes not just highly desirable. It becomes imperative to keep jobs at home and economies afloat. No matter what those jobs are and who is doing them. Despite rhetoric about controlling migration, migrant workers remain in irregular situations, tolerated because they provide that cheap, docile, flexible labour needed to sustain enterprises, employment and competitiveness.

An excerpt from the executive summary of a report on the UK sums up features consistent with data from other EU countries:[17]

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

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

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

---

[17] 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

Migration is a key zone of contention between labour and capital today. It is where the division of wealth is fought out-- how much of what is generated is returned to capital versus how much goes to working people as remuneration and to and populations as public services.

Migrants are also vectors of contention over conditions of work and investment in safety and health protections versus lowering costs to obtain higher returns on capital. Migration poses the question of whether – not just to what extent-- working people remain organized to defend and advance their interests. Migrant workers are key to whether and how workers freely associate and organize to collectively bargain for fair remuneration and decent work conditions.

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

Gender Specificity

The feminization of migration is less about the gender proportions of migration, globally female participation has been above 45% for decades. In several regional communities including the EU, females are the majority among migrants.. The difference today from two or three decades ago is that most if not nearly all women migrants are economically active. They often migrate on their own rather than as dependants.

In a context of stratification of employment and segmentation of labour markets, women migrants hold particular appeal for employers in all regions 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 so called 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.

Particularly urgent concerns for governance is that women and girls face high risks of sexual and gender based exploitation as well as violence, and all the more so female migrants both in the migration process and in destination countries. 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 domestic women workers –native and migrant—should be a springboard to highlight the generalized lack of effective protection faced by women workers in agriculture, in textile sweatshops and elsewhere—sectors where migrant women are often prevalent. 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.

7. The Governance Framework

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

At multiple jurisdictional and territorial levels, governance functions inter alia to regulate economic, social and political organization; provide for infrastructure; stimulate and regulate economic activity; ensure social protection, health, education, food, housing, transportation, utilities and services for concerned populations; uphold decent work; ensure public safety and order; mediate

conflicting interests; provide for justice; and conduct relationships with and defend interests vis à vis external entities.

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

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

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

The nine main Human Rights Conventions; 2) all up-to-date International Labour Standards; 3) the widely ratified 1951 Convention and 1967 Protocol on the Status of Refugees, 4) the Vienna Convention on Consular Relations; and 5) the two Protocols on trafficking in persons and smuggling of migrants to the Convention against transnational organized crime.

The core of the global legal regime for migration governance is three complementary, sequential instruments specifically on international migration: ILO Convention 97 on Migration for Employment (of 1949), ILO Convention 143 on migrant workers (Supplementary Provisions) (of 1975), and the 1990 International Convention on the Protection of All Migrant Workers and Members of Their Families (ICRMW).[18] All three contain norms for governance and administration of migration and provisions for international dialogue and cooperation as well as specific standards recognizing and protecting the rights of migrant workers and their families.

87 countries have ratified at least one of these three instruments, including majorities of member states of Andean Pact, CARICOM, CICA, EAC, ECOWAS, ECCAS, MERCOSUR and UMA. 12 EU member states have ratified one or both ILO Conventions 97 and 143. Counting in not yet ratified signatories of the ICRMW, 99 countries, a majority of countries for which migration is a significant governance concern, have committed to putting national and regional migration legislation, policy and practice within the framework of international standards.

Specific regional instruments on human rights, migrant workers, refugees, and trafficking established by the African Union, ASEAN, the Council of Europe, the European Union and the Organization of American States –as well as other 'sub-regional' RECs provide further normative guidance in their respective regions. Sp

The normative frameworks establishing and regulating free circulation of people in most Regional Economic Communities derive from, are based on and are generally consistent with the formal

---

[18] Texts & information on ILO Conventions at www.ilo.org/ilolex. Text & information on the ICRMW at http://www2.ohchr.org/english/bodies/cmw/index.htm and/or www.migrantsrights.org

international and regional normative instruments noted above.

8. Regional governance frameworks

to be elaborated with focus on the parent frameworks for regional community integration and the derivative migration governance law, policy, structures and implementing and monitoring mechanisms.

9. Clear and Present Danger of Destructuring

Implementation of freedom of movement systlems, and consequently regional development-- is under threat in concept and practice in nearly all existing and emerging communities.

This analysis addresses Regional Economic Communities as formalized and generally comprehensive governance systems, with formal legal regimes set by binding treaties, with integrated institutional governance structures and institutions, and with --to a greater or lesser degree-- operational executive, parliamentary-, administrative, regulatory and judicial functions.

A significant emerging trend (if that is an appropriate term) is apparently increasing impedements and challenges to **implementation of free circulation regimes.** In a number of RECs, the lack of political will to realize and implement the circulation regimes is evident in national governments, manifested in non-ratification of regionally agreed regimes by some REC member States. Among ratifying States, there are manifest delays in adopting national implementing legislation and administrative rules and procedures.

A longer term challenge to advancing effective implementation is the time-consuming, lengthy processes of harmonizing and then adopting in member states the requisite labour administration, labour code measures and social protection measures.

Given the time it takes any government to act on ratifying international instruments and changing legislation, codes and practices –recalling that the EU is still 'at it' more than 50 years on-- the greater concern may be the adoption and application of legal, administrative and control measures that objectively thwart intra-community circulation, as well as establishment of employment, commercial or business activity

Governance as applied to migration –and the ideology as well as practice of "governance of migration"-- is changing in countries across most RECs. The locus of migration governance in immigration countries and countries receiving migrants whether or not they acknowledged being immigration countries was generally in labour and employment-concerned ministries. This designation reflected understanding of the primacy of need to regulate labour markets and protect workers as well as oversee employment relations and social dialogue for all workers, particularly when significant numbers of foreigners were entering the labour force. Those ministries retained the vitally important competences not only in labour market administration, but also in supporting and mediating as needed dialogue and negotiation between social partners, the employers and the unions representing the collective voice of workers—including migrants. This reflected the reality that then and now, regardless of migrant motivations whether seeking employment, refugee flight, family reunion, environmental displacement, or pursuing studies, over 90% of migration results in

employment outcomes or comprises dependents of those economically active.

Security and control institutions of States increasingly predominate in managing and controlling migration, and migrants. This appears to be coincident with a broad redefinition of conditions for labour. The treatment imposed on a substantial migrant component of work forces can and does influence treatment of the work force more broadly. Administration of the increasing foreign component of work forces by interior or home affairs ministries has significant consequences in shifting emphasis of law enforcement affecting workplaces from labour standards to immigration enforcement. Similarly, in imposing policing solutions to labour conflicts at the expense of social dialogue.

Coincidentally, movement monitoring and control measures have been strengthened worldwide, in all regions. 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. For example, the five or more control posts every hundred kilometres on land routes within countries and on regional routes, each with obligatory inspections and usually with payment of 'fees' do not facilitate either circulation of goods, services or people.

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

10. An Action Agenda

Evidently, much needs to be done to protect and implement the existent and emerging rights-based regional circulation regimes. At their most basic, these regimes are imperative components of sustaining development and ultimately, human welfare in all countries and regions concerned.

A number of convergent policy lines, political demands and practical lines for governance concerning regional migration have been articulated in debates and discussions in forums in most of the regions addressed in this paper. Those discussions and the points identified below also drew on global migration «plans of action agendas» evoked in World Conferences in 1994, 1995 and 2001, in the Plan of Action on migrant workers adopted by the International Labour Conference in 2004 and in the ILO Multilateral Framework for Labour Migration,[19] and most recently by the UN 2030 Sustainable Development Agenda and the New Urbant Agenda.

Vital components of an agenda for action and oversight engaging not only governments but also trade unions, employers, civil society, interlocutors in international organizations, and of course migrants, include the following elements. However, this listing is neither fully comprehensive nor exhaustive.

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,** and **ILO C-143** on migrant workers and **ILO C-189** (on decent work for domestic workers).
   b) Upholding and promoting full implementation of the refugee protection and assistance regime, based on the **1951 Convention and 1967 Protocol on the Status of Refugees**
   c) Calling for, promoting and assisting in **regularization** of migrants in unauthorized situations.

2. Promoting full adoption and implementation of free circulation regimes
   - Advocating for political will by governments to realize and implement
   - Advocating ratification of regionally agreed regimes by all REC member States
   - Promoting and advising on national implementing legislation
   - Working to harmonize labour codes, social security, educational standards, qualifications, etc in RECs
   - Obtaining derogation of legal, administrative and control measures that thwart circulation, access to residence, and establishment of employment, commercial or business activity

Normative references: Existing/emerging REC treaties, protocols and executive decisions in RECs.

3. Obtaining gender and age disaggragated data and conducting research on characteristics, situations and conditions of migrants and migration regimes in regional integration communities.
   - Adoption/utilization of international labour migration database indicators
   - Application of international statistical standards to obtaining data on labour migration
   - Incorporating forthcoming international standards on labour migration statistics
   - Establishing data sharing and coordination among national institutions concerned
   - Interfacing data with relevant international labour market and labour migration databases
   - Supporting provision of competencies, training, and appropriate hardware & software

Areas of urgent need for research and documentation:
Free circulation regimes: assessing prospects and problems to enable and defend them, contesting impediments to implementation; obtaining realization and respect for rights and freedom

---

[19]   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

of regional mobility; ensuring access to employment; questioning imposition of enhanced border and movement control regimes within regional communities; etc.
Normative references: International Labour Statistics Standards

4. Overcoming skills shortages; training youth for employment

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

Normative references: UNESCO Conventions; international occupational classifications

5. Establishing National *policy frameworks on migration*, in accord and in implementation of regional regimes

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

Normative references: ILO Multilateral Framework on Labour Migration (non-binding); existing formal policies adopted by States in various African and Asian countries

6. Obtaining decriminalization of migrants, refugees and migration:

   a) de-criminalization/non-criminalization of immigration law and infractions to it
   b) non-detention/ending detention of migrants for non-criminal offenses
   c) treatment of minors according to best interests of child
   d) repeal of exceptional generalized migrant/traveler identify control, surveillance and restriction measures
   e) lift border controls and eliminate in-country travel/transport inspection-control posts within established areas of regional, multi-country free circulation of persons

Normative references: UDHR (Universal Declaration of Human Rights), ICRMW, Regional treaties and executive decisions in ECA, ECOWAS, EU, Mercosur, etc.

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

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

References: All International Labour Standards, ILO C-81 (labour inspection), rulings of CEACR (ILO Committee of Experts on Application of Conventions and Recommendations).

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

a) Advocate for legislation ensuring freedom of associations rights for migrants

b) Support migrant organizing in unions, by unions

c) Conduct outreach to engage migrants in unions, associations, CSOs where they live and work.

d) Support migrant entrepreneur participation in employer organizations

Normative references: ILO C-87 (freedom of association), ILO C-98 (collective bargaining rights), ICPCR (International Covenant on Political and Civil Rights), rulings of ILO Committee on Freedom of Association

9. Stop Xenophobia, racism and discrimination against migrants

a) Repeal discriminatory legislation and policy and reinforce non-discrimination/equality of treatment law and practice

b) Propose and support definition and implementation of national action plans against racism, xenophobia, discrimination

c) Denounce and call for political and public repudiation of any and all acts of xenophobic violence.

d) Demand anti-racist, anti-xenophobia political discourse, media reporting and school curricula.

Normative references: ICERD (International Convention for the Elimination of Racial Discrimination), ILO C-111 (discrimination in employment, occupation), ICRMW, also the 2001 Durban Declaration and Program of Action.

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

a) Ensure full access by migrants to health prevention and care services and facilities

b) Demand and support elaboration of specific national public health policy on health for migrants

c) Advocate for and monitor adequate occupational safety and health (OSH) protection for migrants in all workplaces

Normative references: UDHR, ICESCR (International Covenant on Economic, Social and Cultural Rights), ILO C-155, 161, and 187 on OSH plus over 30 others on specific branches or specific risks

11. Social Security for migrants

a) Advocacy for immediate unilateral measures to extend social security coverage and portability to migrant workers in both origin and employment countries

b) Implement social protection floor regimes and measures, ensure explicit inclusion of migrants.

c) Incorporate and harmonize social security access in regional integration spaces.

d) Ratify and implement ILO C-102 (social security) C-118 (social security portability)

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

12. Gender-specific migration legislation and policy

a) Ensure equality of rights, opportunities and protection for all migrant women and girls

b) Gender specific policy, measures and practices recognizing specific gender-based risks and ensuring equality of outcomes as well as intent.

Normative references: CEDAW (International Convention on the Elimination of Discrimination Against Women), ILO C-100 (equal remuneration)

13. Family Unity and family support

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

b) Ensure immigration law facilitates family reunification

c) Call for government and other support measures to sustain socialization and education for children and adolescents remaining at home while one or both parents are abroad.

Normative references: UDHR, CRC (International Convention on the Rights of the Child), CEDAW

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

15. Consolidating policy and administrative responsibility, capacity and engagement across the 'whole of government', with key coordination responsibilities retained in labour and social functions ministries (including health, education, social protection, and gender)
- Consolidate assignment of labour governance responsibilities to labour/employment concerned ministries
- Designate and resource focal points or units addressing migration considerations in all concerned ministries.
- Encourage engagement of social partner organizations
- Provide training and capacity building for personnel of all concerned institutions.
- Establish mechanisms for tripartite policy consultation and practical coordination at national and regional levels

Normative references: ILO C-143 (provisions on involvement of social partners in migration policy)

Concluding Note:

To be added

* * *

Patrick Taran
President, Global Migration Policy Associates
email: taran@globalmigrationpolicy.org   website: www.globalmigrationpolicy.org

18 June 2018