

MIGRATION RESEARCH LEADERS' SYNDICATE
IN SUPPORT OF THE GLOBAL COMPACT ON MIGRATION

Migration Research Leaders' Syndicate

Ideas to inform international cooperation on
safe, orderly and regular migration



International Organization for Migration (IOM)

The UN Migration Agency

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IOM is committed to the principle that humane and orderly migration benefits migrants and society. As an intergovernmental organization, IOM acts with its partners in the international community to: assist in meeting the operational challenges of migration; advance understanding of migration issues; encourage social and economic development through migration; and uphold the human dignity and well-being of migrants.

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Foreword

The 2018 global compact on migration presents a pivotal opportunity in international migration as it will constitute the first comprehensive and long-term vision for international cooperation on migration.

In responding to the New York Declaration for Refugees and Migrants of September 2016, the Compact is expected to advance a framework for international cooperation on migration governance to address migration's current challenges in an encompassing and coherent way. Building on an ambitious process of consultations at national, regional and international levels, the Compact will reflect the positions of Member States, including by drawing on the expertise of academics, practitioners and intergovernmental organizations and the perspectives of other stakeholders, such as the private sector. The preparations are therefore a unique opportunity to propose innovative ideas for international cooperation in migration governance that respond to the complex realities of migration. Grounding the Compact in existing knowledge and evidence will be critical in developing effective and sustainable policy responses.

In fulfilling its obligation to jointly service the preparations for the global compact, IOM extends its policy and technical expertise on migration to the consultative process. To support this work in a practical and effective way, the Migration Research Leaders' Syndicate was convened. The Syndicate consists of a group of thirty-six leading scholars in migration and nine advisers with vast experience in bridging policy and research, whether as senior non-migration scholars, former policymakers or prominent practitioners engaged in the dialogue between research and policy. Bringing together experts from all over the world, the Syndicate was designed to enrich the preparations of the global compact on migration with insights from a range of disciplines, comparative perspectives and a wealth of evidence and rigorous analysis. In other words, IOM has created a framework and space to enable Syndicate members to provide the global compact on migration process with the latest thinking in academic and applied research to inform intergovernmental negotiations.

Following IOM's invitation to contribute to this initiative, a group of Syndicate members and advisers jointly discussed ideas on a range of issues in a workshop that took place in September 2017 in Geneva. The insights compiled in this volume are contributions that can assist in designing practical, evidence-based and innovative solutions for migration governance at a global level, as well as hopefully avoid negative unintended consequences.

William Lacy Swing
Director General



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Introduction

Marie McAuliffe¹ and Michele Klein Solomon²

There continues to be wide acknowledgement that much more needs to be done to support safe, orderly and regular migration. Now is a decisive time in international migration, with the 2018 Global Compact on Migration presenting a unique opportunity to develop, commit to and begin implementing innovative ideas and practical solutions on safe, orderly and regular migration. Member States have indicated that the Global Compact on Migration, as expressed in the September 2016 Declaration for Refugees and Migrants, is to “...set out a range of principles, commitments and understandings among Member States regarding international migration in all its dimensions.” The Global Compact will be finalized and agreed by States at a United Nations conference in late 2018 following a three-phase process: consultation phase (April to November 2017); stocktaking phase (December 2017 to February 2018); and intergovernmental negotiation phase (March to July 2018). The process is occurring concurrently with the development of the global compact on refugees. Taking stock of, and drawing upon, the existing evidence on key aspects of migration will be critical in shaping the Global Compact, and provides an opportunity to draw on the latest thinking underpinned by research and analysis to support international cooperation and effective responses at the global level.

The series of six United Nations led informal thematic consultations, as outlined in the United Nations modalities resolution of January 2017, comprise the following broad themes: migrants’ rights; drivers of migration; international cooperation and global governance; migration and sustainable development; migrant smuggling and human trafficking; and irregular/regular migration pathways. Regional consultations have also taken place, and many States are undertaking national-level consultations as their own views and inputs are further developed and refined. Throughout these processes, migration academics and other migration experts and practitioners continue to be involved in various capacities, including by providing advice on general approaches and/or specific aspects of a yet-to-be articulated global compact on migration. A word cloud on the New York Declaration and United Nations modalities resolution text provides some indication of the focus thus far.

Figure 1: Word cloud of New York Declaration and United Nations modalities text



Note: Excludes keywords ‘migration’, ‘migrant’, ‘refugee’, ‘United Nations’ and ‘States’.

1 Head, Migration Policy Research Division and Co-Convenor of the Syndicate.
2 Senior Policy Adviser to the Director General and Co-Convenor of the Syndicate.

Migration policy contexts

International migration patterns and processes occurring within regional and global economic, social, political and security environments reflect, to some extent, migration policy settings, which are mainly determined at the national level. Where, how, when and with whom people migrate often depends on the options available to them, with many of those options being determined or shaped by national-level policies both directly and indirectly. In migration, as in many other areas of State regulation, the tension that exists in finding the right policy balance between *influencing* behaviour and *responding* to changes in behaviour can be a delicate one. In migration policy, which has impact stretching well beyond national regulatory systems, there are also foreign policy, human rights, human development, border management, trade and economic aspects to contend with. These are in addition to significant domestic policy aspects, including those related to labour markets, industry, social cohesion, infrastructure and social services. Migration is a rich and complicated area of policy. Negotiating potentially competing aspects of national interest with those of international interest (at the bilateral, regional or multilateral levels) can result in challenging conundrums.

There is also the turbidity of the policymaking environment and the high turnover rate of ministers, senior officials and others working on international migration. These changes are not particular to migration and relate to more systemic shifts toward managerialism in governance and regulatory environments that have seen expertise and content knowledge diminish over recent decades.³ At the same time, information overload is challenging knowledge building and policymaking processes while policy complexity and interlinkages continue to grow.⁴

How is the Migration Research Leaders' Syndicate contributing?

The Migration Research Leaders' Syndicate brings together senior migration researchers from around the world with expertise and deep knowledge of migration. The Syndicate consists of 36 members with diverse geographic origins, thereby gathering perspectives from traditional origin, destination and transit countries. The Syndicate has been designed as an inter-disciplinary body and includes researchers from a range of disciplines including law, geography, economics, demography, international relations, sociology and political science. In addition to responding to the ambitious global compact on migration time frame, a number of other important aspects have been taken into account in bringing together the Syndicate, including:

- Syndicate members' knowledge is based on years of empirical research and analysis that typically tests assumptions and hypotheses to improve understandings of migration;
- Syndicate members bring considerable expertise in communicating findings to academic and policy audiences; and
- that the depth of knowledge of Syndicate members extends to areas less prominent in policy spheres, such as global/regional migration patterns, migrant decision-making, and the diversity of migrants' experiences.

In addition to the short time frame, one of the more challenging aspects of the global compact on migration will be formulating *effective* principles and commitments for Member States given the breadth of migration issues and the complexity of international migration. If the Compact is not grounded in evidence and knowledge, the risk of unintended consequences could be high.

Taking these issues into account, Syndicate members' expertise in informing the global compact on migration has involved two key elements. The first has been recommending 'top three reads' for policymakers ahead of the intergovernmental negotiations phase. Advice on what to read from experts with depth of knowledge on specific topics is highly valued by policymakers who often have to manage and respond to a multitude of priorities under pressure. Like many of us, policymakers are extremely busy, and providing 'top' reads is

³ Box, 1999; Kirkpatrick et al., 2005.

⁴ Nutley and Webb, 2000; Weinberger, 2011.

one tool to help make sense of the mountain of material we receive on migration in this era of ‘information overload’. Overall, experts’ ‘top reads’ helps save time and can support better policy.

The second element is a series of technical papers on migration policy conundrums and innovative ideas for effective responses designed to encourage aspects of safe, orderly and regular migration. As a first step in commissioning the papers, Syndicate members were invited to submit abstracts for papers, which were then reviewed by IOM and Syndicate advisers. We also commissioned additional papers on key complex migration issues, such as supporting people under pressure to migrate, responding to environmental migration and return and reintegration. In total, 26 papers have been produced and brought together in this publication under the following broad themes: ‘conflicting issues of governance’; ‘migrant worker safeguards’; ‘countering migrant smuggling and human trafficking’; ‘regular migration pathways’; ‘integration, return and reintegration’; ‘migration narratives’; and ‘mobilizing partners for action’.

A two-day workshop of Migration Research Leaders’ Syndicate members, their advisers and senior IOM officials was convened to focus on technical input and ideas on addressing key migration conundrums that pose obstacles to safe, orderly and regular migration and/or act to unintentionally facilitate *unsafe, disorderly and irregular* migration. The workshop focused on how the Syndicate can usefully contribute on two aspects: i) articulating the conundrums that currently exist on the management of international migration; ii) suggesting how those conundrums might be better reconciled in practical, sustainable ways. Examples of migration conundrums are provided in the text box below but many others exist. Dispelling myths and unpacking migration conundrums is a unique contribution to the overall global compact on migration process. Equally, in supporting the possibility of innovative ideas to be brought forward, we have sought to support new thinking including that which may not necessarily reflect the views of IOM or its Member States.

Examples of Migration Conundrums

Supporting sedentary communities

How can people who prefer to remain at home be better supported to do so despite strong cultures of migration placing pressure on them to migrate?

- Can transnational connectivity and emerging gig economies help people to realize the benefits of migration and support development without people needing to move?
- Are there practical ways to ‘speed up’ the processes of ‘hump migration’?

Incentive systems and structures

How can the lives of displaced persons at risk of irregular migration be significantly improved without creating incentives for others to migrate to those locations?

- What are the ways protection systems and processes can be enhanced in key origin and transit locations or ‘hotspots’ that don’t create incentives for people to move *en masse* to those locations?
- In what ways can countries of origin be made more accountable and/or better supported to prevent displacement?

Countering smuggling

How can migrant smuggling be significantly reduced and border management enhanced without undermining humanitarian credentials and international obligations?

- What are the ways corruption within border-related authorities can be reduced without further undermining confidence in border management?

Migrant worker safeguards

How can migrant workers’ rights be strengthened without reducing access to other countries’ labour markets?

- Are there examples of unauthorized labour migration having been significantly reduced in partnership with key industries/sectors that had previously relied upon irregular migrant workers?
- Are there settlement and integration approaches that can be implemented in ‘non-immigration’ countries relying on migrant workers to better improve migrants’ conditions and reduce exploitation?

Regular pathways

How can more regular pathways be created to respond to displacement events without creating incentives for others to follow irregularly?

- Is it possible to design international commitments to enhance regular pathways in order to meet demand (posed by displaced and non-displaced populations in need) without further increasing demand?
- Are there ways to better manage increases in immigration without causing public concern related to economic, security and political issues?

Migration narratives

How can policymakers, and those involved in policy processes (e.g. senior officials) maximize space for balanced discussions of migration without engaging in the 'race to the bottom' game of divisive politics?

- How can policymakers be better supported by researchers and media to reassure populations and promote cohesion through balanced narratives?
- How can the increasingly unbalanced securitization of migration be countered more effectively through the use of existing evidence or other approaches?

While the focus of workshop discussions and related papers has necessarily been mainly at the global level, current knowledge of migration indicates that there can be strong regional dynamics underpinning international migration patterns and processes. Some of the papers in this publication, therefore, take a regional approach and offer ideas for regions and subregions to consider and possibly implement.

We hope readers find the papers included in Part II of this publication both interesting and useful. The immediate needs of the global compact on migration have been foremost in our minds but there are likely to be ideas that also have strategic application as we work to enhance international cooperation on migration for the benefit of migrants, States and the general public globally.

References

Box, R. (1999) *Running Government Like a Business: Implications for Public Administration Theory and Practice*, *The American Review of Public Administration*, 29(1).

Kirkpatrick, I., Ackroyd, S. and Walker, R. (2005) *The New Managerialism and Public Service Professions: Change in Health, Social Services and Housing*. Palgrave Macmillan: New York.

Nutley, S. and Webb, J. (2000) Evidence and the policy process in Davies, H., Nutley, S. and Smith, P. (eds) *What Works? Evidence-based policy and practice in public services*. The Policy Press: University of Bristol.

Weinberger, D. (2011) *Too Big to Know: Rethinking knowledge now that the facts aren't the facts, experts are everywhere, and the smartest person in the room is the room*. Basic Books: New York.



From the left: Ray Jureidini, Erica Usher, Manolo Abella, Martin Ruhs, Gervais Appave, Jenna Hennebry, Jorgen Carling, Anna Triandafyllidou, Susan Martin, Eric Kaufmann, Harald Bauder, Kathleen Newland, Md Jalal Abbasi-Shavazi, Linguère Mbaye, Binod Khadria, Marie McAuliffe, Gibril Faal, Gurucharan Gollerkeri, Liliana Jubilot, Michele Klein Solomon, Travers McLeod, Inês David and Guofu Liu.

Workshop participants not in the photo: Jill Helke, Walter Käelin, Khalid Koser, Marius Olivier and Sanjula Weerasinghe.

**Part I:
Syndicate Members'
Top 3 Reads**



Syndicate Members' Top 3 Reads

Syndicate members were asked to recommend their top three reads for policymakers ahead of the intergovernmental negotiations on the global compact on migration. Advice on what to read from experts with depth of knowledge on specific topics is highly valued by policymakers who often have to manage and respond to a multitude of priorities under pressure. Like many of us, policymakers are extremely busy, and providing top reads is one tool to help make sense of the mountain of material we receive on migration in this era of 'information overload'. Overall, experts' top reads helps save time and can support better policy.

The below is listed in alphabetical order by surname. To locate individual 'reads' listed below we suggest using an academic search engine, such as Google Scholar. Links to many of the 'reads' are also available on the Syndicate webpage at www.iom.int/migration-research-leaders-syndicate.

Md Jalal Abbasi Shavazi

Professor of Demography, University of Tehran; Director, National Institute of Population Research of Iran

1. "Socio-cultural Adaptation of Second-generation Afghans in Iran" by Mohammad Jalal Abbasi-Shavazi and Rasoul Sadeghi (2014)
2. "Theorising Return Migration: The Conceptual Approach to Return Migrants Revisited" by Jean-Pierre Cassarino (2004)
3. "Environmental Concerns and International Migration" by Graeme Hugo (1996)

Harald Bauder

Director, Graduate Program in Immigration and Settlement; Professor, Department of Geography, Ryerson University

1. "Sanctuary Cities: Policies and Practices in International Comparison" by Harald Bauder (2016)
2. "Perspectives of Open Borders and No Border" by Harald Bauder (2015)
3. "Domicile Citizenship, Human Mobility and Territoriality" by Harald Bauder (2014)

Alexander Betts

Leopold Muller Professor of Forced Migration and International Affairs, University of Oxford

1. "Temporary Work Visas as US-Haiti Development Cooperation" by Michael Clemens and Hannah Postel (2017)
2. "The Globalization of Migration? Has the World Become More Migratory?" by Hein de Haas and Mathias Czaika (2014)
3. "'Yes!' In My Backyard: The Economics of Refugees and Their Social Dynamics in Kakuma, Kenya" by Apurva Sanghi, Harun Onder and Varalakshmi Vemuru (2017)

Jacqueline Bhabha

Professor of the Practice of Health and Human Rights, Harvard School of Public Health; Lecturer in Law, Harvard Law School; Adjunct Lecturer in Public Policy at the Harvard Kennedy School

1. "Emergency within an Emergency: The Growing Epidemic of Sexual Exploitation and Abuse of Migrant Children in Greece" by Vasileia Digidiki and Jacqueline Bhabha (2017)
2. "Recommended Principles to Guide Actions Concerning Children on the Move and Other Children Affected by Migration" (adopted June 2016)

3. "Children on the Move in the 21st Century: Developing a Rights-Based Plan of Action" by Jacqueline Bhabha (forthcoming 2018)

Jørgen Carling

Research Professor of Migration and Transnationalism Studies, Peace Research Institute Oslo (PRIO)

1. "'Keeping Them in Their Place': The Ambivalent Relationship Between Development and Migration in Africa" by Oliver Bakewell (2008)
2. "Refugee Advocacy and the Meaning of 'Migrants'" by Jørgen Carling (2017)
3. "Root Causes and Drivers of Migration: Implications for Humanitarian Efforts and Development Cooperation" by Jørgen Carling and Cathrine Talleraas (2016)

Rodolfo Casillas

Senior Professor and Researcher, Facultad Latinoamericana de Ciencias Sociales (FLASCO) Mexico

1. "The Dark Side of Globalized Migration: The Rise and Peak of Criminal Networks—The Case of Central Americans in Mexico" by Rodolfo Casillas (2011)
2. "The Polysemic Use of Identity and Culture in International Migration: The Case of Central American Migration in Mexico" by Rodolfo Casillas (2016)
3. "The Analytical Eye and its Urgent Update" by Rodolfo Casillas (2016)

Pablo Ceriani

Professor of Law and Coordinator, Migration and Human Rights Program, National University of Lanús

1. "Principles and Guidelines on the Human Rights of Protection of Migrants in Vulnerable Situations within Large and/or Mixed Movements" by the Global Migration Group (2017)
2. "Human Mobility: Inter-American Standards" by the Inter-American Commission on Human Rights (2015)
3. "Language as a Migration Policy Tool" by Pablo Ceriani (2016)

Vincent Chetail

Professor, International Law, Graduate Institute of International and Development Studies

1. "Migration and International Law: A Short Introduction" by Vincent Chetail (2016)
2. "The Transnational Movement of Persons Under General International Law - Mapping the Customary Law Foundations of International Migration" by Vincent Chetail (2014)
3. "Sources of International Migration Law" by Vincent Chetail (2012)

Michael Clemens

Senior Fellow, Center for Global Development

1. "Immigrants' Effect on Native Workers: New Analysis on Longitudinal Data" by Mette Foged and Giovanni Peri (2015)
2. "The 1956 Hungarian Refugee Emergency, An Early and Instructive Case of Resettlement" by Marjoleine Zieck (2013)
3. "Does Development Reduce Migration?" by Michael Clemens (2014)

Lakshman Dissanayake

Vice Chancellor and Senior Professor, University of Colombo

1. "Environmental Concerns and International Migration" by Graeme Hugo (1996)
2. "The Process of Sri Lankan Migration to Australia Focusing on Irregular Migrants Seeking Asylum" by Graeme Hugo and Lakshman Dissanayake (2014)
3. "Interlinkages Between Internal and International Migration and Development in the Asian Region" by Ronald Skeldon (2006)

Papa Demba Fall

Senior Researcher, Université Cheikh Anta Diop de Dakar

1. "Imagining Europe: Being Willing to Go Does not Necessarily Result in Taking the Necessary Steps" by Papa Demba Fall (2014)
2. "Migration and Development in the Sahel. Upon Lessons Learnt: How to Take Advantage of Mobility Better?" by Papa Demba Fall (2016)
3. «Des Francenabé aux Modou-Modou. L'émigration Sénégalaise Contemporaine» by Papa Demba Fall (2016)

Elizabeth Ferris

Research Professor, Institute for the Study of International Migration, Georgetown University

1. "The New Wave: Forced Displacement Caused by Organized Crime in Central America and Mexico" by David Cantor (2014)
2. "Migration and Global Environmental Change: Future Challenges and Opportunities" by the UK Government Office for Science (2011)
3. "Gender and International Migration: From the Slavery Era to the Global Age" by Katharine Donato and Donna Gabaccia (2015)

Anne Gallagher

Independent Scholar and Legal Adviser to the United Nations and ASEAN

1. "Strangers in Our Midst: The Political Philosophy of Immigration" by David Miller (2016)
2. "The Politics of Immigration: Contradictions of the Liberal State" by James Hampshire (2013)
3. "Exploitation in Migration: Unacceptable but Inevitable" by Anne Gallagher (2015)

Hein de Haas

Professor of Sociology, University of Amsterdam; Extraordinary Professor of Migration and Development, Maastricht University / United Nations University

1. "Theories of International Migration: A Review and Appraisal" by Douglas Massey, Joaquin Arango, Graeme Hugo, Ali Kouaouci, Adela Pellegrino and J. Edward Taylor (1993)
2. "Migration and Development: A Theoretical Perspective" by Hein de Haas (2010)
3. "Why Border Enforcement Backfired" by Douglas Massey, Jorge Durand and Karen Pren (2016)

Jenna Hennebry

Director, International Migration Research Centre, Wilfrid Laurier University

1. "Worlds in Motion: Understanding International Migration at the End of the Millennium" by Douglas Massey, Joaquin Arango, Graeme Hugo, Ali Kouaouci, Adela Pellegrino (1999)
2. "Globalizing Care Economies and Migrant Workers: Explorations in Global Care Chains" by Nicola Yeates (2009)
3. "Women Migrant Workers' Journey through the Margins: Labour, Migration and Trafficking" by Jenna Hennebry, Will Grass and Janet McLaughlin (2016)

Ahmet İçduygu

Dean of College of Social Sciences and Humanities at Koç University

1. "Europe's Failed 'Fight' Against Irregular Migration: Ethnographic Notes on a Counterproductive Industry" by Ruben Andersson (2016)
2. "Critical Approaches to Transit Migration" by Michael Collyer, Franck Düvell and Hein de Haas (2012)
3. "The Politics of Irregular Migratory Flows in the Mediterranean Basin: Economy, Mobility and 'Illegality'" by Ahmet İçduygu (2007)

Liliana Lyra Jubilut

Professor of International Law, Human Rights and Refugee Law, Universidade Católica de Santos

1. "Durable Solutions: 5 Implementation Challenges and Possible Pathways for Improvement" by André de Lima Madureira and Liliana Lyra Jubilut (2016)
2. "Making the Most of Human Mobility" by António Guterres and William Lacy Swing (2010)
3. "The Refugee Crisis is Humanity's Crisis" by Brad Evans and Zygmunt Bauman (2016)

Ray Jureidini

Professor in Migration Ethics and Human Rights, Center for Islamic Legislation and Ethics, Hamad Bin Khalifa University

1. "Ways Forward in Recruitment of Low-skilled Migrant Workers in the Asia-Arab States Corridor" by Ray Jureidini (2016)
2. "When Refugees Stopped Being Migrants: Movement, Labour and Humanitarian Protection" by Katy Long (2013)
3. "Global Migration Governance" by Alexander Betts (ed.) (2014)

Walter Kälin

Professor Emeritus for International Law, University of Bern and Envoy of the Chair of the Platform on Disaster Displacement

1. "Migration and Global Environmental Change Report - Executive summary" by Foresight (2011)
2. "Agenda for the Protection of Cross-Border Displaced persons in the Context of Disasters and Climate Change" by the Nansen Initiative on Disaster - Induced Cross-Border Displacement (2015)
3. "Building International Approaches to Climate Change, Disasters and Displacement" by Jane McAdam (2016)

Binod Khadria

Indian Council for Cultural Relations (ICCR) Chair of Contemporary Indian Studies, Rutgers University

1. "Adversary Analysis and the Quest for Global Development" by Binod Khadria (2009)
2. "Migration of Health Workers and Health of International Migrants: Framework for Bridging Some Knowledge Disjoints Between Brain Drain and Brawn Drain" by Binod Khadria (2012)
3. "Involuntary and Illegal Migration to India: The Case of Bangladesh" by Binod Khadria (2016)

Khalid Koser

Executive Director, Global Community Engagement and Resilience Fund (GCERF)

1. "Migration in an Interconnected World: New Directions for Action" by Global Commission on International Migration (2005)
2. "The Business Case for Migration" by the World Economic Forum (2013)
3. "International Migration: A Very Short Introduction" by Khalid Koser (2016)

Loren Landau

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1. "Planning and Participation in Cities that Move: Identifying Obstacles to Municipal Mobility Management" by Loren Landau, Aurelia Segatti and Jean Pierre Misago (2013)
2. "Stealth Humanitarianism: Negotiating Politics, Precarity, and Performance Management in Protecting the Urban Displaced" by Caroline Wanjiku Kihato and Loren Landau (2016)
3. "Southern Urbanism, Legalization, and the Limits of Migration Law" by Loren Landau (2017)

Guofu Liu

Vice Director of Migration Law Committee at the Beijing Society of International Law

1. "Chinese Immigration Law" by Guofu Liu (2010)
2. "Chinese Skilled Migration Legislation and Its Introduction of Foreign Talents" by Guofu Liu (2013).
3. "Legislation, Impacts and Deficiencies of the Law of Exit and Entry Administration of China 2013" by Guofu Liu (2014).

Huawen Liu

Assistant Director, Professor, Institute of International Law, Chinese Academy of Social Sciences

1. "Study on the UN Protocol Against Human Trafficking from a Human Rights Law Perspective" by Huawen Liu (2011) (in Chinese)
2. "Basis of Prohibition of Human Trafficking" by Huawen Liu (2016) (in Chinese)
3. "Rule of Law, Development and Human Rights: Three Dimensions of China's Path" by Huawen Liu (2014) (in Chinese)

Susan Martin

Donald G. Herzberg Professor Emerita of International Migration, Georgetown University

1. "Soft Law and the Protection of Vulnerable Migrants" by Alexander Betts (2010)
2. "What is Crisis Migration?" by Susan Martin, Sanjula Weerasinghe and Abbie Taylor (2014)
3. "International Migration and Global Governance" by Susan Martin (2015)

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2. "Climate change, natural disasters, and migration" by Linguère Mously Mbaye (2017)
3. "Barcelona or die: understanding illegal migration from Senegal" by Linguère Mously Mbaye (2014)

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2. "The Turbulence of Migration: Globalization, Deterritorialization and Hybridity" by Nikos Papastergiadis (2000)
3. "Practicing Diversity" by Megha Amrith (2015)

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2. "Unauthorized Maritime Migration in Europe and the Mediterranean Region" by Elizabeth Collett (2016)
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2. "Migrant Indebtedness: Bangladeshis in the GCC Countries" by Md Mizanur Rahman (2013)
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3. "The Price of Rights: Regulating International Labor Migration" by Martin Ruhs (2013)

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1. Material produced by the Migration Policy Institute in Washington and the Migration Observatory in Oxford
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3. "Empires and Barbarians: Migration, Development and the Birth of Europe" by Peter Heather (2009)

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2. "Europe 2020: Addressing Low Skill Labour Migration at Times of Fragile Recovery" by Anna Triandafyllidou and Sabrina Marchetti (2014)
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1. "Escaping the Escape: Toward Solutions for the Humanitarian Migration Crisis" by Bertelsmann Stiftung (ed.) (2017)
2. "Migration from the Middle East and North Africa to Europe: Past Developments, Current Status and Future Potentials" by Michael Bommers, Heinz Fassmann and Wiebke Sievers (eds.) (2014)
3. "2015 Situation Report on International Migration, Displacement and Development in a Changing Arab Region" by UN-ESCWA and IOM (2015)

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- 2 Sitting around the table, anticlockwise from the left, Martin Ruhs, Binod Khadria, Susan Martin, Kathleen Newland, Manolo Abella, Gurucharan Gollerkeri, Gervais Appave, Jorgen Carling, Md Jalal Abbasi-Shavazi, Guofu Liu, Harald Bauder, Marius Olivier, Ray Jureidini, Travers McLeod, Linguère Mbaye, Eric Kaufmann, Liliana Jubilut, Walter Kaelin, Ambassador William Lacy Swing, Michele Klein Solomon, Marie McAuliffe, Inês David.
- 3 From the left, Inês David, Marie McAuliffe and Michele Klein Solomon.
- 4 From the left, Linguère Mbaye, Md Jalal Abbasi-Shavazi, Susan Martin and Gibril Faal. In the back, Gervais Appave, Marie McAuliffe, Anna Triandafyllidou and Martin Ruhs.

Part II: Syndicate papers





How Does Migration Arise?

Jørgen Carling

Executive summary

Ambitious policy documents such as the *New York Declaration* are phrased in very general terms, yet require action that is based on more specific understandings of the processes at work. This paper seeks to lay out – in a comprehensive yet concise way – how migration comes about. It stops short of prescribing particular policy interventions, but lays the foundation for identifying how migration dynamics and their outcomes may be shaped by government policy.

The paper presents a model of migration that draws upon recent developments in migration theory. It is broadly applicable across different categories of migrants, including refugees. The model is built around three steps:

1. *The formation of a desire for change.* This is driven by people's current conditions, their perception of prospects for the future, and their life aspirations. The desire for change may be focused on personal security, living conditions, professional development, or other spheres of life.
2. *The channelling of a desire for change into migration aspirations.* People could respond to a desire for change by seeking a future elsewhere. Alternatively, they could pursue local opportunities – either for changing their personal circumstances or contributing to social change. These responses could be constructive (e.g. pursuing education, entrepreneurship, or political activism) or destructive (e.g. radicalization or violent mobilization).
3. *The outcomes of migration aspirations.* A wish to migrate could be converted into actual migration, depended on opportunities and resources. But it could also result in an *unsuccessful migration attempt* in the form of death, being trapped *en route*, or having to return against one's will. A third outcome is involuntary immobility – wishing to leave but being unable to do so. This is a largely invisible outcome, but a potentially damaging one for individuals and communities.

The idea of containing migration by addressing root causes is fashionable but misguided. The model illustrates the potential pitfalls and shortcomings of such an objective. Instead, policy should specifically seek to reduce the number of unsuccessful migration attempts and the extent of involuntary immobility.

Introduction

The Sustainable Development Goals include a call for 'orderly, safe, and responsible migration and mobility of people' (target 10.7) as a pathway to reducing global inequalities.¹ Similarly the *New York Declaration for Refugees and Migrants*, adopted by the UN General Assembly in 2016, supports 'safe, orderly and regular migration'. The Declaration includes specific language on addressing the root causes of migration, making the most of the potential benefits of migration, and preventing human suffering in the context of migration.²

Ambitious policy documents such as the New York Declaration are phrased in very general terms, yet require action that is based on more specific understandings of the processes at work. This paper seeks to lay out – in

1 United Nations General Assembly (2015).

2 United Nations General Assembly (2016).

a comprehensive yet concise way – how migration comes about. It stops short of prescribing particular policy interventions, but lays the foundation for identifying how migration dynamics and their outcomes may be shaped by government policy.³

The question in the title – ‘How does migration come about?’ – is carefully phrased. It alludes to dynamic *processes* at work. By contrast, asking ‘what are the causes of migration?’ or ‘why do people migrate?’ suggest a static list of causes or motivations.

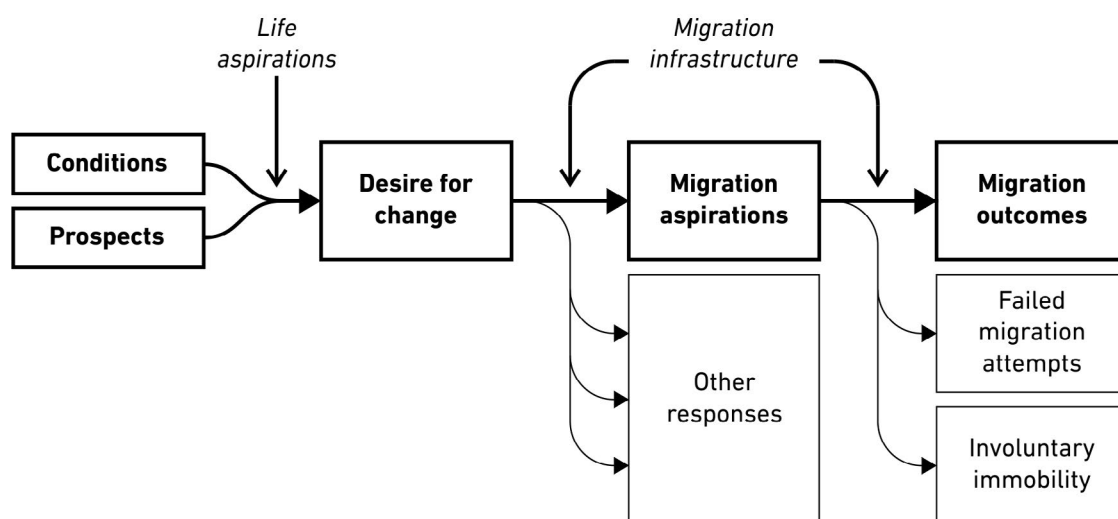
The notion of root causes

The idea of managing migration through addressing ‘root causes’ became part of European policy in the 1980s and gained popularity through the 1990s.⁴ By the 2000s, the root-causes doctrine had become engrained in European policy thinking about migration and development.⁵ It has partly been a dormant idea, however, and re-emerged in an unprecedented way with the establishment of the Emergency Trust Fund for Africa in 2015.

The notion of ‘root causes’ appears to have originated in debates about conflict-driven displacement.⁶ In this field attempts to tackle root causes have centred on humanitarian action to prevent violence, end human rights abuses, and facilitate peace-building. The preventative logic has been transferred to economically motivated migration where the assumption has been that migration can be stemmed by alleviating poverty and creating jobs. Since the 1990s, the two fields have partly merged, as governments and international agencies increasingly recognize the mixed nature of migration flows and migration motivations.

The ‘root causes’ approach appears intuitive and welcome, but is, in fact, analytically weak and politically problematic. Researchers have demonstrated that socio-economic development in poor countries tends to *increase* migration rather than reduce it.⁷ Consequently, the idea of poverty as a ‘root cause’ of migration is misleading, even if individual migrants feel that they are compelled by poverty. Armed conflict, repression, and societal breakdown can more easily be seen as causes of migration. But, politically and ethically, that is not how these issues should be framed by the international community. People’s suffering should be addressed because it is a humanitarian concern, not because suffering people could become mobile.

Figure 1. A model of the mechanisms that produce migration



3 Parts of the text are revised content from Carling and Talleraas (2016). I am grateful to comments from participants at ‘Ideas to inform international cooperation on safe, orderly and regular migration’ Migration Research Leaders Syndicate Workshop, International Organization for Migration, Geneva, 28–29 September 2017.

4 Castles and Van Hear (2011). Although the term ‘root causes’ was introduced in the 1990s, there is a longer history of attempting to limit economic migration through development of the regions of origin.

5 Crush (2015:42).

6 The arguments in this paragraph draw upon Castles and Van Hear (2011), who provide the most thorough analysis of the root causes doctrine in migration policy thinking.

7 Carling and Talleraas (2016), Clemens (2014), de Haas (2007).

A desire for change

Figure 1 displays a model of migration that does away with the notion of root causes. It reflects newer approaches to migration theory that see migration as the outcome of, first, the formation of migration aspirations, and second, the ability to realize those aspirations.⁸

The model is a general framework for all types of migration, including refugee flows. While refugees are a distinct category in legal terms, the difference with other migrants is not an analytically clear-cut one. There is enormous variation in the balance of choice and constraint among migrants, and this variation does not map neatly onto legal classifications.

As shown in Figure 1, the origins of migration lie in the *conditions* of states, communities, and individuals that underlie a *desire for change*, which, in turn, produces *migration aspirations*. A desire for change means a recognition that action is needed to alter the course of one's life – be it to ensure survival, escape repression, finance children's education, fulfil professional ambitions, or other reasons. Across these diverse circumstances, it matters that there is a difference between the present conditions and the desired state of affairs.

The effect of present conditions interacts with the *prospects* for improvement. It is often not destitution that makes people turn to migration, but rather a feeling of inescapable stagnation.⁹ If there is hope that things will get better, hardships might be easier to endure. Whether or not certain conditions and prospects create a desire for change also depends on peoples' *life aspirations*. For instance, it matters to what extent poor people can imagine, and actively seek, a better life.¹⁰ If a country experiences rapid but uneven growth, *conditions* might not change much for the majority of poor people, and the *prospects* for improvement might be dim. But their *life aspirations* could rise in response to other people's visible wealth.

Migration aspirations

People who desire change might seek it in myriad ways, individually or collectively. Some develop *migration aspirations*. This term is commonly used to describe preferences or desires for migration, regardless of the context and the urgency of the desire.¹¹ Civilians threatened by conflict, university graduates faced with unemployment, and farmers hurt by environment degradation might all reach the conclusion that their best option is to leave. They can then all be said to have migration aspirations. This is the first step towards actually migrating.

The concept of 'migration aspirations' might seem at odds with the notion of forced migration. Surely, people who are forcibly displaced have no wish to move? They do in the sense that they have considered the options and considered flight the best strategy for survival. The point becomes clearer by considering all those who make the same assessment but lack the resources to escape.¹² ('Forced migration' is increasingly abandoned in favour of other terms, such as 'wartime migration'¹³ or 'survival migration'¹⁴, which are more aligned with the dynamics at work.)

8 Carling (2002), Carling and Schewel (in press), de Haas (2014), Docquier *et al.* (2014).

9 See, for instance, Frederiksen (2013), Hernandez-Carretero and Carling (2012), Mains (2007, 2011).

10 Appadurai (2004) examines this in terms of 'capacity to aspire'.

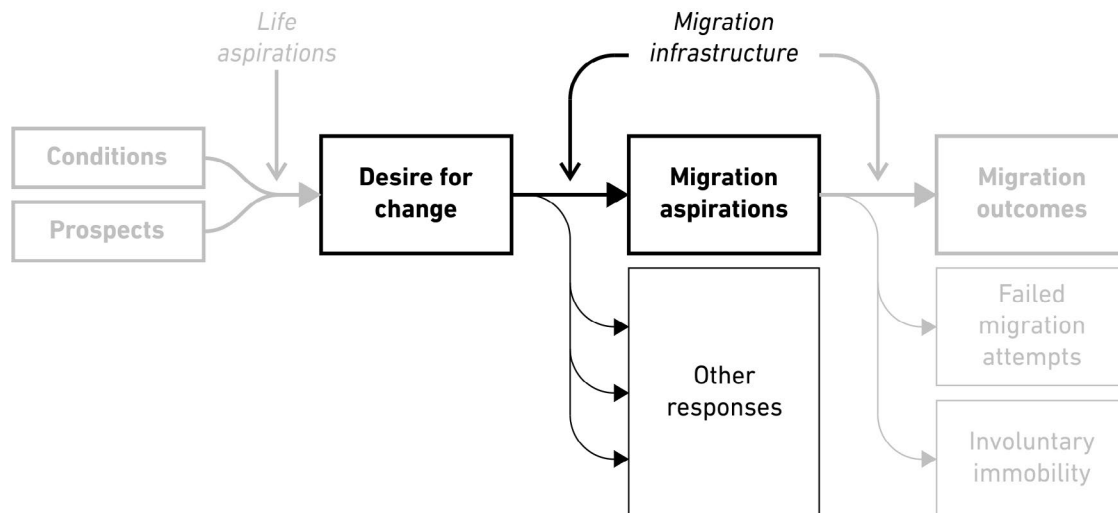
11 Carling and Schewel (in press).

12 Black and Collyer (2014), Carling (2002), Lubkemann (2008b).

13 Lubkemann (2008a).

14 Betts (2013).

Figure 2. A model of the mechanisms that produce migration (focus on the formation of migration aspirations)



When people develop a desire for change in their lives, directing this desire towards migration is only one possibility. As Figure 2 highlights, there are also paths that lead to other responses. The range of possible responses depends on the context. For instance, inhabitants of a country with a dictatorial regime could seek to escape, but they could also fight for change, or protect themselves through allegiance to the regime in power. Versions of these three options – presented as ‘exit, voice, and loyalty’ in a classic framework¹⁵ – often apply.

Another situation that often spurs migration – or other responses – is the blockage of transition to independent adulthood. The ensuing frustrations are not simply about poverty, but also about social and political structures that marginalize young people. Migration is one possible response, but so is joining an insurgency or vigilante group.¹⁶ In other words, the ‘root causes’ of migration are also root causes of other, no less important phenomena.

A desire for change can also be a positive force. The frustrations and energies that turn people towards migration could conceivably be channelled to education, or entrepreneurship for instance. But that requires the right conditions. Education must be accessible and have a real impact on job prospects; the business environment must be conducive to small-scale entrepreneurship.

Where people direct their desires for change depends on the *relative* appeal and feasibility of the different possible responses. Even when it is risky, migration can hold greater promise of a better future than the alternatives. Conversely, when migration is blocked, people could be more inclined to other responses, such as joining violent movements.¹⁷

Migration might not feature as a possibility in people’s minds. But it probably will if many others have already left the same community. Few things predict migration as much as social networks with past migrants.¹⁸ This is one aspect of *migration infrastructure*, a concept that was recently introduced to migration theory. As indicated in Figure 2, migration infrastructure affects the likelihood that people’s desire for change will be directed towards migration aspirations.

Migration infrastructure consists of the diverse human and non-human elements that enable and shape migration.¹⁹ They can be grouped into five dimensions: the commercial (brokers, smugglers), the regulatory

15 Hirschman (1970).

16 Vigh (2006).

17 Ware (2005).

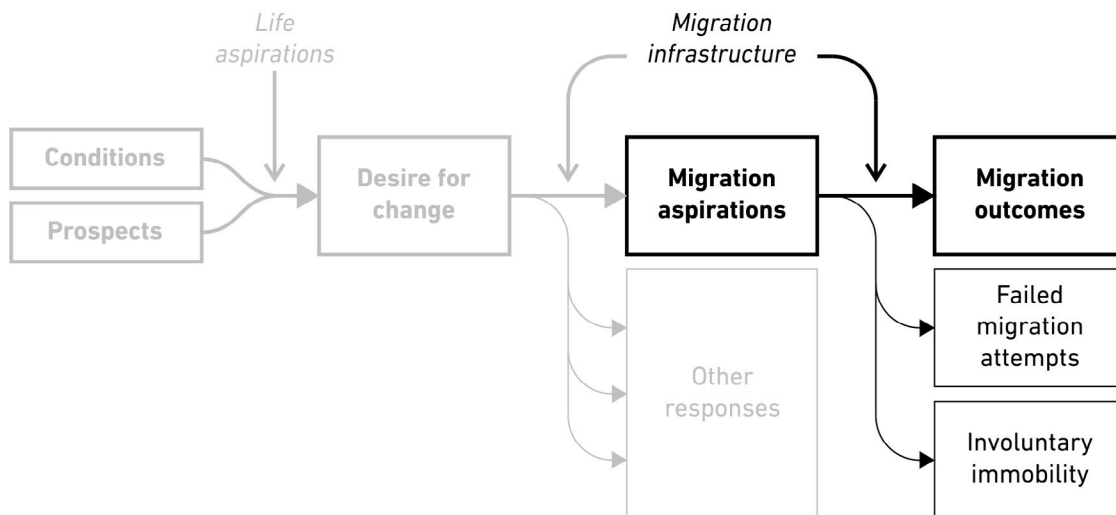
18 Cohen and Sirkeci (2011), Faist (2000), McKenzie and Rapoport (2007).

19 Xiang and Lindquist (2014).

(state apparatus and procedures), the technological (communication, transport), the humanitarian (NGOs and international organizations), and the social (migrant networks).

Importantly, migration infrastructure plays two distinct roles. First, it affects how people perceive the possibility of migration and whether or not they develop migration aspirations. Second, migration infrastructure affects whether or not such aspirations are realized.

Figure 3. A model of the mechanisms that produce migration (focus on migration outcomes)



Migration outcomes

As Figure 3 illustrates, migration aspirations are one step removed from actual migration. And this is a decisive step. Survey data from the Gallup World Poll suggest that about 14 per cent of the world population would like to migrate permanently to another country.²⁰ This is a much higher proportion than the 3 per cent who have actually migrated. The share of people who want to migrate varies greatly by region and country. Nowhere is it greater than in West Africa (39 per cent). Other regions with a high proportion of potential migrants are the rest of Sub-Saharan Africa (29 per cent), Non-OECD European countries (24 per cent), North Africa (24 per cent) and South and Central America (21 per cent).²¹

Having a wish to migrate is not the same as acting upon it. Both the Gallup World Poll and other surveys have therefore asked additional questions about plans and preparations.²² In the case of West Africa, 5 per cent plan to move within the next 12 months, and 2 per cent have started making preparations. These are much smaller proportions than the 39 per cent who express migration aspirations, but still represent substantial numbers of people (20 million and 6 million, respectively).

For people who have developed migration aspirations, there are essentially three possible outcomes (Figure 3). First, they could succeed in migrating. This does not imply that migration is a ‘success’ for the individual, but it means reaching the destination. Possibilities for converting migration aspirations into actual migration depend on migration regulations, access to information, social networks, and other dimensions of migration infrastructure.

The second possible result of migration aspirations is a failed migration attempt. The most extreme – but not uncommon – form of failure is death. Several thousand people die every year in the attempt to migrate.²³

20 Esipova and Ray (2009), Esipova *et al.* (2011).

21 OECD (2015).

22 Laczko *et al.* (2017), OECD (2015).

23 Global Migration Data Analysis Centre (2016).

Many others are apprehended and returned soon after arriving. In addition, thousands of migrants manage to leave home, but get stuck on the way. For instance, many Sub-Saharan Africans headed for Europe are trapped in North Africa without the means to make the final leg of the journey. Failed migration attempts are a serious burden also for migrants' families and communities of origin.

The third type of outcome occurs when migration aspirations are thwarted at the outset and people fail to leave. They are then in a situation of *involuntary immobility*.²⁴ This is a largely invisible outcome, but nevertheless a consequential one. When people have their hopes pinned on leaving, they are less likely to invest resources in local livelihoods and locally relevant skills. Even in communities where emigration has brought significant benefits, involuntary immobility can drain resources away from development processes. In the context of humanitarian crises, involuntary immobility can exacerbate hardships and increase the number of fatalities.²⁵

Conclusions

The 'root causes' agenda is focused on restricting migration that is seen as problematic. The chain of mechanisms presented in Figures 1–3 implies that there are many possible strategies for doing so. But just as important, the chain raises questions about what objectives should be.

The different strategies have different implications for the lives of individuals and the development of communities of origin. When migration is prevented in conventional ways, through restrictive immigration policies, it can result in involuntary immobility. It can also make people direct their desires for change towards other responses, which may be disruptive or detrimental to development processes.

If policy interventions are successfully directed at earlier stages in the chain – towards the left-hand side of the Figures 1–3 – people would stay because they want to, and not because they are blocked from leaving. The potential for such a strategy lies not only in creating jobs, raising standards of living, and eliminating repression and violent conflict, but also in nurturing foundations for hope. Prospects for social mobility and social change are crucial. For instance, it is not only *provision of* education that matters, but equally important, *returns to* education.

Recommendations

- Policy objectives that seek to address the so-called 'root causes' should focus not on containing migration, but rather on reducing (1) the number of unsuccessful migration attempts and (2) the extent of involuntary immobility. The negative consequences of involuntary immobility are theoretically plausible, but not yet well-researched.
- Unsuccessful migration attempts may be possible to avert through communication activities. But current efforts of this kind suffer from a mismatch between official messages and prospective migrants' other sources of information.²⁶
- Involuntary immobility can be reduced by expanding migration opportunities and/or contributing to lowering migration aspirations. The latter is primarily a matter of establishing faith in local futures. This is an elusive but extremely important policy objective that is not well reflected in the SDGs.
- Development cooperation should, as a rule, not be reoriented towards reaching migration management objectives. Such reorientation carries risks of making development interventions less effective, and at the same time not contributing successfully towards better migration management.

²⁴ Carling (2002).

²⁵ Black and Collyer (2014).

²⁶ See Alpes and Sørensen (2015), Schans and Optekamp (2016).

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Border Security, Migration Governance and Sovereignty

Susan Martin and Elizabeth Ferris

A time of paradoxes

We live in an increasingly borderless world where funds can be transferred across borders with a swipe on a smartphone, where automobiles and computers are made up of parts produced in many countries, and where music can be streamed and cyberattacks launched with no impediments from national borders. At the same time – and herein lies the paradox – governments are increasingly trying to exert ever greater control over the movement of people across borders. Walls and fences have gone up where only a few years ago, people freely crossed into other countries. Would-be asylum-seekers are prevented from entering territories by interdiction, by outsourcing control of maritime borders, and by offshore processing. Populist politicians promise to impose more draconian measures to keep people out of their countries. At a time when borders are becoming less restrictive in terms of movement of goods, services and communication, they are becoming more important politically.

Sovereignty is the bedrock of today's international system. While there are different definitions of sovereignty, sovereignty is generally understood as the authority of a polity to govern itself, recognition of the autonomy of all states and the principle of non-intervention in the affairs of other states.¹ Within this context, national security – whether defined as political, economic, social, or cultural – underlies the decisions of sovereign states with regard to border control.²

In practice, of course, there are limits on the sovereignty of states – limits which states have collectively imposed on themselves because the benefits of multilateral cooperation were perceived as being more beneficial than the costs of limiting sovereignty.

Why do States accept limits on sovereignty?

There are many examples in which state sovereignty has given way to more collaborative approaches in addressing important transnational issues. In the 1920s, states accepted the Nansen Passport, issued by the League of Nations office of the High Commissioner for Refugees, thereby allowing an international organization to assume one of the functions of a state in identifying and vouching for refugees who had no state protection. Article 33(1) of the 1951 Refugee Convention expanded the notion, stating that: 'No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life

1 The classic work on sovereignty, Stephen Krasner's *Sovereignty: Organized Hypocrisy*, (Princeton University Press, 1999) adds a third understanding of sovereignty – legal sovereignty manifest when a state is recognized by others, is able to join international organizations and has the right to represent itself.

2 See for example, Myron Wiener, ed., *International Migration and Security* (Boulder, Co: Westview Press, 1993) and Saskia Sassen, *Losing Control? Sovereignty in an Age of Globalization*. (NY: Columbia University Press, 1996) on the connections between sovereignty, security and migration. For a more recent review of the literature, see Fiona B .Adamson, "Crossing Borders: International Migration and National Security," *International Security*, vol. 31, no. 1 (Summer) 2006): 165-199. Also see Donald Kerwin, "The Use and Misuse of 'National Security' Rationale in Crafting U.S. Refugee and Immigration Policies," *International Journal of Refugee Law*, 2006. www.researchgate.net/profile/Donald_Kerwin/publication/31038440_The_Use_and_Misuse_of_'National_Security'_Rationale_in_Crafting_US_Refugee_and_Immigration_Policies/links/556e018908aacc2268308c08f.pdf

or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.’ These prohibitions on refoulement have acquired the status of customary international law. Other human rights instruments – from the Universal Declaration on Human Rights to the International Covenants on Political and Civil Rights and on Economic, Social and Cultural Rights – have committed signatory governments to respecting human rights of people within their territories. The endorsement of the ‘responsibility to protect’ concept at the World Summit in 2005 was another example of classical notions of sovereignty giving way to more expansive ones that emphasized that international actors can step in, without violating the UN Charter, when sovereign states engage in genocide, war crimes and crimes against humanity.³ In other words, there was a recognition that the benefits of living in a world in which human rights are widely respected outweighs the limitations to the freedom of action of governments to abuse the rights of those living within the borders of their countries.

These are all cases where states have voluntarily and collectively accepted limitations on their sovereign authority to act within the borders of their own countries because there was a perceived greater good of having a multilateral system that contributed to order and security. To some extent, this willingness to restrict sovereignty, particularly through ratification of binding international law, reflects growing recognition that sovereignty requires a robust framework of human rights that apply not only to one’s own citizens but others who seek to enter the country. As Don Kerwin has argued, “sovereignty is not only about national defense, border control, or homeland security. Sovereign states also exist to safeguard rights and (more broadly) to provide the conditions that allow their residents to thrive, which invariably requires that they maintain a level of social order, peace and cohesion.”⁴ In other words, sovereignty is responsibility, not merely control over the territory of the state.⁵

The limits to sovereignty are also derived from changes in the nation-state system that conveys sovereignty. Some of these changes are directly related to migration. As Adamson observes: “Ever larger flows of people across borders; increasingly multicultural populations; and the emergence of informal, migration-based, transnational networks that circulate capital, goods and ideas – all challenge notions of the territorial state as a bounded entity with a clearly demarcated territory and population.”⁶ States limit their sovereignty when doing so allows them to engage with other states and actors, including civil society, the private sector and migrants themselves, to manage more effectively complex movements of people across borders. Policies adopted unilaterally are often impossible to implement as they do not take into account the interests of other key stakeholders. Instead, states turn to bilateral, regional and sometimes global agreements that spell out the responsibilities of all parties.

This is increasingly the case with regard to border control, which is seen as a quintessential exercise of sovereignty. State control over borders has several purposes: maintaining control of populations, limiting access to labor markets and maintaining internal security. Even as governments are devoting more resources to policing of borders and to enhanced use of technology in border control, strengthening border controls also challenges sovereignty in that close inter-state collaboration is necessary for effective border management. International migration “does create incentives for states to selectively relinquish dimensions of their autonomy so as to increase their capacity to control their borders. International cooperation on migration and border control can be seen as essential to maintaining a state’s capacity to regulate population flows, and is therefore a vital component of a state’s national security policy.”⁷ By giving up some sovereign authority (for example, by relying on information collected by other states), states are able to strengthen their ability to control borders and hence their security.

3 Francis Deng, Sadikiel Kimaro, Terence Lyons, Donald Rothchild, and I. William Zartman, *Sovereignty as Responsibility: Conflict Management in Africa*, Washington, DC: Brookings Institution Press, 1996 (2nd ed., 2010).

4 Don Kerwin, “International Migration, Human Dignity, and the Challenge of Sovereignty,” 2014. <http://cmsny.org/publications/kerwin-migrationdignitysovereignty/>

5 See Deng et al. for a fuller discussion of this evolving notion of sovereignty as responsibility.

6 Adamson, p. 175.

7 Adamson, p. 180.

Even as states voluntarily enter into international agreements, they retain the right to renege on these commitments if observance would threaten national security. For example, the 1951 Refugee Convention explicitly excludes from the refugee definition those who have committed a crime against peace, a war crime, or a crime against humanity; those who have committed a serious non-political crime; and those who have been guilty of acts contrary to the purposes and principles of the United Nations (Article 1f). Article 32 permits states to expel a refugee lawfully in their territory on grounds of national security or public order. The bar on refoulement (Article 33) does not apply to a refugee who is “a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country. The 1990 Migrant Workers Convention includes numerous rights which cannot be abridged “unless compelling reasons of national security require otherwise.”⁸ States also make reservations when they ratify conventions if they believe that certain clauses are not in their national interest or limit their sovereignty. For example, several parties to the Migrant Workers Convention indicated they would not be bound by article 92, paragraph 1 which provides that disputes between state parties about the interpretation of the Convention could be submitted to arbitration or to the International Court of Justice at the request of either party. In effect, restricting one’s sovereignty is not as significant a move when governments negotiate escape clauses that respect their national security interests.

States are also willing to restrict their sovereignty when they have flexibility in interpreting the provisions that they ratify. Non-refoulement is a case in point. The non-refoulement bar in the Convention against Torture (CAT) is broader than it is in the Refugee Convention. Article 3(1) states: No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.⁹ There are no security exemptions to non-return of those who demonstrate they would face torture if returned.⁹ Yet, States have found ways around the bar on non-refoulement. For example, states have sought diplomatic assurances from governments receiving back those covered by CAT that they will not torture in this particular case.¹⁰

Finally, states are willing to cooperate with others because they expect certain benefits to accrue from a better managed immigration system. The research is clear that immigration leads to economic growth which is definitely in a country’s interest.¹¹ For example, the postwar economic boom in Germany would have been impossible without migration and economic growth in the US owes much to labor migration flows of all kinds. Migration also creates diasporic relationships between people in source and destination countries that can accrue to the benefit of both.

Why do states resist loss of sovereignty with regards to migration?

Despite these benefits of migration and cooperative action, the phenomenon presents challenges for states, particularly to traditional notions of citizenship and state boundaries. Not everyone in either source or destination countries believe that they are the beneficiaries of migration. Rather, many believe that migrants undermine cultural, national and religious identity and compete for jobs and wages.

An inability to control migration – whether perception or reality – can have political consequences. Perhaps the starkest example of the relationship between control of borders and political collapse was the experience

8 See, for example, Articles 8 (exit), Article 22 (expulsion), Article 26 (trade unions), Article 39 (liberty of movement), and Article 40 (association).

9 See David Weissbrodt and Isabel Hortreiter, *The Principle of Non-Refoulement: Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Comparison with the Non-Refoulement Provisions of Other International Human Rights Treaties*, 5 *Buff. Hum. Rts. L. Rev.* 1 (1999), available at http://scholarship.law.umn.edu/faculty_articles/362.

10 Human Rights Watch, *Torture and Non-Refoulement Briefing to the 60th Session of the UN Commission on Human Rights*, January 2004, available at www.hrw.org/news/2004/01/28/torture-and-non-refoulement. See also Department of Homeland Security Inspector General, *DHS Detainee Removals and Reliance on Assurances*, November 2011 available at www.oig.dhs.gov/assets/Mgmt/OIG_11-100_Nov11.pdf.

11 See, for example, OECD, ‘Is migration good for the economy?’ *Migration Policy Debates*, May 2014. www.oecd.org/migration/OECD%20Migration%20Policy%20Debates%20Numero%202.pdf and *Economic Implications of Remittances and Migration*, Global Economic Prospects 2006, Washington: World Bank, 2006.

in former Eastern Europe in 1989 when the collapse of borders between East Germany, Hungary and Austria led in November to opening the border between East and West Germany and a process of political change that led to the demise of communism in Eastern Europe. Perceptions that governments have ceded control over their borders to other states can lead to rising nationalism and, when coupled with xenophobia, can exacerbate political instability. The Brexit vote in the United Kingdom and President Trump's call for a border wall with Mexico and renegotiation of the North American Free Trade Agreement (NAFTA) demonstrate how concerns about immigration, trade and regional agreements conflate and lead to calls for re-enforcement of sovereignty.

What does this mean for the Global Compact on Safe, Orderly and Regular Migration?

The case should be made that strengthening global governance of migration – and in particular, promoting more pathways for safe, orderly and regular migration is in the collective interests of all states. The current system is a patchwork of unilateral, bilateral and regional policies which sometimes work at cross-purposes. Steps to regularize migration would create a more orderly and predictable system. States don't like surprises; they are much more likely to respond positively to migration – even to greater numbers of migrants – that is regular and managed. The benefits of such a system would outweigh any restrictions on a particular state's sovereignty.

The Global Compact offers a relatively non-threatening way to move in the direction of global governance as its provisions will likely be non-binding – offering an easy opt-out for states with particular concerns. The Global Compact is also likely to endorse further work on mini-multilateral initiatives, in which 'coalitions of the willing' work together to devise principles and share good practices on specific groups of migrants (such as the disaster-displaced and migrants in countries in crises--MICIC¹²). Again, these do not threaten sovereignty because governments can choose whether or not to participate.

While it seems unlikely that the Global Compact will be able to obtain full consensus on a wide range of multilateral policies related to irregular migrants – in part because of its obvious relationship to sovereignty – small steps could be taken by developing guidance on responding to migrants in vulnerable situations. This was a recommendation of the *New York Declaration* and agreement on principles relating to a particular subset of migrants in vulnerable situations – perhaps unaccompanied children, or survivors of sexual and gender-based violence encountered on route – could serve as confidence-building measures for future agreements on other, more politically-sensitive issues. In particular, clear guidance on return to home countries or relocation elsewhere for this population could help states to formulate agreements on irregular migrants in general. The success of the MICIC initiative in promulgating principles, guidelines and effective practices for protecting one set of vulnerable migrants shows the promise of this approach. Relevant to this examination of sovereignty, it is worth mentioning that many of the effective MICIC practices called for collaboration among source, transit and destination countries.

Finally, if progress is to be made on global governance generally and on the Global Compact on Migration in particular, the language adopted in 2018 must go beyond rhetoric to include practicable steps to balance security and migrant rights issues. Two particular areas will need to be addressed – both of which relate directly to sovereignty and both of which are difficult for both governments and migrants' rights advocates. First, destination and transit countries need assurance that their security concerns about border control will be taken seriously by other states and by migrant advocates. At the same time, source countries and migrant rights advocates need assurance that those attempting irregular entry will be treated humanely and in accordance with international law. The thorny issue of returns will also need to be addressed when migrants are interdicted at sea or are found inadmissible after entry into a country. Identifying effective practices that

12 See Susan Martin, "New Models of International Agreement for Refugee Protection," *Journal of Migration and Human Security*, 4:3 (2016): 60-75. Also Elizabeth Ferris and Jonas Bergmann, "Soft law, migration, and climate change governance," *Journal of Human Rights and the Environment*, March 2017. www.elgaronline.com/view/journals/jhre/8-1/jhre.2017.01.01.xml

balance these two important components of public policy – security and rights – is essential to overcoming concerns about sovereignty in the context of international cooperative efforts to management movements of people.

The second issue to be addressed is the toxic narrative around migration and the conflation between regular and irregular migration that is fueling growth in nationalism. It will be difficult to find common ground between those advocating for tighter border control and for expanded pathways to safe, orderly and regular migration if public opinion is negative and political leadership is absent or, still worse, willing to engage in anti-immigrant rhetoric. Public education about the realities of immigration must accompany adoption and implementation of a sound Global Compact. Information about immigration is woefully lacking in most countries. When armed with better information, however, publics are much less likely to be opposed to migration.¹³ Presumably, they would also be more supportive of international cooperation in pursuit of more manageable global migration.

13 The Transatlantic Trends survey on immigration found that respondents in most European and North American countries overestimated the proportion of the population in their countries that were immigrants by double and sometimes triple the actual numbers. An experiment that informed half of respondents about official statistics on migration found that the informed respondents were much less likely to say there were too many immigrants in the country than was true of the non-informed. See http://trends.gmfus.org/files/2014/09/Trends_Immigration_2014_web.pdf



Southern Urbanism and the Rescaling of Migration Law and Policy

Loren B Landau

Introduction

International migration is a deeply spatial process. Crossing borders – or attempting to do so – invokes concerns of state sovereignty, regulation, and global governance. Those moving also intersect with economies, politics, and societies at far more micro-scales. It is often these sub-national dynamics and responses that produce the most immediate and enduring effects on migrants' lives. While many recognise the spatial dimensions of international migration in principle, they are poorly reflected within the international governance regime. They are also under-represented in ongoing deliberations within regional and sub-regional migration debates – at least within Africa – and in the discussions surrounding the global compacts. The deeply spatialised nature of migration is better (if implicitly) reflected in Habitat's *New Urban Agenda* and the *Sustainable Development Goals* in their call to build more inclusive settlements, but even here policy direction and engagement is remarkably limited. This paper considers what taking space seriously – particularly urban spaces of the global south – may mean for global approaches to governing human mobility.

Drawing on research from across African cities and new research in Pakistan and Turkey, this short paper argues that in seeking means of improving migration policy, there are benefits of rescaling the levels of interventions and thinking pragmatically about the role of law in ensuring safer and more productive patterns of human mobility. Doing this focuses attention on the existing socio-political and economic character of the sites international migrants most of inhabit: spaces within the global south.

More specifically, this paper explores the 'southern' cities where refugees, international migrants, and domestic migrants increasingly seek pathways out of persecution and poverty. Such sites are often highly informal honeycombs of interconstitutive social, political, and economic institutions. Within them, national and global policies are often far removed from migrants' daily realities. In many cases, they have little direct positive or negative effect on migrants' rights or welfare. Such cities may share generic characteristics, but they are also deeply particular. As such, **effective migration policy must be based on high levels of local institutional and political literacy**. More rationalized regional or global policies are likely to offer little short-term protection in the short term and can be potentially counter-productive.

Moving forward towards more effective legal intervention amidst Southern urbanism, it is worth considering two primary research findings:¹

First, **legal status and documentation are unreliable predictors of effective protection and prosperity**: state-recognized refugee status or visas are a poor indicator of someone's substantive experience and has limited effects on welfare or security. Indeed, the primary determinants of substantive protection – whether someone is doing well in terms of income, housing, and physical security – correspond less with direct assistance and legal status than individual choices, skills, and social relations. Very few of those captured in

1 These findings were first described in L.B. Landau and M. Duponchel, 2011. 'Laws, Policies, or Social Position? Capabilities and the Determinants of Effective Protection in Four African Cities,' *Journal of Refugee Studies* 24(1): 1-22. See also S. Madhavan and L.B. Landau, 2011, 'Bridges to Nowhere: Hosts, Migrants and the Chimera of Social Capital in Three African Cities,' *Population and Development Review* 37(3): 473-497.

surveys across African cities,² including recognized refugees, asylum seekers or displaced persons, received any form of humanitarian aid or assistance. Instead, the most significant factor in explaining ‘success’ (i.e., accessing food, jobs, housing, and physical security) was social networks. Although they are clearly important in exchanging information on housing and work, advising people on evading the police (or escaping from custody), and providing moderate (usually once off) material assistance, additional work is needed on the roles these networks play. New research suggests relying on social networks alone can be a dangerous dead end for certain groups.³ Regardless, where vulnerability is widespread and humanitarian resources are limited – as they are in most southern cities – it is these relationships, not legal status or aid, that become protection’s *de facto* lynchpins. Indeed, **heightened focus on legal status can heighten visibility and dangerous contact between migrants and state law-enforcement mechanisms.**

Second, on aggregate, **international migrants are not the most vulnerable among urban residents.** This is so even when focusing on those who self-identify as having been displaced. Indeed, despite encountering a range of formal and informal restrictions on their activities (e.g., prohibitions on employment, education, access to rental housing, challenges in accessing services), international migrants (including forced migrants) regularly negotiate *de facto* protection more effectively than domestic migrants. As noted above, it is not legal status that enables such success but previous urban experience and diasporic networks. **Non-citizens are undoubtedly vulnerable, but they operate in contexts in which few residents have the kind of access outlined in international humanitarian standards let alone the sustainable development goals.**⁴ Precarity is the norm for refugees, migrants, and ‘hosts’ alike.

The findings summarised above questions the practicality and political viability of migrant-centric interventions or policies in spaces where vulnerability may be more acute among non-migrants. Inasmuch as legal interventions shape such offering, they are potentially part of the problem. Where these programs demand rights or services be claimed based on someone’s immigration status, they can foster popular resentment and social fragmentation.⁵ This hinders the kinds of solidarities with local populations and autonomy that are often necessary for migrant and displaced populations to access effective economic and physical protection while avoiding scapegoating and varied forms of precarity.⁶

In such environments, legal rights may have value for some (normative if not practical), but with only limited enforcement capacity and a minimal reliance on state provided services – schools, clinics, jobs – it is safe to say that documentation and legal status often do little. Even in South Africa, arguably Africa’s ‘strongest’ state, these processes are negotiated on the ground through a panoply of rationalities and calculations, sometimes involving laws and state actors but not always in predictable ways.⁷ Rather than integrating into space-bound social or legal communities, the forms of solidarity and recognition people seek are increasingly fluid, syncretic and translocal. Even churches – often seen as instruments of local integration, community formation, or stable transnational mobilization⁸ – are now sites through which migrants seek incorporation and recognition beyond the state.⁹ Within them and similar bodies, people find ways to maintain the levels

2 For details on the survey data, see Landau and Duponchel (2011).

3 See L.B. Landau, K. Bule, A.A. Malik, C.W. Kihato, Y. Irvin-Erickson, B. Edwards, and E. Mohr. 2017. ‘Displacement and Disconnection? Exploring the Role of Social Networks in the Livelihoods of Refugees in Gaziantep, Nairobi, and Peshawar.’ Washington DC: Urban Institute.

4 See ‘The Sphere Project’: www.sphereproject.org/about/.

5 See M. Ticktin. 2011. *Casualties of Care: Immigration and the Politics of Humanitarianism in France*. Berkeley, University of California Press; R. Krystalli, 2014. ‘Deconstructing the 2012 Human Security Report: Examining Narratives on Wartime Sexual Violence,’ *International Journal: Canada’s Journal of Global Policy Analysis* 69(4): 574-593.

6 J.P. Misago, I. Freemantle and L.B. Landau, 2015. *Protection from Xenophobia: An Evaluation of UNHCR’s Regional Office for Southern Africa’s Xenophobia Related Programmes*. Geneva: United Nations High Commissioner for Refugees.

7 T.B. Hansen, T.B. and F. Stepputat, eds. (2010). *States of Imagination: Ethnographic Explorations of the Postcolonial State*. Durham: Duke University Press.

8 W. Cadge, W and E.H. Ecklund. 2007. ‘Immigration and Religion,’ *Annual Review of Sociology* 33: 359-379.

9 See D. Garbin, 2012. ‘Marching for God in the Global City: Public Space, Religion and Diasporic Identities in a Transnational African Church,’ *Culture and Religion* 13(4):425-447; N.G. Schiller, A. Caglar, and T.C. Guldbrandsen, 2006. ‘Beyond the Ethnic Lens: Locality, Globality, and Born-again Incorporation,’ *American Ethnologist* 33(4): 612-633; also L.B. Landau. 2014. ‘Conviviality, Rights and Conflict in Africa’s Urban Estuaries,’ 2014. *Politics & Society*. 14(3): 359-380.

of social engagement and recognition necessary to negotiate everyday life, but without the kind of place-based fixity often associated with durable solutions or locally enforceable legal rights. The forms of solidarity forged through these bodies are often inherently transient, translocal, post-territorial and, in the case of millenarian religious configurations, potentially post-terrestrial. In almost all cases, they speak to systems of rights beyond the legal and national order.¹⁰

Intersections and Conclusions¹¹

It is not clear where the emergence of fragmented polities, economic precarity, and translocal socialities leave efforts to ensure migrants' protection. While there is normative value in pushing for regional and global legal reform or a rule of law agenda, their effectiveness means overturning the fundamental political and economic character of 'Southern' sites.¹² That may take a while. Moreover, legal rights and assistance programs specifically targeting refugees and migrants in urban areas often draw the ire of the equally impoverished citizens amongst whom they live. It is worth remembering Arendt's conclusion that 'that human rights were not a problem of moral speculation nor legal philosophy so much as a problem of *politics*, a matter of mobilizing new and effective forms of solidarity and concern.'¹³

Recognizing this, I suggest working towards a kind of a complementary politics and law informed by a spatial and social understanding of rights violations and potential for empowerment. In terms of the humanitarian and legal enterprise three principles can guide the effort. The first is to promote **stealth protection interventions**. Given the vulnerability that may be associated with visibilizing and fixing migrants within contentious spaces, there is a need to shroud interventions in a language that is both more flexible and in solidarity with non-migrant populations; to find **back routes to rights** and social solidarity with locally legitimate actors who have the power to bring about immediate positive change.

Second, there is a need to **shift from people to place**. As Soysal notes, '...the nation state as a territorial entity is no longer the source of legitimacy for individual rights.'¹⁴ Recognizing the diversity of scales, solidarities, threats, and opportunities within sites refugees occupy, analysis and interventions should begin by improving life within these sites. This means taking advantage of opportunities for 'bureaucratic incorporation' in which refugees gain access to service based less on legally defined rights than by appeals to bureaucrats' professional ethos as teachers, nurses, or urban planners.¹⁵ Indeed, appealing to more generalized interests, around housing, crime, or other concerns – not rights – can help appeal to local political incentives that do not draw lines or make references to discourses which are seen as foreign, threatening, or unwelcome.

In all cases, these interventions demand high levels of **local literacy** in which one's language – even if informed by legal or rights based principles – must be in the vernacular and appeal to interests that make them locally legitimate. Engaging within the legal regulation of space through housing and labour markets or policing can open space for refugees to build lives (i.e., achieve *de facto* protection and human security) that neither

10 See P. Kankonde, 2016. *Taking Roots in the Name of God?: Super Diversity and Migrant Pentecostal Churches' Legitimation and Social Integration in Post-Apartheid South Africa*. Doctoral Dissertation, University of Göttingen.

11 This section is largely drawn from Landau, L.B. 2017. 'Southern Urbanism, Legalization, and the Limits of Migration Law,' *American Journal of International Law (AJIL) Unbound* 111: 165-171; C.W. Kihato and L.B. Landau. 2016. 'Stealth Humanitarianism: Negotiating Politics, Precarity, and Performance Management in Protecting the Urban Displaced,' *Journal of Refugee Studies* (2016): doi: 10.1093/jrs/few031; and Landau, L.B. and E.T. Achiume. 'Misreading Mobility?: Bureaucratic Politics and Blindness in the United Nations' Migration Reports,' *Development & Change* 48(5) (September 2017).doi: <http://onlinelibrary.wiley.com/doi/10.1111/dech.12325/epdf>.

12 See T.E. Achiume and L.B. Landau. 'The African Union Migration and Regional Integration Framework.' 2015. *Policy and Practice Brief* 36. Durban: ACCORD. www.accord.org.za/publications/policy-practice-briefs/1422-the-african-union-migration-and-regional-integration-framework.

13 J. Isaac, 1996. 'A New Guarantee on Earth: Hannah Arendt on Human Dignity and the Politics of Human Rights,' *American Political Science Review* 61. Also H. Arendt, 1958. *The Origins of Totalitarianism*. Orlando: Harcourt Brace.

14 Y.N. Soysal. 1996. 'Changing Citizenship in Europe: Remarks on Postnational Membership and the National State,' Pp. 17-29 in D. Cesarani (Ed.) *Citizenship, Nationality, and Migration in Europe*. London: Routledge.

15 See H.B. Marrow, 2009. 'Immigrant Bureaucratic Incorporation: The Dual Roles of Professional Missions and Government Policies,' *American Sociological Review* 74(5): 758.

bind them to space nor alienate them from those surrounding them. Interventions, legal or otherwise, that improve conditions in refugee affected areas may also help build political support for their presence. This also means finding credible local voices to take forward migration policy and agenda. In an era in which external actors active seek to manipulate African (and other regions') immigration policy,¹⁶ local leaders and populations are likely to treat international organisations and agencies with high levels of scepticism.

Lastly, there is a need for greater honesty in the promises made to local and national authorities. For many years, the World Bank and others offered the potential of triple wins from properly calibrating migration policies (for migrants, hosts, and sending communities). Selected examples were offered as best practice. The humanitarian community has echoed such tendencies with promises that refugees can be an economic resource. This is potentially true, but even under the best circumstances immigration and displacement will likely have significant short-term costs for host communities. It is the poorest in these communities who will likely bear these costs even when there are aggregate benefits in the short or long-term. Such costs may be economic, but will also social and institutional. Where costs are not addressed – and even where the costs are only perceived – migrants can become a political resource for populist politicians. As such, **policies must be pragmatic, attitude to local economic and political incentives, and be prepared to align incentives at elite political and popular levels.** Organisations and agencies should build case-study repository outlining both successes and failures in ways not typically recorded in donor reports. These need to reflect backroom deals, compromises, and dead-ends can help guide future initiatives and avoid repeating potentially hazardous mistakes.

The approach I describe may in many cases means all but abandoning the language of rights and protection. That may include the language of 'safe and legal' migration. This will not be easy. As Fassin¹⁷ (2010) so trenchantly notes in discussing reforms to the humanitarian systems, there are great institutional and personal interests invested in preserving both the universal language and mechanisms mobilized for rights. People with almost religious faith in law and rights may be deeply unsettled when confronted with pragmatic shades of grey. Organizations built around a rights discourse may fear for their relevance and funding. But there is a place for all these strategies in the complementary politics I have described. The diversity of spaces in which we push for social justice demands as many strategies and appeals.

16 See J. Brachet, Julien. 2016. 'Policing the Desert: The IOM in Libya Beyond War and Peace.'" *Antipode* 48 (2):272-292; A. Knoll and F. de. Weijer. 2016. 'Understanding African and European Perspectives on Migration: Towards a Better Partnership for Regional Migration Governance?' *Discussion Paper 203*. Maastricht: ECDPM; M. Casas-Cortes, S. Cobarrubias, and J. Pickles. 2015. 'Riding Routes and Itinerant Borders: Autonomy of Migration and Border Externalization,' *Antipode* 47 (4):894-914; D. Perrin, 2012. 'The impact of European migration policies on migration-related legislative activity in Maghreb countries: An overview of recent reforms,' Pp. 251-260 in C. Gortazar, M. C. Parra, B. Segaeert and C. Timmerman (Eds) *European Migration and Asylum Policies: Coherence or Contradiction?* Brussels: Bruylant.

17 D. Fassin. 2010. 'Heart of Humanness: The Moral Economy of Humanitarian Intervention,' Pp. 269-293 in Fassin, D. and Pandolfi, M. (eds.) *Contemporary States of Emergency*. New York: Prospect Books: 269-293.



Environmental Migrants and Global Governance: Facts, Policies and Practices

Walter Kälin* and Sanjula Weerasinghe

Executive summary

Human mobility linked to environmental factors such as sudden- or slow-onset disasters is a reality. Although the global governance of environmental mobility is fragmented, many of the principles and elements to improve it are, at least implicitly, enshrined in hard and soft-law agreements, policies, agendas and action plans adopted by the international community. The Global Compact on Safe, Orderly and Regular Migration (GCM) provides an indispensable opportunity to bring these principles and elements together into a State-led, global-level, normative framework. This can provide States and the international community with a clearer understanding of obligations, policy options and actions necessary at different levels of governance.

To protect persons moving in the context of disasters and environmental changes, including adverse impacts of climate change, and improve responses to environmental mobility, the GCM must be underpinned by a recognition that such mobility takes different forms ranging from (predominantly) voluntary migration to (predominantly) forced displacement. Regardless of the form, environmental mobility is multi-causal, and the significance of the environment as a driver of human movement is context dependent. Most environmental mobility will be within countries although there is also evidence of cross-border movements. Continuing changes in the climate is expected to increase displacement.

This knowledge presents States and other actors with a series of policy options. Efforts to prevent, minimize and address displacement can encompass: (1) action to reduce vulnerability and strengthen resilience of at risk populations; (2) action to facilitate movement away from harm; and (3) action to protect displaced persons within their country or across borders.

I. Introduction

An increasing number of people are displaced or migrating in the context of disasters, climate change and other environmental factors. IOM calls such people “environmental migrants”, a term covering both forced displacement *and* (predominantly) voluntary migration of people.¹

The relationship between environmental changes, including adverse effects of climate change and human mobility, is complex. The environment-mobility conundrum includes: (i) a limited understanding of the environment-mobility nexus (section 2); (ii) the multi-causality of human mobility in the context of disasters and environmental change and the difficulties of attributing such mobility to environmental causes (section 3.1); and (iii) the available and appropriate policy options (section 3.2). These aspects inform the conclusions and recommendations for the GCM (sections 4 and 5).²

* The opinions expressed in this article are the author’s own and do not necessarily reflect the views of the Platform on Disaster Displacement (PDD).

1 According to IOM, environmental migrants are “persons or groups of persons who, for compelling reasons of sudden or progressive changes in the environment that adversely affect their lives or living conditions, are obliged to leave their habitual homes, or choose to do so, either temporarily or permanently, and who move either within their country or abroad.” To the extent that movement is involuntary and across borders, the Nansen Initiative uses the term “cross-border disaster-displaced persons”. In contrast, the UN and other actors discourage the use of the term “climate refugee”.

2 See Annex 1 for annotations to some of the key reference documents noted in this paper.

2. Background

Human mobility linked to environmental factors such as sudden-onset natural hazards or slow-onset environmental degradation caused by global warming is a reality.

It often takes the form of *displacement*. During 2008 – 2016, on average more than 25 million people were displaced each year in the context of extreme weather events and other sudden-onset disasters.³ The large majority remain within their own country as internally displaced persons (IDPs). Some cross international borders to find protection and assistance – usually in neighboring countries or within their region. Dynamics vary from region to region with, for instance, sea-level rise being a key driver of human mobility in the Pacific and drought in the Horn of Africa. While some instances are well documented,⁴ the overall number of cross-border disaster-displaced persons is unknown. The same is true for persons displaced within their countries or across borders in the context of slow-onset environmental degradation such as drought. The lack of agreed criteria to distinguish displacement from (predominantly) voluntary migration makes the identification of such persons difficult.

Predominantly *voluntary migration* is often used to cope with the dangers of sudden-onset natural hazards or slow-onset environmental degradation. As stressed by the Intergovernmental Panel on Climate Change (IPCC), “[e]xpanding opportunities for mobility can reduce vulnerability” for populations at risk.⁵ Thus, “[c]hanges in migration patterns can be responses to both extreme weather events and long-term climate variability and change, and migration can also be an effective adaptation strategy... ”⁶ Migration is anticipatory when people feel that, in the long-term, their homes will become uninhabitable or their livelihoods destroyed due to environmental changes, and reactive when used to deal with the impacts of sudden- or slow-onset disasters. Circular or temporary migration can build the long-term resilience of people and communities and promote livelihood diversification when living conditions, in places such as low-lying coastal areas, become difficult.⁷ Permanent migration may be the only option for those who anticipate their homes becoming permanently uninhabitable as a consequence of environmental changes. However, if irregular and not properly supported, circular, temporary and permanent migration may expose people to exploitation, discrimination and other violations of human rights and further exacerbate vulnerability by placing individuals and families in a more precarious situation than if they had stayed in their place of origin.⁸

Permanent *relocation* of populations – whether initiated or supported by governments – is increasingly considered as a solution of last resort in contexts where areas are expected to become unsafe or uninhabitable due to natural hazards and environmental changes.⁹ The circumstances associated with a given relocation, including its timing, procedural safeguards and available choices will determine whether such mobility is characterized as displacement.¹⁰

Environmental change is also anticipated to erode different forms of economic and human capital and make movement less possible. This can create “trapped populations” lacking the resources and means to move away from locations vulnerable to disasters and environmental change.¹¹

3 Internal Displacement Monitoring Centre (IDMC), *Global Report on Internal Displacement 2017*, 2017, p. 31.

4 See e.g., The Nansen Initiative Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change, 2015, Vol. II, Annex I.

5 IPCC, ‘Summary for Policymakers’, in *Climate Change 2014: Impacts, Adaptation and Vulnerability, Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, Cambridge University Press, 2014, p. 20.

6 *Ibid.*

7 For example, remittances and knowledge acquired abroad can increase resilience.

8 K. Warner et al., *Where the Rain Falls: Climate Change, Food and Livelihood Security and Migration: Global Policy Report*, UNU-EHS, 2012, p. 17.

9 United Nations High Commissioner for Refugees (UNHCR), Brookings Institution and Georgetown University, *Planned Relocation, Disasters and Climate Change: Consolidating Good Practices and Preparing for the Future*, Sanremo Consultation Report, 2014.

10 See e.g., B. Burson et al., *The Duty to Move People Out of Harm’s Way in the Context of Climate Change and Disasters*, 2017 (forthcoming).

11 See e.g., Foresight, *Migration and Global Environmental Change: Final Project Report*, The Government Office for Science, 2011.

While the IPCC expects displacement to increase due to the rise of extreme weather events and other climate change effects, it highlights that “populations that lack the resources for planned migration experience higher exposure to extreme weather events, particularly in developing countries with low income”.¹² Thus people living in poverty are likely to face a higher risk of being displaced than those with means to migrate internally or abroad before disasters strike.

3. Analysis

3.1 Multiple causes

Sudden-onset natural hazards and slow-onset environmental change alone do not create compelling reason for people to feel obliged to leave their habitual homes or to choose to do so. Rather, as is generally accepted today, human mobility in such contexts is caused by multiple factors.¹³

People are displaced or – provided they have the necessary resources – migrate when they are: (i) exposed or expect to be exposed to (ii) a sudden-onset natural hazard or slow-onset environmental change and (iii) lack the resilience to withstand impacts. People exposed to natural hazards may lack resilience for a multitude of socio-economic and political reasons, including poverty, social and economic marginalization, poor urban planning, expansion of settlements into risk-prone areas, population growth, weak governance regarding disaster risk reduction and management, and in some situations, violence or armed conflict.¹⁴ As compared to the impacts of the natural hazard itself, demographic, social, economic, institutional and political factors contribute as much as, and sometimes even more, to whether affected people will be able to stay or have to move.¹⁵

Such understanding explains why it is difficult to attribute “compelling reasons”¹⁶ to flee or migrate to natural hazards and environmental changes alone. Whether such events and changes sufficiently undermine the lives or living conditions of affected persons to make them move from their habitual homes depends on many factors that are “human” rather than “natural”. This is why the Nansen Initiative put the notion of disaster, understood as a situation where the impact of a sudden-onset natural hazard or slow-onset environmental change “exceed[s] the ability of the affected community or society to cope using its own resources”,¹⁷ as the key trigger for displacement. This notion of disaster provides a useful basis for distinguishing displacement and migration in the context of sudden-onset natural hazards and slow-onset environmental degradation (hereinafter: disaster-related displacement and migration) from other forms of human mobility, including labour migration.

3.2 Conceptualizing responses to environmental mobility: A toolbox approach

Taking the multi-causality of disaster-related displacement and migration seriously presents a plethora of policy options to address the challenges of human mobility in the context of sudden-onset natural hazards and slow-onset environmental degradation.¹⁸

12 IPCC, *supra* note 5, p. 20.

13 See in particular Foresight, *supra* note 11.

14 See e.g., Nansen Initiative Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change, 2015, Vol. I. The Agenda was endorsed by more than 100 States in October 2015.

15 IDMC, *Disaster-related Displacement Risk: Measuring the Risk and Addressing its Drivers*, 2015, p. 27.

16 See the IOM definition of environmental migrant, *supra* note 1.

17 “Terminology,” UN Office for Disaster Risk Reduction (UNISDR).

18 Nansen Initiative, *supra* note 14.

Beyond mitigation measures in line with the climate change regime, available tools to prevent and minimize displacement include:

- (i) *Reducing vulnerability and strengthening resilience* through:
 - a. Disaster risk reduction (DRR) in accordance with the Sendai Framework on Disaster Risk Reduction 2015–2030 (Sendai Framework), which calls, *inter alia*, for the promotion of ‘transboundary cooperation ... to build resilience and reduce disaster risk, including ... displacement risk’;¹⁹
 - b. Climate change adaptation in accordance with the Cancun Adaptation Framework;²⁰
 - c. Full implementation of the sustainable development goals as set out in the 2030 Agenda for Sustainable Development (2030 Agenda), which refers to “more frequent and intense natural disasters” and related “forced displacement of people” as factors undermining development.²¹

A key intervention involves systematically integrating human mobility aspects, including as they relate to migrants, into regional, bi-lateral, national, and local DRR and climate change adaptation policies and strategies. Such action could be underpinned by efforts to map areas or communities at risk of disaster displacement and incorporate internal and cross-border migration and displacement scenarios into disaster preparedness processes (e.g. early warning, contingency planning, stockpiling, coordination arrangements, evacuation planning and public information). Ensuring that funding is allocated for displacement and migration related measures within local, national, bi-lateral, and regional disaster risk management plans, will be critical. In areas that are expected to experience slow-onset environmental degradation owing to factors such as desertification or sea-level rise, it may be important to adopt long-term, strategic, multi-disciplinary measures in national and local development plans to help people to stay as long as possible.

- (ii) *Allowing people to move out of harm’s way* by:
 - a. Facilitating, both legally and practically, safe, orderly, and regular migration as a coping mechanism and adaptation measure;
 - b. Implementing planned relocation in accordance with international standards as an option of last resort.²²

Policies that facilitate internal, intra- and inter-regional circular, temporary, or permanent mobility allow at-risk populations to make timely and strategic choices regarding their well-being. Expanding options for international migration as a form of adaptation can be undertaken through the creation and expansion of safe, legal pathways that leverage regional agreements on free movement, labor mobility schemes, and domestic immigration laws (related to work, family reunification, study, or other privileged access). These efforts, which can be implemented through bi-lateral, regional, multilateral, or transhumance agreements, can draw upon Regional Consultative Processes on Migration (RCPs), historical and contemporary mobility patterns, political or colonial ties, and other networks. Providing residency permit quotas or seasonal worker programs in accordance with international labor standards may be a particularly effective way to prioritize people from countries or areas facing natural hazards, high levels of disaster risks, or climate change impacts. Developing national guidelines and frameworks on planned relocation can ensure that when it needs to be used as a preventive or responsive measure to reduce the risk of disasters and displacement, the necessary structures and guidance are in place.

19 Adopted at the Third UN World Conference on Disaster Risk Reduction, 2015, para. 28(d).

20 Decision 1/CP.16, The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, UN Doc. FCCC/CP/2010/7/Add.1 (2011), paras. 11-35.

21 Transforming Our World: the 2030 Agenda for Sustainable Development, UN Doc. A/RES/70/1 (2015).

22 For more on planned relocation, see e.g., Brookings, Georgetown University and UNHCR, *Guidance on Protecting People from Disasters and Environmental Change through Planned Relocation*, 2015.

Such measures, if fully implemented, would to a large extent reduce, but not entirely stop instances where people have to flee their homes in disaster situations and need protection and assistance as internally or cross-border displaced persons.

(iii) Available *tools to address displacement* include:

- a. Implementing existing normative frameworks to protect IDPs;
- b. Exercising discretion to admit, or refrain from returning, persons displaced across borders.

Those displaced within their own country are covered at the global-level by the framework detailed in the UN Guiding Principles on Internal Displacement and at the regional level by the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the so-called Kampala Convention).²³ These frameworks need to be fully incorporated into domestic laws and policies to encompass internal displacement in the context of disasters linked to natural hazards and environmental degradation. Strengthened implementation and the provision of swift and adequate humanitarian assistance and protection to IDPs in disaster contexts can assuage pressure to undertake subsequent movements.

When disaster-affected persons are displaced across international borders, they normally do not qualify as refugees *per se*, although forms of persecution and violence relevant under international or regional refugee law may also occur in disaster contexts.²⁴ The *non-refoulement* obligation under international human rights law may in some cases also impose constraints on returns of persons to disaster-affected countries.

Many States have used their discretion in migration matters to admit cross-border disaster-displaced persons at least on a temporary basis, and to refrain from removing foreigners who were present on their territory at the time of the disaster, even if their stay had become irregular.²⁵ Such admissions and non-returns were motivated by humanitarian considerations such as a real risk to life or safety from an ongoing or imminent disaster in the country of origin; where affected persons had experienced physical harm, loss of family, or loss of livelihood as a direct result of a disaster; or where they risked very serious hardship in the country of origin because of an inability to access humanitarian protection and assistance. Such measures were sometimes also taken as an expression of solidarity with governments whose capacity in the country of origin was temporarily overwhelmed. In legal terms, affected persons have been admitted and allowed to stay on the basis of:

- a. Regional or bilateral agreements on free movement of persons;
- b. Regular national migration laws (e.g. through the generous and expedited provision of work permits or family reunification);
- c. Exceptional migration categories (e.g. humanitarian visas or temporary protection measures); and
- d. *Ad hoc* decisions.

This evidence of State practice provides opportunities to enhance dialogue and action by regional organizations, as well as RCPs, to agree on and harmonize responses and solutions to cross-border disaster displacement. Efforts should relate to the provision of temporary protection or humanitarian visas: (1) to admit persons who are directly and seriously affected by disasters; or (2) to allow those already in another country at the time of the disaster to stay if their return is not permitted by international law, not reasonable in light of humanitarian considerations, not possible (for instance because airports are destroyed or otherwise closed), or if their country of origin is temporarily unable to protect and assist them due to a disaster. Dialogue and action could also relate to enhancing implementation of agreed responses through the adoption or harmonization of

²³ United Nations Guiding Principles on Internal Displacement, UN Doc. E/CN.4/1998/53/Add.2 (1998); African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (2009).

²⁴ For a discussion of the (non-)applicability of refugee law see in particular AF (Kiribati) [2013] NZIPT 800413 (25 June 2013, B. Burson).

²⁵ For more on this, including the following discussion, see Nansen Initiative, *supra* note 14, paras. 33, 47 and 65.

relevant domestic laws and policies or regional or bilateral agreements on admission and non-return of such persons that are in accordance with international human rights law. Where, in the long run, a whole country becomes uninhabitable or even disappears as in the case of low-lying atoll States, admission and non-return would have to become permanent.

All these approaches to environmental mobility, including facilitating migration and protecting cross-border displaced persons have to be in line with human rights standards. In particular, the duty to protect the right to life applies to situations where a natural hazard is imminent and clearly identifiable,²⁶ imposing on States the obligation to take measures ensuring that affected persons are not exposed to life-threatening situations. More generally, “protecting and promoting human rights of migrants and persons displaced across international borders, in the context of the adverse impacts of climate change”, as recently recognized by the Human Rights Council, is essential.²⁷

4. Conclusions

As is apparent from the frameworks and tools highlighted briefly in this paper (and further annotated in Annex I), the global governance of environmental mobility is fragmented.²⁸ The primary responsibility for the protection of affected persons is on the States under whose jurisdiction they find themselves. Despite their human rights obligations with regard to displaced or migrating people, States possess a large degree of discretion when responding to such situations. Bilateral or regional agreements, standard-setting by regional organizations and discussions within the framework of RCPs still play only limited roles, but have a huge potential to harmonize and improve responses.

In this context, it is important that the New York Declaration for Refugees and Migrants recognizes that some people migrate or are displaced “in response to the adverse effects of climate change, natural disasters (some of which may be linked to climate change), or other environmental factors.”²⁹ More specifically, member States agreed that the GCM should address the drivers of migration, facilitate “safe, orderly, regular and responsible migration and mobility of people,” including by creating and expanding “safe, regular pathways for migration”, as well as provide effective protection for the human rights and “specific needs of migrants in vulnerable situations.”³⁰ People displaced or migrating in the context of disasters and environmental change certainly belong to this category of migrants.

The above analysis suggests that many elements necessary for the global governance of environmental mobility are, at least implicitly, already in place in hard and soft-law agreements, policies, agendas and action plans agreed by the international community. The GCM provides a unique opportunity to strengthen the global governance framework for environmental mobility by bringing together and synthesizing principles in the climate change regime, including the Paris Agreement, the Sendai Framework, the 2030 Agenda and other instruments that are particularly relevant for addressing drivers of migration. It is also an opportunity to build on domestic laws and practices and frameworks such as the Nansen Initiative Protection Agenda and the Migrants in Countries in Crisis (MICIC) Initiative Guidelines developed through ‘mini-multilateralism’ to achieve the goal of safe, orderly and regular migration for all, including those crossing borders in the context of climate change and disasters.³¹

26 European Court of Human Rights, *Budayeva and Others v. Russia*, Application Nos. 15339/02, 21166/02, 20058/02, 11673/02, and 15343/02, Reports of Judgments and Decisions 2008-II, para. 137.

27 Human Rights and Climate Change, UN Doc. A/HRC/RES/35/20 (2017), para. 7.

28 One definition of global governance suggests that it can be defined in either substantive or procedural terms. “On a procedural level, it can be understood as the process by which states engage in collective action to address common problems arising around a particular issue. This process involves agenda-setting, negotiations, monitoring, implementation, and enforcement. On a substantive level, global governance is identifiable by the norms, rules, principles, and decision-making procedures that regulate the behaviour of states (and other transnational actors) in a particular issue area.” A. Betts, ‘The Governance of International Migration: Gaps and Way Forward’, in Bertelsmann Stiftung and Migration Policy Institute (eds.), *Improving the Governance of International Migration*, Verlag Bertelsmann Stiftung, 2011, p.69.

29 New York Declaration for Refugees and Migrants, UN. Doc. A/RES/71/1 (2016), para. 1.

30 *Ibid.*, Annex II, para. 8.

31 Such an approach was promoted by several delegations at the second informal thematic session on addressing drivers of migration, 22-23 May 2017, New York. See the Co-facilitators' summary, pp. 3 and 7.

5. Recommendations

Elements that should be considered for inclusion in the GCM include the following principles:

- The commitment to take, in accordance with relevant international frameworks and instruments, effective DRR and climate change adaptation measures that integrate human mobility aspects to prevent and mitigate environment-related displacement of persons living in areas at risk;
- Recognition that temporary, circular, or permanent migration can be an important means for persons to adapt to climate change and cope with disasters and, in order to expand the number and range of regular pathways for affected persons, the commitment of States to review, existing domestic laws, bilateral and multilateral agreements, and regional migration arrangements, and consider new laws and agreements, to facilitate migration as an adaptation measure, in accordance with international human rights and international labour law;
- The commitment to exercise States' discretion in matters of migration to admit on humanitarian grounds – and not return – persons displaced across borders if they are personally and seriously at risk of, or already affected by a disaster, or if their country of origin is temporarily unable to protect and assist them due to a disaster, and to find durable solutions for such persons;
- Recognition of and support for the crucial role played by regional organizations and processes such as the RCPs to agree on and harmonize responses to environment-related displacement and migration and to enhance their application; and
- The commitment to enhance international cooperation to assist affected States to prevent, avoid, and respond to disaster- and climate change-related risks, including the risk of displacement.

Annex I: Key reference documents

The documents listed below relate to the global-level and many suggest further reading.

1. Background materials

Reference Document(s)	Relevance
<p>Foresight: Migration and Global Environmental Change (2011), Final Project Report: Executive Summary (and full report) (www.gov.uk/government/publications/migration-and-global-environmental-change-future-challenges-and-opportunities)</p>	<p>Produced by the UK Government Office for Science to inform policymakers on necessary decisions and choices in contemporary settings, this report, which examined cutting-edge science and evidence from a range of disciplines and involved more than 350 experts, explores how movement may be affected by environmental changes into 2060. Key findings include recognition that environmental change influences the multi-causal drivers of migration and discussion of ways in which environmental change can hinder mobility and increase vulnerability.</p>
<p>Climate Change 2014: Impacts, Adaptation and Vulnerability: Summary for Policymakers (www.ipcc.ch/report/ar5/wg2/)</p>	<p>A part of the fifth (and latest) assessment report by the Intergovernmental Panel on Climate Change (IPCC), this report summarizes 30 chapters that examine vulnerability and exposure, observed impacts, future risks and adaptation. Mobility is examined and discussed, particularly in the context of human security (Chapter 12). It notes that climate change over the 21st century is projected to increase displacement and expanding opportunities for mobility can reduce the vulnerability of such populations.</p>
<p>Global Report on Internal Displacement (GRID) 2017 (and earlier reports) (www.internal-displacement.org/global-report/) and database (www.internal-displacement.org/database/)</p>	<p>The Internal Displacement Monitoring Center (IDMC) is the reference for global statistics on people displaced within countries in the context of disasters. Its annual GRID reports (e.g. 2017; 2016), provide a global overview of data, while identifying challenges (e.g. disentangling the immediate cause when conflict coexists with disaster) and key gaps (e.g. cumulative totals; movements in the context of slow-onset disasters)).</p>

2. Normative frameworks and tools

Reference Document(s)	Relevance
<p>1992 United Nations Framework Convention on Climate Change (UNFCCC), its Conference of the Parties (COP) Decisions (e.g. 2010 (http://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf#page=4), 2012 (http://unfccc.int/resource/docs/2012/cop18/eng/08a01.pdf), and 2015 (http://unfccc.int/resource/docs/2015/cop21/eng/10a01.pdf)) and the 2015 Paris Agreement (http://unfccc.int/paris_agreement/items/9485.php)</p>	<p>The UNFCCC does not explicitly address climate related mobility, but COP decisions have increasingly done so. Notably, in the Cancun Adaptation Framework (2010), within the context of adaptation, the COP first called on Parties to undertake “[m]easures to enhance understanding, coordination, and cooperation with regard to climate change induced displacement, migration and planned relocation, where appropriate, at the national, regional and international levels.” (para 14(f)). In 2012, within the context of loss and damage, the COP acknowledged the need for greater understanding and expertise on “how impacts of climate change are affecting patterns of migration, displacement and human mobility” (Decision 3/CP.18, para 7(vi)). In its preamble, the Paris Agreement explicitly references migrants: “Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, ... the rights of ... migrants, and people in vulnerable situations”. The associated COP decision also required the establishment of a task force “to develop recommendations for integrated approaches to avert, minimize and address displacement related to the adverse impacts of climate change” (para 49).</p>
<p>1998 United Nations Guiding Principles on Internal Displacement (GPID) (www.unhcr.org/protection/idps/43ce1cff2/guiding-principles-internal-displacement.html) and Annotations (2008, 2nd Edition) (www.brookings.edu/research/the-guiding-principles-on-internal-displacement-annotations-2nd-edition/).</p>	<p>The GPID, which reflects and is consistent with international human rights and humanitarian law, is the global normative framework on the rights of, and obligations towards, IDPs, including those displaced in the context of disasters and environmental change. IDPs are described as including persons “forced or obliged to flee or leave their homes or habitual residences’ in the context of ‘natural or human-made disasters”. The GPID covers all phases of displacement – from pre-flight to return. Although non-binding, the GPID were unanimously recognized as “an important legal framework” for IDP protection at the 2005 World Summit and the UN General Assembly has welcomed and encouraged their use. The Annotations sets out the legal antecedents to the GPID.</p>
<p>Sendai Framework for Disaster Risk Reduction 2015-2030 (SFDRR) (www.unisdr.org/files/43291_sendaiframeworkfordrren.pdf)</p>	<p>The highly authoritative (albeit voluntary and non-binding) SFDRR, adopted by 187 country delegations to the Third UN World Conference on Disaster Risk Reduction (DRR) in 2015 and subsequently endorsed by the UN General Assembly, seeks to substantially reduce disaster risk and losses through the prevention of new, and the reduction of existing, disaster risk. In this context, in its preamble, the SFDRR acknowledges that displacement is one of the devastating effects of disasters and that migrants are a relevant stakeholder. The multiple references to different forms of mobility throughout the SFDD reflect the fact that both displaced persons and migrants are encompassed with the SFDRR’s global targets, including the one on reducing “the number of affected people globally” (para 18(b)) and they, along with their property need to be protected in the context of managing the risk of disasters (para 19(c)). Among the variety of activities for States and other actors, the SFDRR encourages “the adoption of policies and programmes addressing disaster-induced human mobility to strengthen the resilience of affected people and that of host communities” (para 30(l)).</p>

UN Human Rights Council (HRC) Resolution on Human Rights and Climate Change (2017) (UN Doc. A/HRC/RES/35/20, 7 July 2017, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/184/52/PDF/G1718452.pdf?OpenElement>) and earlier resolutions (www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/HRCAction.aspx)

The HRC has adopted a series of resolutions recognizing the interactions between, and implications of, climate change on human rights. Its 2017 resolution, the most detailed and comprehensive to date, “recognizes that climate change-related human mobility and human rights are cross-cutting in nature” (para. 9) and makes multiple references to better understanding and addressing the protection of migrants and persons displaced across international borders in the context of adverse impacts of climate change.

Nansen Initiative Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change, Volumes I and II (2015) (www.nanseninitiative.org/global-consultations/) and follow up work being undertaken by the **Platform on Disaster Displacement** (<http://disasterdisplacement.org/>) and the publications, perspectives and other resources on each website.

The 3-year Nansen Initiative, the State-led process begun in 2012, culminated in the endorsement of its non-binding Protection Agenda by 109 government delegations. The Agenda consolidates the outcomes of extensive consultation, evidence gathering and consensus-building. To assist States and other stakeholders to improve preparedness and responses to address cross-border displacement, the Agenda conceptualizes a comprehensive approach, a toolbox that not only focuses on protecting those who cross borders, but also presents measures to manage risks in the country of origin. The Agenda compiles a broad set of effective practices and highlights three priority areas for action at the national, (sub-)regional, and international levels: (1) Collecting data and enhancing knowledge on cross border displacement; (2) Enhancing the use of humanitarian protection measures for those who cross borders in the context of disasters and climate change; and (3) Strengthening the management of disaster displacement risk in the country of origin by: (a) Integrating human mobility within disaster risk reduction and climate change adaptation strategies and other relevant development processes; (b) Facilitating migration with dignity as a potentially positive way to cope with the effects of natural hazards and climate change; (c) Improving the use of planned relocation as a preventative or responsive measure to disaster risk and displacement; and (d) Ensuring the needs of IDPs displaced in disaster situations are specifically addressed in relevant laws and policies on disaster risk management and internal displacement.

International Law Commission (ILC) Draft Articles on the Protection of Persons in the Event of Disasters (with Commentaries) (2015) (http://legal.un.org/ilc/guide/6_3.shtml)

In 2016, the ILC – the UN body of legal experts elected by States to promote the progressive development of international law and its codification – adopted the Draft Articles with Commentaries and recommended to the UN General Assembly the elaboration of a convention based on the document. The Draft Articles, while not explicitly addressing human mobility, detail the scope and content of State’s duties in the context of sudden and slow onset disasters with respect to preventive and remedial actions. Article 9 states that States have an obligation, derived from widespread State practice, to reduce the risk of disasters. The Draft Articles are also underpinned by general principles of international law, including respect for human dignity, human rights, the principles of humanity, neutrality, impartiality, and non-discrimination, and the duty to cooperate.

The Migrants in Countries in Crisis (MICIC) Initiative Guidelines to Protect People in Countries Experiencing Conflict and Natural Disaster (2016) (<https://micicinitiative.iom.int/>) and other tools listed in website, including practices repository.

Developed through a State-led Initiative, these non-binding Guidelines provide a normative framework for protecting non-citizens affected by disasters in the country in which they are present. The principles, guidelines and practices targeted towards States, private sector actors, international organizations and civil society relate to migrant protection from pre-departure to return.

Guidance on Protecting People from Disasters and Environmental Change Through Planned Relocation (2015) and A Toolbox: Planning Relocations to Protect People from Disasters and Environmental Change (2017) (<https://isim.georgetown.edu/Planned-Relocations>) and other resource listed in the Guidance, Toolbox and website.

The Guidance and Toolbox, developed by institutional actors, academics and other multidisciplinary experts, with input from States, seek to fill a knowledge gap on relocation of populations in the context of disasters and environmental change. The Guidance sets out principles to assist States and other actors to develop laws, policies, plans and programs. The Toolbox highlights cross-cutting issues integral to all planned relocations and identifies practical considerations and challenges to assist with planning and implementation.

UNHCR Guidelines on Temporary Protection or Stay Arrangements (2014) (www.refworld.org/docid/52fba2404.html)

This document provides guidance on the development of temporary protection or stay arrangements as a response to humanitarian crises and population movements, particularly where existing responses are inadequate.



In Each Other's Shoes: Making Migration Policies Equitable Across Borders

Binod Khadria

Executive summary

To celebrate multilateral and bilateral negotiations on international migration as one that could be called “the longest-running plays” would be one thing, but the hard truth staring in our face is that actual policy making in migration has remained a one-sided game, that of the immigration country calling the shots. To talk of making global migration policy more symmetrical through equitable participation of countries across borders – something that I have been arguing for more than a decade to see happening, has therefore, ironically, but suddenly dawned on me as a conundrum – “a modern-day maze, a logical postulation, an intricate and difficult problem that evades easy solution”. There are both recent and old burning examples of the failures of bilateral and/or multilateral frameworks, e.g., Brexit, the Scotland referendum, the Catalonia referendum, the European refugee crisis, the US travel ban, the Mexico wall, the Australian boat people, the Bangladeshi migrants in India, and now the latest Myanmar expulsion of Rohingya refugees, and so on – are each one contributing to the drifting of migration away from rather than coming closer to becoming SOR – “safe, orderly and regular”, what the Global Compact for Migration aims for alongside achieving the SDGs by 2030.

These aberrations in the global scenario – either in anticipation or as a follow-up of perceived migration outcomes - have all been the results of unilateral top-down policy decisions devoid of willful, empathic or active involvement of the counterpart country or countries. This is why the dichotomy between the two complementary streams in migration – emigration and immigration – has often led to inconsistent, contradictory and paradoxical positions being taken by the same policymakers and implementing officials of a country when it comes to their immigration (including transit) and emigration policies. Little wonder then that multilateral and bilateral negotiations aimed at facilitating user-friendly human mobility often end up being game-theoretic hide-and-seek strategies, more than even those under the WTO and GATS negotiations on free mobility of capital, goods and services through international trade.

Driven by divisive politics and fired by overzealous attitudes of 3S - sovereignty, security, and social cohesion through assimilation and integration rather than multiculturalism, immigration policy making is often shrouded in secrecy, mistrust and the “race to the bottom” among countries to outsmart each other. The outcome is what I would call “migrant-blind policies”, which have in turn created turbulences in migration trends with adverse effects of macro-economic uncertainty on the otherwise stable micro-economic mobility decisions of the migrants at the individual and family levels. There is obviously no great Feel-Good-Factor (FGF) in it even for the policy makers or the officials; not to talk for the migrants.

To ameliorate this trend of adversely targeted policies, this paper offers two recommendations towards constructive and viable policy making strategies. Countries can practice them unilaterally by moving back from ineffective multilateral or bilateral pretension without having to get entangled in the conundrum of equitable adversary analysis that necessarily calls for the support of the counterpart country or countries: (i) IDC or Inter-Diaspora Cooperation; and (ii) DCGC or Dual Citizenship for the Global Commons. Destination countries satisfying three preconditions would help pre-empt the conundrum of trying to step into each other's shoes for adversary analysis to make migration policies equitable across countries.

Introduction

The title of my paper may sound like the solution of a conundrum I am suggesting. It is not; rather it is my late realization that it is the conundrum itself! Beginning as far back as in 2007 at a Conference on “Transnationalisation and Development(s): Towards a North-South Perspective” at the University of Bielefeld, Germany, I have often proposed what I call an Equitable Adversary Analysis (EAA) approach to multilateral and bilateral negotiations on migration policy making. I had submitted one of my early papers on this idea to the IOM Migration Research Leaders Syndicate.¹ Over the years, it seemed to me that what I proposed as a policy tool has not been experimented with because it sounded like a utopia. Today, I think even if tried with full sincerity, it might not have worked because it was a conundrum – “a modern-day maze, a logical postulation, an intricate and difficult problem that evades easy solution”.

Background

The conundrum of equitable adversary analysis is based upon the fallacy that the origin and destination countries operating on two sides of an “uneven-playing field” i.e., across the borders can and would come together. Dialogues between emigration and immigration countries (or blocks of countries) are by nature asymmetrical and unbalanced because even though emigration and immigration are two sides of the same coin, it is the latter that dictates the terms of the game. It is a myth then that they would have common goals in setting migration policy and targeting migration outcomes – safe, orderly and regular (SOR). The fact that we make no distinction between emigration and immigration countries, or for that matter via-a-vis transit countries, is evident in the multilateral negotiations taking place at the UN or other international bodies, where the countries are distinguished as destination and origin countries, what I have termed as the “hubs” and the “hinterlands” respectively. Ultimately it is the immigration country that calls the shots and that is the hard fact.

Analysis

Why else did Brexit happen and still remains unresolved? Why Scotland referendum happened and is likely to happen again? Why Catalonia referendum was approved in the provincial assembly? Why Bangladeshi problem in India is eluding a solution? Why refugee issues are persisting? Why travel ban got imposed in the US and went into legal juggling? Why Mexico wall is taking its toll? Why boat people are in a limbo? The most generic common factor in these different phenomena, to my mind, has been that these have all been outcomes of unilateral policy decisions without autonomous, empathic or active involvement of the counterpart country or countries. This is why the dichotomy between the two streams in migration – emigration and immigration – has often led to inconsistent, contradictory and paradoxical positions being taken by the same policymakers and implementing officials of a country when it comes to their immigration (including transit) and emigration policies. Little wonder then that multilateral and bilateral negotiations aimed at facilitating user-friendly human mobility have ended up being game-theoretic hide-and-seek strategies more than even those dealing with the WTO and GATS negotiations on free mobility of capital, goods and services through international trade. Driven by divisive politics and fired by overzealous attitudes of 3S - sovereignty, security, and social cohesion through integration, they have been seen ending up in secrecy, mistrust and the “race to the bottom” to outsmart each other. There is obviously no great Feel-Good-Factor (FGF) in it for the policy makers or the officials; certainly not for the migrants. The outcome is what I would call “migrant-blind policies”, which have in turn created turbulences in migration trends with adverse effects of macro-economic uncertainty on the otherwise stable micro-economic mobility decisions of the migrants at the individual and family levels. Can this trend of adversely targeted policies be ameliorated by constructive policy making strategies, which could be practiced unilaterally without depending upon the conundrum of equitable adversary analysis that necessarily calls for the support of the counterpart country or countries?

¹ Khadria, B., 2009, “Adversary Analysis and the Quest for Global Development: Optimizing the Dynamic Conflict of Interest in Transnational Migration”, *Social Analysis*, vol. 53, issue 3, winter, pp. 106-122.

Conclusions

Consular practices, like the proverbial “holy cow”, are kept out of the public gaze and public scrutiny in multilateral fora. This is a byproduct of an overhyped notion of each country’s sovereignty, and a tit-for-tat approach to bilateral affairs, the migrant being at the receiving end in the middle of the storm. Often there are questionable practices applied under the garb of discretion of the “officer on the spot” manning the consulates and immigration posts, practices which deviate from stated policy of the destination country.² There are no foolproof mechanisms to monitor them for feeding into the preparation of some “global norms and codes of conduct”, as I have argued elsewhere.³ The vulnerability of the migrant that begins at the gate of the consulate prevails throughout the journey of migration. Barring a handful few countries, consulates by nature lack transparency and faster amenability to technology adaptation in visa regimes.⁴ The Global Compact for Migration (GCM) 2018 could be an opportunity to bring visa issues out of the mist and on to the table for constructive discussion towards making migration more user-friendly than what it is.

Until then, upholding the SDG principle of “leaving no one behind”, I propose two experiments to be undertaken. One, for minimizing the “incapability” of the poorer migrants that drives them to risk the “necessity” of unsafe, disorderly and irregular migration; and two, to minimize the collective societal pain arising from the selectivity of the so-called “talent war” that leads to seemingly “choice-determined” brain drain of those in abundance of “capability” and therefore not-so-poor migrants from countries of origin. These two experiments are:

(i) Institutionalize “Inter-Diaspora Cooperation” (IDC)

To tap the so-called diaspora resources, countries of origin have lately been wooing their respective diasporas to invest in their ancestral homeland. This has led to an exclusive obsession with the model of “Diaspora for Homeland Development”. GCM can encourage them to transcend this obsession, institutionalize what I call “Inter-Diaspora Cooperation” (IDC) and engage in South-South Cooperation for adopting a “third-country development (TCD) model”, i.e., to serve another country where the need for sustainable development is much more, say for example, an Ebola-affected country.⁵ Keeping in view the SDG goal of global partnership, this could be done by one diaspora group joining hands with another diaspora group in the same country of destination where they live (see the illustration in Diagram 1 provided in the Appendix).

(ii) Promote “Dual Citizenship for Global Commons” (DCGC)

Scarce human capital, like the STEM professionals (in science, technology, engineering and mathematics) could be declared as the “Global Commons”, like air, water, outer space, Antarctica, and the internet – resources that are essential for the benefit of the entire humanity. GCM 2018 can devise ways for sharing these scarce human capital between and among countries for sustainable development that would help reduce the migration conflicts between origin and destination countries and thereby contain migration that is not safe, orderly or regular. One recommendation I have often made towards this purpose is to encourage countries to move from the concept of mono-nationality to dual citizenship.⁶ Dual citizenship would promote “temporary return” of scarce human capital to the country of origin in place of their “temporary migration” to the country of destination in the first place (I call it TR 4 TM; see illustration of “circulatory migration/temporary return” vis-à-vis “temporary migration/return migration” in Diagram 2 in the Appendix). It would do so by eliminating the

2 Khadria, B., 2005, “Migration in South and South-West Asia, RS6, Global Commission on International Migration, Geneva, www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy_and_research/gcim/rs/RS6.pdf

3 Khadria, B., in UK Government’s Foresight Project, Migration and Global Environmental Change, www.unescobkk.org/fileadmin/user_upload/epr/Quality/Khadria-Free_Mobility_in_Asia-State_of_science_review_for_Foresight_Report_on_Migration_and_Global_Environmental_Change_2011.pdf

4 My observations as a member of the International Advisory Committee of the Civil Society Days, GFMD, Athens, Greece, 2009, incorporated in the Report of the Proceedings, page 10, accessible at https://gfmd.org/files/documents/gfmd_athens09_report_of_the_proceedings_en.pdf

5 Khadria, B., 2012, “Migration of health workers and health of international migrants: Framework for bridging some knowledge disjoints between brain drain and brawn drain”, *International Journal of Public Policy*, 8, 4-6, pp. 266-280.

6 See, Khadria, B., 2012, “Immigration and return migration to India”, chapter 7 in Khadria, B., *India Migration Report 2010-2011: The Americas*, Cambridge University Press, New York.

fear of not being allowed re-entry into the destination country once a migrant leaves that country temporarily to visit and contribute to the home country or a third-country. The net effect would be more or less the same as that of temporary migration policy, but with the added benefit of better management and governance of mobility towards making migration 100 percent safe, orderly and regular.

Recommendations

The present paper has built and expanded on a “migration narrative” – a hands on blue print for operationalizing the idea into practice – towards making migration SOR – safe, orderly and regular aimed at by the proposed 2018 Global Compact for Migration – through two strategic innovations of “regular pathways”, viz., “Inter-Diaspora Cooperation (IDC)” and “Dual Citizenship of the Global Commons (DCGC)”.

As the thematic expert of the second informal thematic session on drivers of migration held at New York on 22-23 May 2017, I had the opportunity to flag these two policy innovations in my report as “the way forward” for the GCM.⁷ My present paper written for the September workshop in Geneva and subsequent publication of the IOM for the UN GCM 2018 is aimed at proposing a roadmap for policymakers and the implementing bureaucracies to optimize the space for a balanced, healthy and constructive engagement with policy making towards operationalizing these innovations. In my opinion, there are three potential preconditions which needs to be satisfied through unilateral macro-level commitments and action by the immigration/destination states. These would be crucial to bring about a sea-change in the management and governance of migration in a sustainable way:

User-friendly consular practices:

Consulates all over the world are by legacy the slowest institutions in doing away with archaic practices. For example, there are only a few select countries that have done away with the practice of requiring hardcopy submission of documents for visa applications. Even frequent travellers have to submit same documents every time they apply for visa. I have often remarked that in an age of gigabyte and terabyte, it is ironical that our consulates have no memory! The more papers they ask for the more they contribute to destruction of forests and environment, leading to climate change and natural disasters that forces people to migrate in unsafe, disorderly and irregular way.

Stability in visa policy changes:

Visa regimes in most destination countries change at frequent but unpredictable intervals without advance signal. In contrast, individual and family decisions for investment in education and career choices contingent upon the demand in global labour markets are mostly long-term, once-for-all and non-reversible. This dichotomy creates vulnerability of the migrants and families when the doors of labour markets in an immigration country suddenly start closing, driving migrants to resort to unsafe, disorderly and irregular mobility. To minimize this dichotomy between visa policy changes and migration decisions, I have often recommended that states should be requested to declare an intended “best-before date” whenever visa rules are changed, and then to commit to honour that date excepting for in extremely unavoidable circumstances, like, for example, sudden onset of recession and large scale laying off that happened in 2008.

Migration data literacy:

Countries can learn of the best practice in collecting and disseminating migration data from each other, like from the prime destination countries like the US and Australia. In the US, with growing security concerns, like in the post 9/11 years, a few important categories of data have ceased to become available in the public domain. Often access to data is prohibitively priced by some countries. Apart from making a plea for data to be made freely available, what is also important is to conduct refresher courses in “data literacy” to root out

⁷ http://refugeesmigrants.un.org/sites/default/files/t2_p3_binodkhadria.pdf, and <http://webtv.un.org/search/4th-meeting-preparatory-process-for-the-intergovernmental-conference-to-adopt-a-global-compact-for-safe-orderly-and-regular-migration-general-assembly-71st-session/5445577372001?term=migration>

the stereotypes, myths and fallacies that lie at the root of many a conundrum. For example, one pervasive misinterpretation I come across arises from the policy makers' failure to make the basic distinction between stock and flow data on migration – often migrant stock data are cited to make a point about their flow.⁸ The remark that “migration now has reached a historically unprecedented high” would raise some eyebrows whereas the fact remains that historically cumulative figures would naturally go on increasing – a simple tautology! Little wonder then that the popular saying continues to do the rounds: “There are three kinds of lies – lies, damn lies and statistics!” There is obviously a need that GCM starts data-literacy courses in migration, both for academics/researchers and policy makers/activists, and feed that experience in the generation, compilation and dissemination of reliable time-series statistics.

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United Nations, 2017b, <http://webtv.un.org/search/4th-meeting-preparatory-process-for-the-intergovernmental-conference-to-adopt-a-global-compact-for-safe-orderly-and-regular-migration-general-assembly-71st-session/5445577372001?term=migration>

⁸ See, Khadria, B., 2016, “Involuntary and Illegal Migration to India: The Case of Bangladesh”, *NORRAG News, Special Issue on Refugees, Displaced Persons and Education: New Challenges for Development and Policy*, 53, May, pp. 118-119.

Appendix

Diagram 1: Inter-Diaspora Cooperation (IDC)

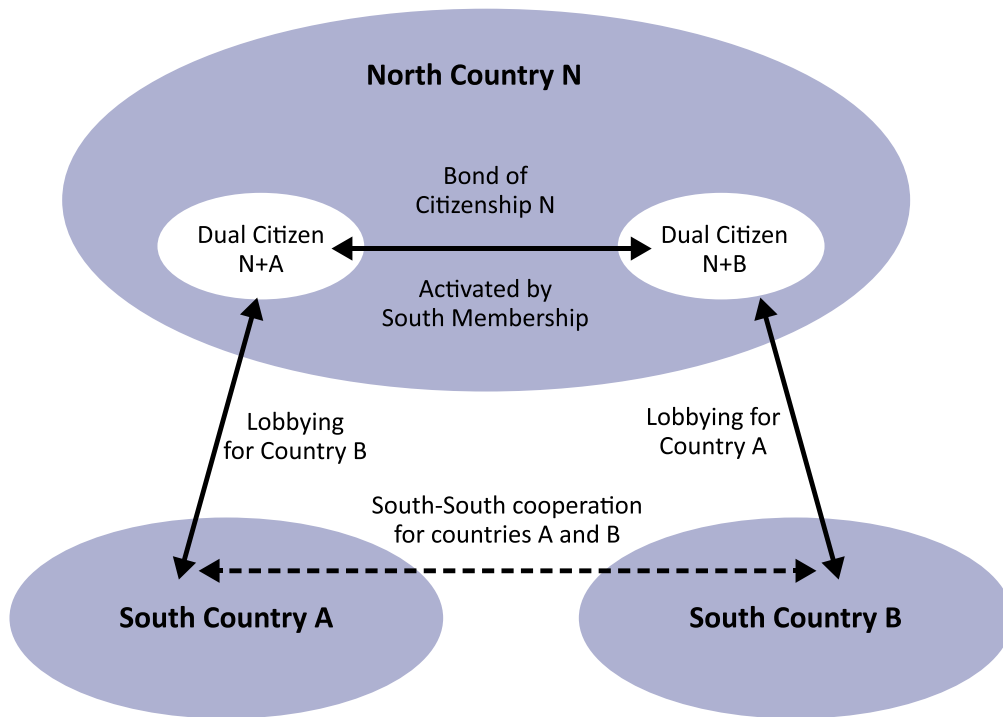
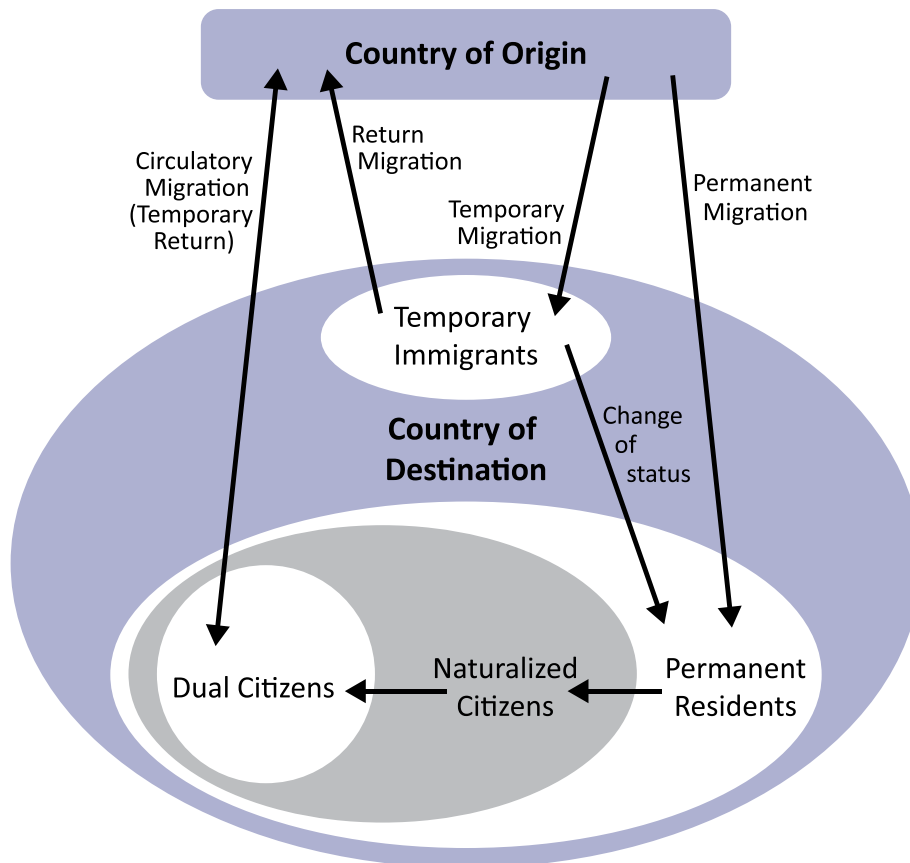


Diagram 2: Dual Citizenship for the Global Commons (DCGC)



Source: Khadria, B., 2009, "Adversary Analysis and the Quest for Global Development: Optimizing the Dynamic Conflict of Interest in Transnational Migration", *Social Analysis*, vol. 53, issue 3, winter, pp. 106-122.



Overprincipled and Underperforming: Why We Need a Practice-based Global Compact on Migration

Gibril Faal

At the UN Summit on 19 September, I had the privilege to speak on ‘International Action and Cooperation: The Way Ahead’¹. Given that we had the Agenda 2030 on Sustainable Development Goals, the New York Declaration (NYD) itself, I thought it was an obvious point that the Global Compact on Migration should predominantly be about practice, performance and actual impacts, not aspirations. This simple and seemingly unsophisticated view is held by many of the organisations and entities – large and small – that work directly with migrants, and operate on the frontline of policy implementation.

There is significant impatience and weariness amongst migrant and diaspora organisations, civil society, and the private sector in particular. There seem to be endless discussions of global or normative principles which are elegant and highbrow in their attestations of commitment to rights, values and human development, yet everywhere, we see flagrant inaction and lack of implementation. Since the adoption of NYD, I have participated in several policy, practitioner and expert consultation sessions across the world. Be it with governments, regional networks, multilateral development institutions, civil society, private sector, migrant and diaspora groups, or academia, the message is consistent – GCM must facilitate effective implementation of agreed principles and commitments. I was taken aback in the pre-UN Summit period in 2016 that some delegations did not think that a UN agreement can be based on practical operational points. I am pleased that in the past year, there is emergent consensus on the primacy of operations and effectiveness.

I. To do, or not to do, that is the only question

In June 2017, at the Global Forum on Migration and Development (GFMD), the Special Representative of the Secretary General (SRSG) Louise Arbour stated that, “we should all aim for the highest common denominator.....leading to the global compact, we must resist the temptation to reinvent the wheel.”² What may have been deemed a chorus of dissatisfaction amongst fringe practitioners is now a veritable lament amongst stakeholders. Already, we have seen apathy and cynicism amongst some stakeholders about the GCM process. Other practitioners and change-makers who also suffer consultation fatigue are engaged not necessarily out of optimism and hope of what GCM can deliver, but out of genuine fear that non-engagement will lead to a GCM marked by retrogression, obfuscation and ascendancy of bad will regarding certain aspects of migration and development. If an excuse or additional rationale is needed, a practice-based GCM can be seen and pursued within the spirit of UN reform. The demand for practical purposefulness and effectiveness echoes in the chambers of New York and Geneva. The UN Secretary General António Guterres stated that: “Someone out to undermine the UN could not have come up with a better way to do it than by imposing some of the rules we have created ourselves. I even sometimes ask myself whether there was a conspiracy to

1 www.un.org/pga/71/wp-content/uploads/sites/40/2015/08/List-of-speakers-Round-Tables-HLM-on-Refugees-and-Migrants-15-September-2016.pdf

2 https://refugeesmigrants.un.org/sites/default/files/statement_by_the_special_representative_of_the_secretary-general_for_international_migration_louise_arbour_at_the_opening_of_the_10th_global_forum_on_migration_and_development_summit_meeting.pdf

make our rules exactly what they need to be for us not to be effective....Our shared objective is a 21st century UN focused more on people and less on process....more on delivery and less on bureaucracy.”³

The factors that affect migration are complex, but the choices to be made about the Global Compact on Migration are not complicated: focus on effective action, or persist in highfalutin rhetoric and diplomatic double-talk. To do, or not to do, that is the only question.

2. From ‘Coalition of the Willing’ to ‘Hyperactivity of the Devoted’

Many of the people who are involved in international negotiations on migration struggle to find any new principles or proposals which singularly further knowledge and understanding of what we should do to address the known problems. Extraordinarily, we seem to know what should be done to protect rights of refugees and migrants, and facilitate and optimise their contribution to the development of countries of origin, heritage, transit and destination. The central challenge we face is that not all UN member states are keen to implement the known best practices. A few member states are in fact inclined to adopt counterproductive actions. Indeed, the principle of equitable responsibility sharing gives us an example of why GCM should concentrate on practice, not reiteration of principles. Within the European Union, spectacular disputes have erupted and enormous resources and time are spent trying to convince member states to implement the principle by taking in few thousand refugees. The countries that are willing end up taking more than their quota, with little fuss. Other countries raise disingenuous legal arguments or dubious referenda to avoid taking their modest quota.

As I observed at the 2016 UN Summit,⁴ we face a moral hazard: Do we persist in negotiations for the lowest common denominator, subject to being dragged down by the unwilling and the obstructionists? Do we spend much of our inadequate resources and time declaring and reaffirming the basic things we already agree on? Do we indulge in negotiations and gamesmanship whilst existing conventions, agreements and best practices remain inert for want of implementation? I argue that for the Global Compacts, we need to provide a practical framework to move from the ‘Coalition of the Willing’ to the ‘Hyperactivity of the Devoted’. Positive impact will come from action and practice, not repetition of agreed commitments or re-wording of diluted principles.

Amidst the doom and gloom of ineffectiveness, we often forget to notice the glimpses of hope and inspiration. For every progressive and enlightened idea and proposal about migration, mobility, human rights and development, there are UN member states who currently implement them to the benefit of society, economy, polity and humanity. Very often, even those implementing countries shun publicity for fear of attracting reactionary backlash. The UN should vehemently bolster progressive actions. UN agreements should be obsessive about actions and impacts. The UN Global Compact on Migration is a test in hand.

3. Principles, policies and practices – the last mile matters

As a community of nations, we witness failure – in too many places and for too many scenarios – regarding facilitation of safe, orderly and regular migration. Are we reckless, incompetent or indifferent? I ask, because in the 21st century, humanity is at the zenith of her innovative capacity, her technological capability, and her operational prowess. As member states and non-state actors, I propose that in this Agenda 2030 SDG era, we make a major practical, emotional and principled shift, such that operational implementation and tactical means of implementation are given the highest priority. This is the practical game-changer we need in order to enhance and optimise the achievement of our cherished aspirations, strategic goals and global commitments. In many ways, we are overprincipled and underperforming. GCM and other global agreements should focus on, facilitate, and enhance performance and impact.

Sometimes I sense that there is an intellectual snobbery about practice-based approaches; that the vulgarity of middle management functionaries must not sully the refined principles of multilateral agreement-making.

³ <https://www.un.org/sg/en/content/sg/speeches/2017-09-18/secretary-generals-reform-remarks>

⁴ <http://statements.unmeetings.org/media2/7660808/statement-by-afford.pdf>

The argument for practice-based agreements is not to deny the importance of broad-based principles and policies. On the contrary, it is to affirm and bring them to life. It is also an acknowledgement that policies in the real world are intrinsically prone to being inert.⁵ In the field of migration and human mobility, we have a surfeit of broad-based policies, and a dearth of practice-based agreements and frameworks. Practice represents that difficult ‘last mile’. The GCM can be the conduit for that proverbial mile.

In many cases, practice is ahead of policy. Can we ever imagine agreeing a global compact whereby a handful of countries, chosen at random, would receive and welcome millions of refugees, whilst another random handful will build walls to stop the entry of refugees? Yet through practical circumstances, humanitarian considerations, generosity of spirit, and enlightened self-interest, several countries have in practice done much more than policy expects of them. A practice-based GCM need to validate, facilitate and normalise the actuation of good practice.

As SRSR Arbour said, focusing on the highest denominator and not re-inventing the wheel, the GCM need to be an example of practice-based global agreement in this era of SDG implementation. It should easily incorporate and bring to life existing and new ideas in the SDGs,⁶ NYD and the 24 points in Section III of Annexe II,⁷ the 16 recommendations of the Sutherland Report,⁸ the 8 goals of the Crepeau Report,⁹ the civil society 5-year 8-point plan,¹⁰ the 10 recommendations of GFMD CSD 2017,¹¹ and many others. For each impactful idea and practice, there are member states who can credibly champion them.

4. Agreement-Implementation Matrix

There are several challenges that need to be addressed. Some of the countries that lead best practice in one field are less progressive or perhaps even obstructionist in others. Some actions can be implemented immediately, others require a longer timescale. Some practices are politically unpopular or sensitive in different countries. These and other obstacles are common features of migration and other policy discourses. The tacit formula for multilateral agreements has been to attempt to cancel out contested options and settle on a lowest common denominator. In some instances a reasonable compromise emerges, in many instances we end up with compromised agreements with little or no practical impact. With this approach, we have normalised mediocrity and by default entrenched ineffectiveness and inefficiency. It need not be this way.

Whether a member state implements an agreement is not dependent on whether they have signed up or not. There are member states that agree to protocols in New York and fail to ratify them in their capitals. There are those who ratify agreements and blatantly act contrary to them. Even for binding global instruments, non-implementation abounds. On the other hand, no member state is an exemplar implementer on all matters regarding multilateral agreements, and the nirvana of absolute policy coherence is elusive.¹²

5 “In every jurisdiction, there are lists of adopted policies and even assented laws that gather dust on shelves; neglected, unimplemented, ineffectual and inert. There are several reasons why governments and institutions adopt policies and then fail to implement them....The reasons why inert policies arise include the following: Lack of political will; Lack of appropriate resources; Emergence of superseding policies or laws; Change of personnel, with new principals considering it low priority; Significant changes in prevalent internal and external conditions and circumstances.” [http://gkpartners.co.uk/Understanding_and_Influencing_Policy_-_Gibril_Faal_\(2014\).pdf](http://gkpartners.co.uk/Understanding_and_Influencing_Policy_-_Gibril_Faal_(2014).pdf)

6 www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E

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10 <http://gfmcivilsociety.org/wp-content/uploads/2014/01/The-5-year-Action-Plan-EN.pdf>

11 http://madenetwork.org/sites/default/files/5-page%20GFMD%20CSD%20Recommendations%202017_final.pdf

12 “Despite the sophistication and thoroughness of policy making systems, in the real world, one encounters imperfect, uncertain and other inchoate policies. These policies tend to be contentious and subject to challenge and disputation. Inchoate policies take many forms including the following examples: Irreconcilable policies which conflict significantly against other existing policies; Incomplete policies which lack substantive relevant information and or contain significant gaps; Inconsistent policies with provisions which are internally conflicting and contradictory; Informal policies emerging from customary practice without comprehensive written stipulations; Impractical policies which, although theoretically sound, are difficult or impossible to implement.” [http://gkpartners.co.uk/Understanding_and_Influencing_Policy_-_Gibril_Faal_\(2014\).pdf](http://gkpartners.co.uk/Understanding_and_Influencing_Policy_-_Gibril_Faal_(2014).pdf)

The known challenges are not extraordinary, they are in the scale of normalcy in most domains in life. The challenges are also not insurmountable, they need new types of solutions, perhaps with approaches, tools and techniques borrowed from the private sector, civil society, cyber-technology and other disciplines. We therefore need to embrace policy plurality, driven not by how many member states sign up to agreements, but how many are likely to implement the agreement. The new approach of practice-based agreements requires appreciation of Agreement-Implementation dynamics, and some restructuring of the very design of multilateral agreements themselves. These proposed changes to approach are neither radical, nor revolutionary; arguably, they are basic and obvious. They may appear bold and contentious simply because we are stuck with traditions that institutionalised the primacy of superficial appearances (e.g. number of agreement ratifications), rather than substance (i.e. level of implementation).

A simplified way of understanding Agreement-Implementation dynamics is to use an illustrative matrix of scenarios that represent the status of member states that sign multilateral agreements. As regards ‘agreement’, there are no absolutes whereby member states agree or disagree with everything in the documents they sign – it is about degrees of agreement. This is also the case with ‘implementation’. Some member states would even sign up to documents which they generally disagree with. Oddly, signing a multilateral agreement is not totally driven by agreement with the content. Political, financial and other factors have varying degrees of importance in determining signature. However, the simple, but fundamental point of this paper is that signing of a multilateral agreement is not necessarily the determinant of implementation or action. Member states can and often do take actions included in an agreement, even when they are not signatories. Of the different categories of signatories, it is other factors that determine the extent to which they implement the agreements. For a practice-based agreement, the most important factor is the extent to which member states are actual or potential implementers. The degree to which they declare their agreement with the contents is of marginal importance. Action speaks louder than words; if a member state implements an agreement, it either agrees to it, or is not too troubled by the sections it does not agree with.

Figure 1: Agreement-Implementation Matrix

	Full Agreement	Part Agreement	Minimal Agreement
Full Implementation	A1	A1	A1
Part Implementation	B1	B1	B1
Minimal Implementation	C1	C2	C3

If we are interested in implementation, then the very structure of the agreements must imbue such purposefulness. We must not be seeking superficial consensus or watered-down provisions. We need to structure agreements such as to motivate and optimise the actions of the first and second tier implementers (A1 and B1). For each of the three categories of non-implementers (C1, C2 and C3), different strategies are needed. For C1 and C2 countries, it may be that they need motivation, resources, mentorship or other forms of support. For C3 countries, it may be that it is not worthwhile spending time and effort trying to engage them.

5. Practice-based compact, focussed on operational excellence

UN SG António Guterres declared that: “reform will not be measured in words in New York or world capitals. It will be measured through tangible results in the lives of the people we serve – and the trust of those who support our work through their hard-earned resources.”¹³

The GCM issues and processes to some extent reflect the constraints that bedevil multilateral agreements. The benefits to humanity of rapid and effective implementation of a decent GCM are immeasurable. The case cannot be overstated. As such, there is every reason to bring in small but important changes to the very form, format and structure of the compact document, in order to minimise the known traits of entrenched ineffectiveness, and harness the practical benefits of operational excellence. Change means exactly that

13 <https://www.un.org/sg/en/content/sg/speeches/2017-09-18/secretary-generals-reform-remarks>

– doing different things or doing things differently. We cannot be serious and credible about ushering in change for greater effectiveness by doing things in the same way that have failed in the past. Aristotle stated that: “virtues are formed in man by his doing the actions”, from which Will Durant elaborated, stating that: “Excellence is an art won by.....habituation. We do not act rightly because we have virtue or excellence, but we rather have those because we have acted rightly. We are what we repeatedly do. Excellence, then, is not an act but a habit.”¹⁴

The New York Declaration requires that the Global Compact “set out a range of principles, commitments and understandings”. The Modalities Resolution anticipates that the GCM will include “actionable commitments, means of implementation and a framework for the follow-up and review of implementation”.¹⁵ In line with these guidelines and the imperative for greater effectiveness, I make the following proposals on form, format and structure:

1. **Preamble:** That the preamble declares, amongst other things: that the overall purpose of GCM is to facilitate practical action by member states and other stakeholders; that in the era of Agenda 2030 SDG implementation, there is an imperative for operational excellence; that the GCM will introduce new global principles regarding the evolving nature and circumstances of migration.
2. **GCM Vision:** That a simple and clear vision be set, regarding human mobility, migration and development in the 21st century; that the vision encompasses long term aspirations as well as immediate actions; that it reflect the existing consensus that ‘migration as driver of development, should be a choice, not a necessity’.
3. **Reaffirmation of Existing Agreements:** That in line with purposefulness and effectiveness, it is a virtue not to re-debate or needlessly repeat what has already been agreed; that it suffices to use a single paragraph to reaffirm existing principles, agreements and commitments; that the relevant existing conventions, frameworks and other agreements may be referred to by name in an annexe or appendix.
4. **New and Updated Principles:** That where genuinely new principles about facilitating safe, orderly and regular migration have arisen, they should be given great prominence; that existing human rights obligations, SDG commitments and enlightened new aspirations may give rise to new migration-related principles; that a small number of existing principles which require updating, emphasis or prioritisation be re-drafted.
5. **Commit to Omit:** That for the purposes of effectiveness, there need to be a formal and clear acknowledgement that implementation comprises both acts and omissions; that there is distinct identification of things that will not be done, if safe, orderly and regular migration is to be achieved; that the acts to be omitted are likely to be contradictory, counteractive and repugnant to human rights and Agenda 2030; that the acts to be omitted are likely to have a binary characteristic in that they are on or off, done or not done; that this section is likely to comprise a short list of items; that the clarity, transparency, and openness to admit weaknesses and failures is a virtue that will practically help member states improve their implementation and performance.
6. **Actionable Commitments:** That actionable commitments focus on new commitments; that existing commitments without clear actionable points be re-drafted accordingly; that actionable commitments should to be expressed as Goals, Targets and Key Performance Indicators; that for each GCM actionable commitment, examples of ‘Actionable Programme Options’ be given in an annexe or appendix; that the examples of ‘Actionable Programme Options’ be identified as evidence of feasibility and viability, means of encouraging the relevant member states and stakeholders to champion implementation and support other actors, and a tool for expanded and enhanced implementation; that this section be divided into sub-sections (perhaps up to 10), informed by the current six NYD thematic areas and

¹⁴ <http://blogs.umb.edu/quoteunquote/2012/05/08/its-a-much-more-effective-quotation-to-attribute-it-to-aristotle-rather-than-to-will-durant/>

¹⁵ http://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_71_280.pdf

other relevant categorisations; that as an annexe, options be given for supplementary agreements on Standards and Guidelines on specific actionable commitments; that as an annexe, options be given for collateral voluntary and binding agreements on selected actionable commitments.

7. **Principle on Implementation:** That in order to make a conceptual shift by focusing on effective practical actions, not number of signatories, a standalone section or paragraph be created, declaring that optimal implementation and operational excellence are matters of principle; that implementation is not about perfection, but requires purposeful, diligent and ongoing improvement; that the primacy and imperative for effective implementation is a veritable virtue, beneficial to all stakeholders; that member states disavow and reject as a moral peril, the current norm of non-implementation of agreements.
8. **Means of Implementation:** That in order to demonstrate purposefulness, resources, effort and time needed for practical implementation be integrated in the compact; that an estimate and budget be prepared on the funds needed for the first five years of implementation; that member states pledge funds to ensure implementation of the compact; that a Migration and Development Financing Facility (MDFF) be created; that proactive acts are undertaken to facilitate plurality in the types of programmes pursued, and diversity in the entities that undertake implementation; that significant and substantial resources are devoted specifically to migrant, diaspora, civil society organisations and social enterprises.
9. **Review, Monitoring and Improvement:** That a format be set for periodic (e.g. 3-yearly) national reporting on implementation and performance; that review should focus on adherence to principles and omissions, and performance on actionable commitments; that the review mechanism is promoted as a positive tool for ongoing performance improvement, not to name, shame or blame; that openness be promoted for member states to be able to admit performance weaknesses, and seek support and partnerships; that peer support and cross-sectoral collaboration for performance improvement be promoted; that the review mechanism should also be used as a tool by Non-State Actors; that GFMD and HLD Summits be used in part, as forums for review, monitoring and improvement.
10. **Usage of Format:** That the suggestions, recommendations and proposals arising from the GCM consultations and negotiations, be assessed and analysed in relation to the above 9 points, which reflect the thoughts of many practitioners and policymakers from all sectors.



Protecting Migrant Workers: The Case for a Core Rights Approach¹

Martin Ruhs

Executive summary

This paper makes the case for a “core-rights” approach to the global governance of international labour migration. This would involve the creation of a list of core rights of migrant workers that would include fewer rights than the *UN’s International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families* (henceforth ‘CMW’, adopted in 1990). The list of core rights should complement rather than replace the CMW and other existing international legal standards for the protection of migrant workers. I provide three reasons for this new approach: 1) the low level of ratifications of the CMW which can be largely explained by the assessment of many high-income countries that the CMW is “too demanding” in terms of the potential impacts and costs involved for the population of the host country; 2) the tension in many high-income countries’ labour immigration policies between openness to admitting migrant workers and some of the rights granted to migrants after admission; and 3) the variations of labour immigration policies (including migrant rights restrictions) across different national institutional contexts, which make it hard to agree on a long list of common rights for migrant workers. The overall logic of core rights for migrant workers would be similar to that underlying the ILO’s “core labour standards” in the *1998 Declaration on Fundamental Principles and Rights at Work*. The paper concludes with a call for debate about what rights should be included in the shorter list of core rights for migrant workers – an inherently normative question with no one “right” answer. One option might be to focus on identifying core rights for migrant workers legally employed under *temporary* labour migration programmes which constitute the great majority of labour immigration programmes around the world.

Introduction and Background

This paper discusses the role of international legal standards in protecting migrants and their rights in the global labour market. My starting point is that the three international legal instruments specifically designed for the protection of the rights of migrant workers – the UN’s *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families* (henceforth ‘CMW’, adopted in 1990) and the ILO’s *Migration for Employment Convention (1949) and Migrant Workers (Supplementary Provisions) Convention (1975)* – have largely failed, or at least had very limited success, in protecting migrants in practice. This is primarily because the great majority of high-income countries have refused to ratify and implement these conventions. Consequently, while the existing international legal instruments for migrant workers have clearly played an important role in setting out ideals and aspirations, it is, I argue, high time for a new approach that complements (rather than replaces) existing international legal norms and is focused on helping provide more effective protection for migrant workers in practice.

Drawing on my recent and ongoing research on the regulation of international labour migration and the rights of migrant workers², I make the case for a “core-rights” approach to the global governance of international

1 This paper is a marginally revised version of Ruhs, M. (2017a) “Rethinking International Legal Standards for the Protection of Migrant Workers: The Case for a ‘Core Rights’ Approach”, *American Journal of International Law (AJIL) Unbound* 111: 172-176.

2 See Ruhs 2013, 2016, 2017a, 2017b.

labour migration. This would involve the creation of a list of core rights of migrant workers that would include fewer rights than the CMW. The list of core rights should complement rather than replace the existing international legal standards. The paper explains the rationale of this new approach and begins a discussion about what rights should be included among the core rights for migrant workers. The paper aims to stimulate discussion rather than provide answers to the questions raised.

Analysis

The case for core rights for migrant workers

Together with the more general human rights treaties, the existing international legal instruments for protecting migrant workers lay out a comprehensive set of civil, political, economic, social and other rights for migrant workers, including the right to equal protections under labour laws, antidiscrimination laws and family laws. In particular, the CMW articulates a broad set of rights for migrants, including those living and/or working abroad illegally. The CMW includes ninety-three articles (compared to the twenty-three articles of ILO Convention 97 and the twenty-four articles of ILO Convention 143) and extends fundamental human rights to all migrant workers, both regular and irregular, with additional rights being recognized for regular migrant workers and members of their families. Crucially, the CMW is based on the principle of equal treatment of migrant and nationals rather than on a “minimum standards” approach, which characterizes many other international legal instruments.³

The **first reason** for thinking about creating a shorter list of rights for migrant workers is that, in practice, the ratifications of the CMW and ILO conventions on migrant workers by state parties have been disappointing. With 51 ratifications as of July 2017,⁴ the CMW is the least ratified treaty among all major human rights treaties. The few countries that have ratified the CMW are predominantly migrant-sending rather than migrant-receiving countries. They are all low- or middle-income countries with three-quarters having a low or medium human development index. The majority of countries that have ratified the CMW have poor records of protecting human rights (e.g. according to Freedom House, most countries that have ratified the CMW are “partly free” or “not free”). A similarly low number of countries has ratified ILO Convention 97 (49 countries)⁵ and even fewer ILO Convention 143 (23 countries).⁶ Partly because of the low numbers of ratification, it is widely agreed that the effectiveness of global migration norms in protecting migrant workers has been extremely limited. It is important to add that it is by no means clear that these conventions are offering effective protection even in the few countries that have formally ratified them. The relationship between states’ ratification of international rights treaties and their respect for rights in practice is unclear and an important issue for empirical research.⁷

As I have shown elsewhere⁸, there is considerable evidence to suggest that the primary reason why high-income countries have not ratified the CMW, is that they consider the convention “too demanding” in terms of the potential impacts and costs involved for the population of the host country. In some countries, governments have expressed concern that ratifying the CMW could create problems for – and may well be incompatible with – their existing temporary migration programmes, especially for lower-skilled workers.⁹ Arguably, a shorter list of universal core rights would be more acceptable to a larger number of countries including states that admit large numbers of migrant workers.

My **second reason** for advocating a core rights approach that focuses on a shorter list of rights for migrant workers than the CMW stems from the trade-offs (i.e. inverse relationship) between openness and some rights in high-income countries’ labour immigration policies. Examining the characteristics of labour immigration

3 Lonroth (1991).

4 For the ratification status of human rights treaties, including the Migrant Workers Convention, see <http://indicators.ohchr.org/>.

5 See http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312242:NO

6 See http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312288:NO For a recent overview and discussion of the ratifications of ILO instruments on migrant workers, see ILO (2016).

7 See, for example, Simmons (2009).

8 See Ruhs (2013).

9 For example, see the discussion of the obstacles to ratification of the CMW in Canada by Piché, Depatie-Pelletier, and Epale 2009.

policies on over 30 high-income countries, I provided evidence that labour immigration programs in high-income countries can be characterized by trade-offs between openness and some migrant rights, that is, programs that are more open to admitting migrant workers are also more restrictive with regard to specific rights.¹⁰ My study found that the trade-off between openness and rights affects only a few specific rights rather than all rights, and that they most commonly include selected social and economic rights as well as rights relating to residency and family reunion. I showed that trade-offs between openness and migrant rights can be found in policies that target a range of skills, but are generally not present in labour immigration programmes specifically designed for admitting the most highly skilled workers, for whom there is intense international competition.¹¹

The trade-off between openness and some specific migrant rights in high-income countries' labour immigration policies means that insisting on equality of rights for migrant workers can come at the price of more restrictive admission policies and, therefore, discourage the further liberalization of international labour migration. Put differently, rights-based approaches to migration that demand all the rights stipulated in the existing international labour standards run the danger of doing good in one area (i.e. promoting the rights of existing migrants) while doing harm in another (i.e. decreasing opportunities for workers to migrate and legally work in higher-income countries). Given this trade-off between openness and some rights, I argue that there is a strong normative case for tolerating the selective, evidence-based, and temporary restrictions of a few specific rights under new and expanded temporary migration programs (TMPs) that help liberalize international labour migration, especially of lower-skilled workers whose international movement is currently most restricted and who would therefore reap large human development gains from employment abroad.¹²

Third, as I show in some of my recent work¹³, labour immigration policies of high-income countries – including restrictions of the rights of migrant workers – are characterized by significant variations across political regimes (i.e. across democracies and autocracies) and 'varieties of capitalism' (i.e. across liberal market economies with liberal welfare states and coordinated market economies with other types of welfare states). Compared to policies in democracies, labour immigration programs in autocracies are characterized by fewer restrictions on the conditions of employment of migrants, greater openness to labour immigration, more restrictions of migrants' rights, and stronger trade-offs between openness and rights. With regard to variations across types of capitalism, I find that immigration programs in liberal market economies (LMEs) impose fewer limits on the employment conditions of migrants but they place more restrictions on migrants' social rights than policies in coordinated market economies (CMEs). Policy trade-offs between openness and social rights are more likely to occur in LMEs with liberal welfare states than in CMEs with other types of welfare states.

Since the design of national labour immigration policies is correlated with national institutions (particular political systems, labour markets, welfare states, etc.), I argue that any common global policy approach needs to take account, at least to some extent, of institutional variations across countries. A list of universal core rights that allows some room for differential restrictions on migrants' access to the welfare state, for example, has a much better chance of acceptance and implementation than an approach that demands equality or near-equality in social rights in all countries regardless of their institutional differences.

The overall logic of core rights for migrants would not be too dissimilar from that underlying the emphasis placed on the ILO's "core labour standards" in the 1998 Declaration on Fundamental Principles and Rights at Work, which was adopted in the context of dwindling numbers of ratifications of ILO Conventions and general criticism that the ILO's labour standards were not effective enough at protecting workers' rights in a rapidly globalizing economy. The development of a core rights approach to the global governance of international labour migration would need to be informed by a careful assessment of the ILO's experience with its core labour standards.

10 See Ruhs (2013).

11 The precise nature, origins and variations of trade-offs between openness and rights in high-income countries' labour immigration policies is an important issue for future research. Recent papers that identify similar tensions between 'access' and 'rights/conditions' include McKenzie et al (2014); Milanovic (2016); Money et al (2016); Naidu et al (2016); and Weyl (forthcoming).

12 For a more detailed discussion of this argument, including the ethics of restricting labour immigration and the rights of migrant workers, see Ruhs (2013).

13 See Ruhs (2017b).

What are ‘core rights’ for migrant workers?

What rights should be included in a list of core rights for migrant workers? Given the inherently normative character of this question, there is no one “right” answer. I suggest that the list of core rights must emerge through the kind of “public debate and reasoning” that Amartya Sen advocated in the context of the need to value and prioritize competing capabilities and objectives when thinking about how to best advance human development.¹⁴ I am attracted to Sen’s capability approach to development because it is explicitly “people-centred” in the sense that it focuses on agency and choice. It also forces an open discussion of potential tensions and trade-offs between different types of capabilities and rights. As the UNDP’s report on human rights and human development argues:

“Human rights advocates have often asserted the indivisibility and importance of all human rights. This claim makes sense if it is understood as denying that there is a hierarchy of different kinds of rights (economic, civil, cultural, political and social). But it cannot be denied that scarcity of resources and institutional constraints often require us to prioritize concern for securing different rights for the purposes of policy choice. Human development analysis helps us to see these choices in explicit and direct terms.”¹⁵

We know that employment in a higher-income country is usually associated with very large gains in income for migrants and their families. We also know that the vast majority of migrant workers in the world are ‘volunteers’ who have decided to migrate and take up employment abroad, sometimes under severely restricted rights, because they consider this to be their best option among the choices available to them. This also applies to the great majority of migrants employed under severely restricted rights in the Gulf States in the Middle East and in Singapore, for example. While it is clearly critical to discuss the meanings and limits of individual migrants’ ‘agency’ and ‘choice’ in these cases, it is in my view equally important to take seriously the fact that millions of workers around the world have actively decided to migrate and take up employment abroad under what most people would consider highly exploitative conditions.

With this in mind, my starting position is that the list of core rights for migrant workers should protect basic civil, political and labour rights, such as the right to keep your own identity documents, the right to equal access to the protections of the courts and the right to equal employment conditions. Arguably, core rights for migrant workers do not need to include extensive social rights. For example, core rights could exclude, at least for a limited period of time, access to needs-based benefits such as social housing and low-income support. In practice, these welfare benefits are already restricted under most labour immigration programs around the world. A list of core rights for migrant workers could thus contribute to making the global governance of the rights of migrant workers more relevant to the realities of labour immigration policy-making around the world. In this context, one option of operationalising a “core rights” approach would be to focus on the core rights of migrant workers legally employed under *temporary* labour immigration programmes which constitute the great majority of labour immigration programmes in the world.¹⁶

Conclusions and recommendations

A major study of the UN’s International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), led by UNESCO and published in 2009, suggested that there were three options for responding to the low number of ratifications of the CMW: 1) consider the CMW a “lost cause” (i.e. de-facto abandonment); 2) consider alternatives including modifications that “incorporate the concerns of the developed destination countries”; and 3) “continue the efforts to promote the Convention and try to convince as many countries as possible to ratify”.¹⁷ The editors of the study concluded that the third option was best. Eight years later, and 27 years after the adoption of the CMW by the UN’s General Assembly in

¹⁴ Sen (2005).

¹⁵ UNDP (2000).

¹⁶ See Ruhs (2013).

¹⁷ Cholewinski et al. (2009).

1990, I am arguing that we should now consider the second of these options. As explained in this paper, my specific proposal is to consider drawing up a new and shorter list of core rights for migrant workers. This list of core rights could complement (rather than replace) existing international legal instruments for protecting migrant workers. Its explicit aim would be to provide more effective protection to a larger number of migrant workers in the global labour market. One option would be to focus on the core rights of migrant workers legally admitted and employed under temporary labour immigration programmes around the world.

Clearly, different people, organizations and countries will disagree about what rights should be included in a list of universal core rights for migrant workers. My policy recommendation is simply to start a process of consulting and discussing the idea of a list of core rights for migrant workers (including the question of which specific rights should be included) with a wide range of relevant organisations and stakeholders (including, importantly, migrant rights organisations in different regions and countries). Among UN and other global institutions, these consultations and debates need to include a wide range of organisations working on different aspects of international labour migration. This includes organisations that advocate for “more migration” (especially of lower-skilled workers) because of its positive effects on poverty reduction and human development, such as the UNDP and the World Bank, as well as those primarily concerned with protection and equality of rights, such as the OHCHR and the ILO. This is because the protection of migrant workers’ rights needs to be considered in the larger context of the impacts of international labour migration, including the significant economic and other benefits of migration for migrants and their families.

Critically, to be effective, a new list of core rights for migrant workers would need to be accompanied by a clear mechanism for review and monitoring. As I have discussed in more detail elsewhere¹⁸, we urgently need a ‘global migrant rights database’ with indicators of the legal rights that different groups of migrants are accorded by the laws and regulations of different countries. Such a database could lead to a step-change in the analysis and protection of migrants’ rights. The creation of a “migrant rights database” could be a useful tool to review countries’ progress with protecting the core (and other) rights of migrant workers. The general idea of such a database was endorsed by the recent *Peter Sutherland report on migration* (see especially recommendation 12d¹⁹).

The aim of this paper is to encourage debate about (rather than give answers to) what I think are important and urgent questions. It is a debate that is long overdue and that, in my view, should be at the centre of international initiatives such as the UN’s ‘Global Compact for Migration’ that aim to find more effective ways of protecting migrants in practice.

18 See “The case for a global migrant rights database” (2013) <http://priceofrights.com/blog/post.php?s=2013-11-30-the-case-for-a-global-migrant-rights-database#.Wd9ImDskqUk>

19 See www.un.org/en/development/desa/population/migration/events/coordination/15/documents/Report%20of%20SRSG%20on%20Migration%20-%20A.71.728_ADVANCE.pdf

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Transnational Culture of Corruption in Migrant Labour Recruitment¹

Ray Jureidini

Executive summary

Analyses of international labour demand and supply assume that the cost of migration for low-skill, low-income jobs to the GCC states is the cost that prospective migrant workers pay. This assumption can be challenged when the real costs and commissions are not separated from what migrant workers are actually charged by private recruitment agents in countries of origin. In understanding and explaining the cost of migration, or the cost of recruitment, it is critical to factor in the differences between what employers are prepared to pay for and what private recruitment agencies want to charge prospective migrant workers. In what is often referred to as “excessive fees” migrant workers pay far more than the real costs of recruitment. The “extra” charges that workers pay is also used to fund kickback and other fraudulent payments to personnel of employing companies in countries of destination in exchange for the labour supply contracts and should be offset from financial remittances. It will be argued that ignoring these transactions is to ignore what is in practice bribery and/or extortion, rather than “facilitation costs”, “leakage”, “seepage”, “informal payments” and other euphemisms that hide what should be called “corruption”. Throughout the recruitment process that begins at the point of tendering for project contracts, the structural culture of corruption should not be accepted as “the way business is done”, but dealt with as fraudulent, corrupt and criminal behaviour. Remedies, however, are complex and require coordinated legislative changes and policing in countries of origin and destination, replacing the employee-pays model with an employer-only-pays model.

Introduction

Why are prospective low-skill, low-income migrant workers, particularly from Asian and African countries, required to pay private recruitment agencies (PRAs) in labour origin countries for being recruited, while most higher-skilled workers and professionals do not pay? The general assumption by some labour economists is that it is exploitative, but, because low-skilled labour supply far outstrips labour demand, the labour market works in alleviating unemployment in countries of origin and filling jobs in labour destination countries. It is merely a fact of migrant labour recruitment where low-skilled workers must pay, and are willing to go into debt to pay in order to procure employment – and where the labour indebtedness serves employers as a guarantee of labour retention or, indeed, forced labour.

There are a number of myths that have entered into the lexicon around migrant labour recruitment. The first is that the “cost of migration” is the amount of money that workers pay recruitment agencies - the cost to the worker. In reality, it is not the actual cost of migration, but rather the CHARGE to workers for obtaining a work contract that includes whatever employers are unwilling to pay plus the cost of corrupt transactions between recruitment agencies and employer representatives – and whatever excesses recruitment agencies care to charge workers for their own profit.

¹ I am grateful to Manolo Abella for his critical comments on an earlier draft and participants of the IOM Migration Research Leaders' Syndicate *Ideas to inform international cooperation on safe, orderly and regular migration* Geneva, September 28-29, 2017.

The second myth is the widespread acceptance that migrant workers pay for their work visas, even though what they pay (anything from US\$700-5,000) is far in excess of the actual cost (around US\$80 in the GCC). In reality, the employer, prior to it being issued, pays for the work visa. Thus, workers are not paying for a work visa, they are paying for a job and, unwittingly, for corrupt transactions between recruitment intermediaries. Private recruitment agencies call it a fee for the work visa to make it seem legitimate. In reality, agents are selling or auctioning “the visa” whereas they have no right to do so. Employers or sponsors who sell visas to individuals or agencies for more than their actual cost are also acting fraudulently.

Another myth is that the exploitation and corruption in the recruitment process is located in countries of origin and perpetrated by private recruitment agencies. In reality, the recruitment exploitation begins in the destination countries where companies tendering for a contract decide not to pay recruitment costs in order that their tender can be more price-competitive. Thus, the exploitation and corruption is systemic between both destination and origin countries with all stakeholders involved directly or indirectly, wittingly or unwittingly.

Background

Despite local labour laws in Qatar, the Kingdom of Saudi Arabia (KSA) and the United Arab Emirates (UAE) that prohibit charging migrant workers for any recruitment costs, the laws have been interpreted as against deducting money from wages in the destination country. Thus, the money is taken from workers prior to departure in their countries of origin. In 2016 the UAE made it clear that the prohibition includes accepting or demanding payment from workers “whether before or after recruitment” (Article 18 of UAE Labour Law No. 8, 1980). In February 2017 in their report to the ILO, Qatar made the same announcement.² In International law, the ILO Convention 181 (Article 7) stipulates clearly that workers should not pay recruitment fees or costs, anywhere.

Despite the principle of not charging workers for their recruitment, the practice continues and has done so for decades, but is largely restricted to low-skilled, low-income migrant workers from Asia, and increasingly from Africa. Further, despite the laws in the 3 GCC countries mentioned, the Asian origin countries retain contradictory regulations that allow private recruitment agencies to charge workers, albeit with varying caps (from one to three months’ salary). The expectation of paying something and the lack of policing has led to workers paying far more than what is allowed.

The importance of recruitment procedures and costs has been more recently given prominence by the ILO, the IOM and the Abu Dhabi Dialogue. Recruitment is part of the 2018 Global Compact on Migration to support safe, orderly and regular migration, and the reduction of recruitment costs is one of the UN’s Sustainable Development Goals (although it is not clear whether the reduction is for employers or employees, or both). Concerns over migrant labour recruitment have prompted considerable international research, discussion and debate in the last year or two. It is important, therefore, to dispel the myths and misunderstandings within the recruitment industry, particularly the critical role of non-transparent and fraudulent financial transactions.

Analysis

The World Bank-ILO (KNOMAD) study on the “cost of migration” to low-skilled migrant labour has sought to measure “worker-paid costs” of different migration corridors, including Asian workers to the GCC.³ With the objective of finding ways to reduce these costs, the study fails to adequately explain why there are wide cost

2 International Labour Organization (ILO). (2017) *Complaint concerning non-observance by Qatar of the Forced Labour Convention*, International Labour Office Governing Body, 329th Session, Geneva, 9–24 March 2017.

3 Abella, Manolo (2017). “The High Cost of Migrating for work to the Gulf”. Draft paper presented at Workshop 11, *Migration Policies in the Gulf: Continuity and Change*, Gulf Research Meeting, Gulf Research Center, Cambridge University, 2-3 August 2017; Martin, Philip (2016). “Bilateral and Multilateral Government Collaboration to Ensure Lawful, Fair, and Transparent Labor Recruitment Practices”. Background paper on Labour Recruitment, Prepared for the Senior Officials’ Meeting convened by the Abu Dhabi Dialogue May 11-12, 2016 in Dubai, UAE.

differences to workers according to nationality, destination, mode of recruitment, wage levels, qualifications, age and experience working abroad.

The idea of measuring “migration costs”, or “recruitment costs”, based upon interviews asking migrant workers (in countries of destination and returnees in countries of origin) what they paid to recruitment agencies will not reveal the real cost of recruitment. It only reveals what workers are charged. Further, what they pay are not really bribes, but exaction, as they are demanded by the agencies, rather than offered by the workers. Workers generally do not know what the payment is for and are not given itemized receipts. They usually are not given receipts at all. They may be told it is for emigration clearance, the work visa, the air ticket, for reimbursing the employer, agency fees, or not told anything. Indeed, workers are generally too polite, shy and afraid to even ask what it is for, with the sole understanding that if they do not pay, they do not get the job. Even if workers know they are paying far more than their government’s regulatory ceiling on what agencies can charge, they say nothing. Further, workers do not ask their employers post-arrival what they had paid to recruit them.

To understand the real costs of recruitment, we need to distinguish between actual costs in the country of origin and country of destination and between variable and fixed costs. Just as an example, Table 1 provides an estimation of actual costs between Bangladesh and Qatar.

Table 1. Example Costs for Low-skilled Worker Recruitment per person: Bangladesh-Qatar

Bangladesh	US\$	Qatar	US\$
Variable Costs		Variable Costs	
Internal Travel, Food, Accommodation	50-100	Airfare (one way)	360-450
Subagent Commission	75-100	Agency commission	250-450
Total (average)	163	Total (average)	755
Fixed Costs		Fixed Costs	
Medical Test	70	Work Visa	82
Orientation	25	Visa attestations	150
Welfare Fund	10	Residency permit	320
Life Insurance	13	Medical Test	30
Administration	25	Health Insurance Card	30
Govt. training	85		
Skills Test	35		
Emigration stamping	36		
Advertising	10		
Sub-total	309	Sub-total	612
Combined total	472	Combined Total	1,367
Overall Total	US\$1839		

Source: placement/recruitment agencies and employers in Qatar.⁴

As the KNOMAD study has acknowledged, Bangladeshi workers going to Qatar can pay between US\$3,136 and US\$3,650, while Sri Lankan workers may “only” pay US\$1,092.⁵ Thus, the difference between the costs of US\$1839 and charges of US\$3,393 (being an average paid by Bangladeshi workers) is US\$1,554. The

⁴ Jureidini, Ray. (2016) *Ways Forward in Recruitment of ‘Low-skilled’ Migrant Workers in Asia-Arab States Corridor*, International Labor Organization White Paper, International Labor Organization Regional Office for Arab States, Beirut.

⁵ Abella, Manolo, Martin, Philip & Yi, Soonhwa (2016 draft) *Why are Migration Costs High for Low-Skilled Workers? Evidence from Migrant Surveys*. World Bank KNOMAD Program: 5.

difference would be even greater if the employer is paying the costs at destination (US\$612), making the difference US\$2,166. This excess may be accounted for, or seen as an indicator of funds for kickback payments to employers and their agents in destination countries, to officials in origin and destination countries, and to the recruitment agency as extra profit.⁶ While the fixed costs at origin as specified in the above table should be fixed, quotations by recruitment agencies to employers can vary the amounts for each item. However, when the workers are paying for these, the employer will have no interest in challenging them.

The KNOMAD survey tried to correlate what workers paid with nationality, destination, mode of recruitment, wage levels, qualifications, age and experience working abroad. They were unable to adequately explain the differences in what workers pay from the same agency, but different employers at destination; or differences between individual workers doing the same job in the same firm, but through different agencies or coming from different countries.

There are 5 factors, or variables, that are not accounted for in the surveys on recruitment/migration costs that are more likely to explain the worker payment discrepancies.

1. *The propensity for employers to pay all, part or none of the recruitment costs.* Employing companies at destination vary in what they are prepared to pay for the recruitment of migrant workers. Some may pay for everything as listed in the above Table 1. Other employers may not pay the costs borne in the country of origin, but do pay the costs at destination. They may or may not pay for agency fees and the airfare, etc. What they do or do not pay for can be reflected in the differences in the charges to migrant workers. The KNOMAD study did not survey employers for this data.
2. *The propensity of private recruitment agencies to charge workers* that may, or may not, be dependent on what the employer is willing to pay. Recruitment agencies in countries of origin may settle with employers for different levels of commission, pay what the employer refuses to pay and charge workers accordingly. Agencies may still charge workers for the costs that employers do pay for. This is because there is a culture of workers expecting to pay without questioning what they are charged, the lack of transparency, and the lack of government oversight and regulation of recruitment agencies. This is why there should be a shift from the employee-pays model to an employer-**only**-pays model (rather than the current proposition of an employer-pays model). The KNOMAD study did not survey private recruitment agencies for this data.
3. *The presence and level of kickback payments/bribes and payment of expenses* to representatives of employer companies at destination. It is well known in the recruitment industry that recruitment agencies compete with one another by offering bribes to representatives of employers in order to procure labour supply contracts. These kickback bribes can range from US\$400-1,500 per worker. In addition to the kickback payments, recruitment agencies are often required to fund the trips of employer representatives to the origin countries by paying for flight upgrades, or even airfares, 5 star hotels, food and sometimes 'entertainment'. The trips are ostensibly for skills testing and selection of recruits. Employer personnel often ask agents for the hotel and food receipts so they can claim them from their companies on return, even though they had not paid. The funds for the kickback payments and employer travel expenses are built into the charges that agencies foist upon the low-skilled migrant workers as part of the "recruitment costs". The extent of the kickback and other payments to personnel of the employing company will also be factors in the differences that migrant workers pay.
4. *Worker payments used to pay various local officials in origin and destination countries* to process paperwork more quickly or to prevent deliberate delays. There are kickback payments to "a range of government officials in both origin and destination countries to fraudulently approve a host of applications or facilitate discretionary decisions including, but not limited to, foreign worker quotas,

⁶ Verité International (2016) *An Exploratory Study on the Role of Corruption in International Migration*: 2. www.verite.org/wp-content/uploads/2016/11/Verite-Report-Intl-Labour-Recruitment.pdf

demand set attestations, visas, medical certificates, and work permits.”⁷ There is little or no oversight of such fraudulent practices by origin or destination country governments. The KNOMAD study did ask workers if they had made “informal” payments, but there did not appear to be significant responses to this question. In only “some cases”, informal payments were reported, “to expedite the deployment process”.⁸ These were more likely to have been to personnel of the recruitment agencies. Recruitment agencies themselves may be more likely to be involved in bribing officials and charging workers without explaining it to them.

5. Indirect corrupt payments can also be made by colluding with employers to illegally *deduct recruitment fees and costs from workers’ wages* over a period of time that can last for over a year or for the term of the employment contract. The current Wage Protection Systems in the GCC are not yet sophisticated enough to detect such payments.⁹

Conclusion

It has been demonstrated here that there are discrepancies between the actual costs of recruitment and what workers are charged. What workers are charged is not cost of migration/recruitment but includes variations in what employers pay, what recruiters charge and fraudulent charges to fund corrupt practices of bribery and exaction. Thus the nomenclature that refers to “recruitment fees” that workers pay should be changed to “recruitment charges” that workers are required to pay.

It is therefore incumbent upon researchers of migrant labour recruitment to not only interview migrant workers, but also private recruitment agencies, sub-agent brokers and employers to better determine disbursements of the charges and explain why there are such differences between what workers pay. Far more robust inquiries into the recruitment industry and all the “merchants of migration” are required with the objective to not just reduce charges to workers, but to eliminate them altogether and make those involved in corrupt practices accountable. Reduction of recruitment costs should be seen as cost reductions for employers.

At the same time, incentives for ethical compliance in recruitment should be encouraged. In the example of QDVC in Qatar (a subsidiary of the Vinci corporation in France), under threat of reputational risk, the company now pays all recruitment costs and recruitment agencies are given higher commissions with promises of economies of scale under the condition that workers are not charged anything. Others have suggested country of origin government incentives for ethical recruitment agencies including the streamlining of license extensions, tax incentives, fast-track contract processing, reduced supervision, quota preferences for bilateral agreements, lower bank deposits and publicly listed recommendations.¹⁰ ‘Carrot’ incentives, however, need to be complemented by the ‘stick’ approach using prosecutions or credible threats of reputational risk for unethical recruitment, given the seductive scale of funds for fraudulent practices and excessive profit-taking.

The widespread practice of kickback bribes results in billions of dollars annually exiting the countries of origin to individuals and companies in destination countries. These are not factored in to the aggregate net remittances that migrant workers send home. In the case of Bangladesh alone, it may be estimated that around half a billion dollars are leaving the country annually as kickback bribes, paid for by low-skilled, low-income migrant workers.

7 Verité International (2016) *An Exploratory Study on the Role of Corruption in International Migration: 2*. www.verite.org/wp-content/uploads/2016/11/Verite-Report-Intl-Labour-Recruitment.pdf

8 Abella, Manolo, Martin, Philip & Yi, Soonhwa (2016 draft) *Why are Migration Costs High for Low-Skilled Workers? Evidence from Migrant Surveys*. World Bank KNOMAD Program: 18.

9 Jureidini, Ray (2017) “Wage Protection Policies and Programs in Various Gulf Countries” Draft paper presented at Workshop 11, *Migration Policies in the Gulf: Continuity and Change*, Gulf Research Meeting, Gulf Research Center, Cambridge University, 2-3 August 2017.

10 Farbenblum, Bassina and Nolan, Justine (2017) ‘The Business of Migrant Worker Recruitment: Who has the Responsibility and Leverage to Protect Rights?’ 52 (1) *Texas International Law Journal* (2017).

Recommendations (not in order of priority)

- Repeal laws and regulations in origin countries that allow recruitment agencies to charge migrant workers and criminalize charges to workers.
- To show commitment to eradicating corruption, both origin and destination countries should ratify relevant international conventions and activate existing penal codes towards the recruitment industry.
- Establish accredited, proven ethical recruitment agencies that do not charge workers as exclusive migrant labour suppliers to destination countries.
- Establish serious, binding bilateral and multi-lateral agreements specifically banning the employee-pays model and introducing an employer-only-pays model.
- Mandatory reimbursement of charges to workers by employers who could in turn claim reimbursement from recruitment agencies involved.
- Increased electronic/internet government-to-government recruitment.
- Project tenders should include a separate detailed and transparent 'Labour Recruitment Cost Analysis' within bidding proposals that detail variable and fixed costs of recruitment, including labour costs of subcontractors. Lowest bids should be more carefully scrutinized to ascertain whether cost reductions are at the expense of migrant workers being recruited.
- Calculate and establish international standards for reasonable commissions for agencies involved in low-skilled migrant labour recruitment.
- Legislative reform is insufficient. The commercial sector must be targeted for compliance with ethical-legal standards and prosecuted for corrupt practices. For example, employing companies need oversight of personnel in human resources, procurement and facilities management departments to identify fraudulent transactions.



Securing and Insuring Livelihoods: Migrant Workers and Protection Gaps

Jenna Hennebry

Executive summary

Around the globe, weak or declining public social protection and insurance systems¹ contribute to migration. Many migrants leave developing countries in response to gaps in social security and protection systems (lack of unemployment and medical insurance, pensions, parental and disability benefits, childcare, etc.), yet their labour offsets such gaps in developed countries (e.g. insufficient parental leaves and childcare systems leave families with limited affordable options).

For many, migration is a resilience strategy, with many individuals migrating in search of more secure livelihoods. However, upon arrival in countries of destination, migrant workers continue to face poor levels of social protection and access to social security systems (e.g. unemployment insurance, parental benefits), as well as poor access to medical insurance and compensation systems (e.g. disability, long term care, survivor's benefits).² This cycle has enduring consequences for migrant workers and their families.

Offloading social protection

Social protections can be understood as an “institutionalized response to social and economic problems”³ which promote equality of opportunity in employment, education and well-being by improving welfare and decreasing dis-welfare among the disadvantaged.⁴ In the absence of social protections, many have chosen to migrate for work in order to provide for their family's welfare. Many developing states have begun to rely on migrant remittances to offset citizen's social protection gaps, in effect offloading state social protection responsibilities onto migrants.

By the 1990s a shift towards neoliberal capitalist governance caused the erosion of welfare states internationally, and the global economic crisis of 2007-2008 has resulted in the continuous global decline of social protection systems. Since 2010, social protection budgets worldwide have been cut despite mounting and consistent need for public assistance⁵. Such cuts adversely impact women, who devote on average 2.5 more time on unpaid care and domestic work than men, and this negatively impacts women's ability to dedicate their time to education and paid labour outside of the home.⁶

1 Devereux, S., & Sabates-Wheeler, R. (2004). Transformative Social Protection (No. Working Paper 232). Brighton. Retrieved from <https://opendocs.ids.ac.uk/opendocs/bitstream/handle/123456789/4071/Wp232.pdf?sequence=1>

2 Hennebry, J. (2014). Falling through the cracks? Migrant workers and the Global Social Protection Floor. *Global Social Policy*, 14(3), 369-388.

3 Beland, D. 2010. What is Social Policy? Understanding the Welfare State. Malden: Polity Press.

4 Aspalter, C. 2008. “The Welfare State in Cross-Cultural Perspective.” *International Social Work* 51 (6): 777–789; Esping-Andersen, G. 1990. *The Three Worlds of Welfare Capitalism*. Cambridge: Polity Press; Esping-Andersen, G. 1999. *Social Foundations of Postindustrial Economies*. Oxford: Oxford University Press. Esping-Andersen 1990, 1999).

5 Ortiz, I., Cummins, M., Capaldo, J., & Karunanethy, K. (2015). *The Decade of Adjustment: A Review of Austerity Trends 2010-2020 in 187 Countries* (No. 53). Geneva.

6 Women, U. N. (2015). *Progress of the World's Women 2015-2016: Transforming Economies, Realizing Rights* (No. id: 7688).

Shrinking welfare states and demographic change have created care gaps,⁷ declining funding for pensions, employment and disability insurance, with privatization and shifting policies affecting eligibility for benefits and creating hierarchies of access. Employers and states in high-income countries have reacted to this changing landscape by seeking workers who will not, or cannot claim benefits, leading to a rise in labour contractualization and temporalization.

Further, with raising wages and status for workers in the care sector (both private and public) not on the agenda of most governments or employers, migrant workers become attractive alternatives.⁸ Overall, with diminished full-time, permanent positions with benefits, across a range of sectors, the ideal worker has been recast as someone who is temporary, replaceable, least expensive and the least able to claim rights and social protections. In this economic model, migrant workers are ideal workers, whose precarity and temporality is structured into contemporary versions of guest worker programs.⁹

The cycle of poor social protection is further compounded by global care chains¹⁰ where the burden of care falls squarely on women in the Global South. “As we go down the chain, the value ascribed to the labour decreases and often becomes unpaid at the end of the chain.”¹¹ Women migrant workers (WMWs) fill essential care jobs in the global north which provide an alternative to state sponsored social protection, and increases the size and availability of the work force in countries of destination. For example, in Europe, WMWs are highly concentrated in very few occupations: 42% of them working in three sectors alone: the care/domestic sector in private households (residential care and home care), care in hospitals, and cleaning activities.¹² In this respect, migrant labour has offset the care gap in popular migrant destination countries.¹³

Additionally, migrants contribute to the tax base that finances social insurance systems in high-income countries. Indeed, migrants in OECD countries contribute more in taxes and social contributions than they receive in individual benefits.¹⁴ Many destination countries turn to immigration to “bring in care providers but also to replenish their labor forces and keep revenues flowing into pay-as-you-go pension funds.”¹⁵

Falling through the cracks

Insecure livelihoods for migrant workers often start in countries of origin. In the case of Nepal, a weak social protection system provides a minimal old age/survivor allowance, while pensions are only available to civil servants, government employees and formal sector employees able to voluntarily contribute. Few initiatives in countries of origin are directly aimed at improving protections for migrants, especially families of undocumented migrants abroad. Sometimes such initiatives fail in enabling national portability, internal mobility and a guaranteed access to healthcare. In some cases, Conditional Cash Transfer (CCT) programs have been initiated, such as Brazil’s *Bolsa Familia* or Mexico’s *Oportunidades*, which typically exclude those

7 Daly, M., 2011. What adult worker model? a critical look at recent social policy reform in Europe from a gender and family perspective. *Social Politics* 18 (1), pp. 1-23.

8 Martin, P. A need for migrant labour? UK-US Comparisons. In Ruhs, M. and B. Anderson, eds.(2010). *Who needs migrant workers? Labour Shortages, Immigration, and Public Policy*. Oxford University Press. 295-321.

9 McLaughlin, J., & Hennebry, J. (2013). Pathways to precarity: structural vulnerabilities and lived consequences for migrant farmworkers in Canada. *Producing and negotiating non-citizenship: precarious legal status in Canada*, 175-195.

10 Hochschild, A., 2003. *The managed heart: commercialization of human feeling*. 20th anniversary ed. Berkeley: University of California Press.

11 Yeates, N. (2005) Global care chains, a critical introduction, *Global Migration Perspectives*, No. 44.

12 Farris, S. R. (2015). Migrants’ regular army of labour: Gender dimensions of the impact of the global economic crisis on migrant labor in Western Europe. *Sociological Review*, 63(1), 121–143. <http://doi.org/10.1111/1467-954X.12185>

13 The Migration Observatory. (2011). *Social Care for Older People and Demand for Migrant Workers*. Oxford: University of Oxford. Retrieved from www.migrationobservatory.ox.ac.uk/resources/primers/social-care-for-older-people-and-demand-for-migrant-workers/; Buchan, J., & Sochalski, J. (2004). The migration of nurses: trends and policies. *Bulletin of the World Health Organization*, 82(8), 587-594.

14 Liebig, T., & Mo, J. (2013). The fiscal impact of immigration in OECD countries. *International Migration Outlook 2013*, 125-189.

15 Badasu, D. & Michel, S. (2015). On a collision course: Millennium development goals and mothers’ migration. In Zahra Meghani (Ed.), *Women Migrant Workers: Ethical, Political and Legal Problems*. New York: Routledge.

households with income sources from migrant workers abroad. This lack of access to social protections, coupled with gender discrimination and inequality are major drivers of migration for women.

In countries of destination, migrant workers are often excluded from social protection systems designed for citizens, and migrant workers are especially vulnerable to economic shocks, unemployment and poverty, as “they often do not enjoy the same rights and protection as nationals”.¹⁶

Due to residency requirements or migration status, migrant workers often face barriers in accessing unemployment insurance, parental and sick leaves, as well as disability insurance, pensions and other benefits, even though they may pay into these systems.

At the same time they risk losing entitlement to any existent social security benefits in their countries of origin due to extended periods living abroad.¹⁷ Further, even if eligibility requirements are met, migrant workers will likely face constraints in the portability of these rights across borders (ie. accessing long-term disability when returned to countries of origin), which is particularly problematic for seasonal or temporary migrant workers”.¹⁸ In Canada, migrant workers under the Seasonal Agricultural Worker Program (SAWP) cannot claim unemployment or sick leave benefits for which they pay premiums because they must leave the country when no longer working.¹⁹

Although most major countries of destination have laws in place establishing minimum wages, hours worked and workplace conditions, many migrant workers continue to be contracted and employed informally or only partially covered by such laws, particularly those in the care and agriculture sectors.²⁰ In some cases states have provided access to alternative voluntary social security schemes (sometimes private, for profit insurance systems) that enable all workers (including undocumented workers) to “opt in” for coverage. For example, government of Thailand, implemented voluntary health insurance scheme for documented and undocumented migrants, however for the system to protect migrant workers rights it must be “firewalled” to enable all workers to access unemployment insurance and pension schemes without fear of reprisals from employers or of deportation.

The dominant framing of labour migration as “an informal form of social protection for households left behind”,²¹ is particularly problematic. Dependency on remittances does not mean greater social security, but rather heightened precarity and vulnerability to periods of insecurity since migrant workers’ jobs are not secure, they face barriers accessing essential services and social protections, and they can be denied pay, fired or exploited without much recourse.²² This heightens dependency on remittances and increases the likelihood that migrant families will experience periods of poverty or insecurity when transfers fluctuate or halt from family members working abroad.

Dependency of remittances as a form of informal social protection, further entrenches migrant precarity into the employment relationship intrinsic to contemporary versions of guest workers programs or managed migration programs. For example, many managed labour migration programs tie migrant workers’ residency permits to employers whose written consent is required for workers to change employers, access medical services or insurance, etc. In Gulf countries, such as Saudi Arabia, visa sponsors (employers) provide health

16 Awad, I (2009) *The Global Economic Crisis and Migrant Workers: Impact and Response*. Geneva: International Labour Organization. Available at: www.ilo.org/wcmsp5/groups/public/-ed_dialogue/-actrav/documents/publication/wcms_112967.pdf (accessed 10 June 2017).

17 Hennebry, J. (2014).

18 Holzmann, et al. 2005: 50.

19 In 2012, the federal government eliminated access to paternity, maternity and compassionate benefits for temporary workers not present in the country (the maximum stay in Canada under the SAWP is 8 months) and without a valid social insurance number.

20 Hennebry, J., Grass, W., & McLaughlin, J. (2016). *Women migrant workers’ journey through the margins: Labour, migration and trafficking*. United Nations Entity for Gender Equality and the Empowerment of Women (UN Women). Retrieved from www.unwomen.org/en/digital-library/publications/2017/2/women-migrant-workers-journey-through-the-margins.

21 Bachelet M (2011) *Social Protection Floor for a Fair and Inclusive Globalisation*. Geneva: International Labour Organization. Available at: www.ilo.org/public/english/protoc-tion/spfag/download/background/bachrep_en.pdf (accessed 18 June 2013).

22 Sabates-Wheeler, R., & Devereux, S. (2007). Social protection for transformation. *IDS bulletin*, 38(3), 23-28.

insurance for recruited migrant workers. Employers abuse this power to confiscate passports, withhold wages and force migrants to perform unsafe work on exploitative terms.²³ In many cases, employers “simply withdraw the visa and the work permit if the employee falls sick so the employee then must return to her home country.

Bilateral labour agreements (BLAs) or memoranda of understanding (MOUs), like the Canadian SAWP, typically set parameters for managing the movement of workers in given sectors between specific countries, however they tend to neglect elements of social protection and rights. There are more than 317 BLAs in force²⁴ and rarely do these discuss social protection measures. In other cases, Bilateral agreements (BLAs) are implemented to enable pension sharing or portability of social security and health insurance schemes across borders. However, rarely do BLAs integrate both labour migration with social security. And when they do, these tend to favour high-skilled labour migration, and limit low-skilled workers with lack of access to permanent residence status that would enable them full access to protection schemes. Moreover, there are more North-South than South-South agreements, with the majority among high-income countries,²⁵ such as between the United States and Canada, have social security arrangements with each other to facilitate the portability of pensions, and ensure contributions to their respective tax base.

Yet, bilateral agreements provide one potential policy instrument to enhance rights frameworks and address social security gaps for migrant workers.²⁶ This may be particularly important for women migrant workers who are concentrated in domestic and low paid occupations, which are plagued by labour and social protection gaps with little recourse, complaint or enforcement mechanisms.²⁷ The 2013 Saudi Arabia-Philippines BLA outlines parameters for paid leave, and provides some reference to social protections.²⁸ However, MOUs and BLAs cannot by themselves “secure and insure” migrant livelihoods. Even in cases where countries engage in shared responsibility through MOUs and BLAs, these are unenforceable in the absence of national legislation aligned with international human rights law (IHRL) ensuring migrant rights to social security and insurance, and resources dedicated to monitoring and enforcing multi or bilateral agreements.²⁹

Overall, the path forward will necessitate the recognition that economic migration happens “less because of personal motivation of the person that migrates and more because of the asymmetries among countries.”³⁰ Labour migration, particularly circular or temporary migration, is not designed to enable employers to secure a temporary, flexible workforce in place of permanent workers, nor is it a long term solution to persistent social protection gaps.

23 Human Rights Watch. (2015). World Report 2015: Saudi Arabia.

24 Hennebry, J. L., Grass, W., Williams, G., Williams, K., Chikanda, A., Walton-Roberts, M., & Crush, J. (2015). *Bilateral Labour Migration Agreements, Development and Trade: Complexity, Contradiction and Coherence*. Waterloo; See: ILO (2015); Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A Review www.ilo.org/global/topics/labour-migration/publications/WCMS_385582/lang-en/index.htm

25 ILO (2015). Bilateral agreements and memoranda of understanding on migration of low skilled workers: a review/ Report prepared for the Labour Migration Branch / Piyasiri Wickramasekara; International Labour Office – Geneva: ILO, 2015, 64 p.

26 ILO, 2015.

27 International Labour Office (ILO), & Labour Migration Branch. (2016a). *Gender sensitivity in labour migration-related agreements and MOUs*. Geneva: ILO.

28 ILO, 2016a.

29 Hennebry, et. al, 2016; ILO, 2016.

30 Ceriani-Cernadas, P. (2016). Language as a migration policy tool: Critical remarks on the concept of “economic migrant” and how it leads to human rights violations. *The Sur File on Migration and Human Rights*, 13(23), 97–111. Retrieved from <http://sur.conectas.org/wp-content/uploads/2016/09/8-sur-23-ingles-pablo-ceriani-cernadas.pdf>

Recommendations: Closing the social protection gap for migrant workers

The Global Compact on Migration must ensure the following with respect to migrant workers regardless of categorization or status:

1. Ratify and enforce international conventions and treaties relevant to social protection. These instruments³¹ that make up international human rights law (IHRL), must be incorporated into law and policy in countries of destination and origin.³²
 - 1.1. Enhance collaborative efforts among Committees and Treaty Bodies to enable communication and checks and balances using conventions and other instruments.³³
2. Enhance data collection to provide information on contributions of migrant workers to pension and employment insurance systems, as well as establish accurate and consistent definitions and measurement approaches. Such data can enhance efforts at challenging negative perceptions about migrants, and strengthen evidence-based social policy reform.³⁴
3. The SDGs offer valuable insight for how policy makers might improve social protections in countries of destination while recognizing the impacts of gendered migration streams and sectors:
 - 3.1. Following SDG 1.3., establish minimum social protection floors that include migrant populations (across both low and high-income countries), along with monitoring and enforcement.³⁵
 - 3.2. Following SDG 5.4,³⁶ mainstream practices of recognizing the value of unpaid care into labour, health insurance, pension, parental benefits and unemployment policies across countries of origin, transit and destination.³⁷
 - 3.3. Recognize the contributions of migrant labour of the global south in filling the social protection gaps, and ensure that their labour rights are protected, promote safe and secure working environments for all workers, including migrant workers, in particular women migrants (goal 8.8³⁸).

31 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), as further elaborated in General Recommendations No. 26 (2008) on women migrant workers; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), as further elaborated in General Comments No. 1 (2011) on Migrant Domestic Workers and No. 2 (2013) on the rights of migrant workers in an irregular situation; International Convention on the Elimination of all Forms of Racial Discrimination (ICERD) (1966); ILO's international labour standards including conventions of general application as well as those that contain specific provisions on migrant workers including the Migration for Employment Convention, 1949 (No. 97), the Migrant Workers Convention, 1975 (No. 143) and, more recently, the ILO Convention concerning Decent Work for Domestic Workers, 2011 (No. 189) and the attending Domestic Workers Recommendation, 2011 (No. 201); The international Covenant on Economic, Social, and Cultural Rights (ICESCR).

32 See also recommendation 5.6 from: UN Women. (2016). *Recommendations for addressing women's human rights in the global compact for safe, orderly and regular migration - Outcome of expert meeting in Geneva*. Geneva. www.unwomen.org/en/digital-library/publications/2017/3/addressing-womens-rights-in-global-compact-for-migration

33 For example, in 2016 UN Women facilitated a collaborative effort between CEDAW and ICRMW committees, to strengthen gender-responsiveness within the LOIPR of the ICRMW, and similarly to enhance language pertaining to women migrant workers in CEDAW with references to ICRMW. Such efforts will strengthen accountabilities to existing frameworks, using those more widely ratified instruments (such as CEDAW or ICERD) to address issues pertaining to migrant workers.

34 See Rec. 1.5. in UN Women. (2016). *Recommendations for addressing women's human rights in the global compact for safe, orderly and regular migration - Outcome of expert meeting in Geneva*. Geneva.

35 Implement nationally appropriate social protection systems and measures for all, including floors, and by 2030 achieve substantial coverage of the poor and the vulnerable.

36 Recognize and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies, and the promotion of shared responsibility within the household and the family as nationally appropriate.

37 See for more detail recommendation 5.13: UN Women. (2016). *Recommendations for addressing women's human rights in the global compact for safe, orderly and regular migration - Outcome of expert meeting in Geneva*. Geneva.

38 Protect labour rights and promote safe and secure working environments of all workers, including migrant workers, particularly women migrants, and those in precarious employment.

- 3.4. Recognize the role that migrant remittances play in helping families cope with insufficient social security in countries of origin, and reduce transaction costs of migrant remittances to less than 3 per cent (goal 10c³⁹).
4. Establish bilateral labour migration agreements (BLAs) consistent with international labour and human rights law that clearly identify and set the standard of access to social protections as part the agreement (i.e. embed social security clauses into labour migration agreements). Include enforcement and monitoring mechanisms, and provide sufficient information to migrant workers about their rights to standards of social protection, as well as how to access these protections.⁴⁰
 - 4.1. Create mechanisms to enhance the commensurability of existing bilateral social security agreements and labour migration agreements to ensure migrant workers are covered under these systems.
 - 4.2. Establish bilateral social security agreements between countries of origin and destination (that directly reference BLAs where relevant) to enhance access for migrant workers.
5. Enhance social protection portability schemes that ensure that social protections into which migrants have paid in destination countries, can be accessed and claimed in origin countries by workers and their families. In particular, create policy instruments and programs that specifically address this population and ensure eligibility (e.g. into pension plan, parental benefits, or employment insurance systems) in countries of destination, and policies and programs to support migrant workers in countries of origin to access systems and disbursements from abroad regardless of migration status;⁴¹ and this should be the case for all benefits. This requires an incredible amount of cooperation between states to make benefits portable.
 - 5.1. Establish or involve regional organizations, intergovernmental meetings and consular services to organize and administer this type of transnational transfer of national benefits to migrant workers, so that the challenges of navigating claim systems or receiving transfers from abroad are mitigated.
6. Facilitate access to permanent residency and family reunification for migrant workers in low-skill employment. This addresses challenges of demographic change (e.g. stagnated birthrates and aging populations), increases the productive workforce in countries of destination, and lessens the burden of care on women in countries of origin. It may assist with migration development nexus since evidence suggests that diaspora communities continue to remit to their networks in countries of origin – this would be a more positive gain when care burdens are not downloaded.⁴²

39 By 2030, reduce to less than 3% the transaction costs of migrant remittances and eliminate remittance corridors with costs higher than 5%.

40 See Rec. 5.1. and 5.5 in UN Women. (2016). *Recommendations for addressing women's human rights in the global compact for safe, orderly and regular migration - Outcome of expert meeting in Geneva*. Geneva.

41 i.e. ensuring that undocumented, temporary and permanent migrants have equal access to such systems in policy and practice.

42 www.weforum.org/agenda/2015/06/why-countries-should-make-the-most-of-their-diasporas/



Social Protection for Migrant Workers Abroad: Addressing the Deficit via Country-of-origin Unilateral Measures?

Marius Olivier

Introduction

From the perspective of international standards, destination countries are supposed to extend social (security) protection – at least in the area of contributory benefits – to migrant workers on the basis of equal treatment with national workers. Yet, migrant workers often experience inadequate social protection provisioning in destination countries. Increasingly, one of the reasons relates to clear indications of nationality discrimination in both social security and related laws and the practice of several destination countries. The lack of bilateral social security coordination arrangements contributes to the absence of or insufficient social (security) protection extended to migrant workers in destination countries, while multilateral social security agreements are still inadequately developed in several regions of the world. In addition, both bi- and multilateral agreements are often restricted to certain migrant worker categories. This paper reflects on unilateral measures introduced by sending countries in an attempt to deal with this deficit, and critically evaluates the sufficiency and appropriateness of such measures.

Challenges faced by migrant workers abroad in relation to access to social protection

In many destination countries migrant workers are faced with a lack of, or weak social protection coverage. The reasons for this may be manifold. In particular, in certain regions, especially in Gulf countries, limited provision is made for the extension of social protection to migrant workers. In fact, there is a tendency, especially in ASEAN countries, to develop separate but inferior regimes for the coverage of migrant workers, in particular unskilled and lower-skilled migrant workers. The protection so provided is less beneficial in comparison with that available to nationals, and at times also higher skilled non-nationals.¹

Also, the social protection system of the destination country may not be adequately developed. This may be the case where workers migrate to countries, for example, within less developed regions of the world, where limited provision is made for social protection. Furthermore, bilateral (social security) agreements are still new to large parts of the developing world; where they do exist, they often only cover a limited range of benefits, and only in relation to certain workers, in particular higher-skilled workers.

¹ M Olivier *Social protection for migrant workers in ASEAN: developments, challenges and prospects* (Final draft report, June 2017) 114. Malaysia can be cited as an example. In the area of *employment injury benefits*, a separate scheme was initiated for migrant workers (the Foreign Workers Compensation Scheme (FWCS)) in 1993. This removed the equal treatment of foreign workers, as well as the possibility of portable employment injury benefits. Regarding *health insurance benefits*, since 1 January 2011 migrant workers are covered by the separate Health Insurance Protection Scheme (SPIKPA). Apparently, the health policy provides for a higher medical fee for migrants compared to citizens, who are covered under the different, subsidised mainstream health insurance scheme. See B Harkins *Review of labour migration policy in Malaysia* (ILO, 2016) 21; Olivier 67-68.

In fact, generally, migrant workers may not be covered by the social protection system of either the host or the home country due to:²

- Lack of extra-territorial application of the laws (and social protection systems) of the country of origin
- Nationality requirements
- Residence requirements
- Work in the informal economy
- Documentation and other administrative barriers

Protection for migrant workers: historical approaches and (the lack of) international standards

Generally speaking, and as a principle of international law, countries have assumed responsibility for nationals/citizens living and working abroad, at least to the extent of diplomatic protection. However, this has not necessarily translated in extending social protection to them. Yet, the realisation that migrant workers in particular are in need of such protection, has given rise to what has become known as international coordination law, both in terms of bilateral agreements and earlier international standards: this entails the principle of equal treatment of migrant workers, appearing from the *reciprocity of unilateral solutions based on citizenship/nationality status*. In particular, older ILO Conventions required of ratifying Member States to extend the same social security protection available to their national workers to migrant workers of other ratifying countries, in the social security area covered by the particular Convention.³

Modern co-ordination instruments (especially bi- and multilateral social security treaties) have reduced the role of citizenship and reciprocity. Increasingly, protection has been based on a *human rights understanding* of the need of migrant workers to be protected by social protection arrangements. This is also evident from the current international standards framework.⁴ The general principle contained in international human rights instruments pertaining to non-citizens is that all persons, by virtue of their essential humanity, should enjoy all human rights *unless exceptional distinctions, for example, between citizens and non-citizens, serve a legitimate State objective and are proportional to the achievement of that objective*.⁵ It has also been remarked that, “[A]ll current ILO social security standards define the personal scope of coverage irrespective of nationality and almost all contain similar clauses on equality of treatment between nationals and foreign workers in the host country, and most of them contain special non-discrimination clauses, such as, for example, Convention 102 of 1952.”⁶ Therefore, the extension of equal treatment is in fact no longer dependent on reciprocity – a tendency which is also confirmed by recent UN and ILO instruments.⁷ In the European Union, the adoption

² W van Ginneken “Making social security accessible to migrants” *World Social Security Forum* (2010) 3; Olivier (note 1) 31.

³ See, for example, ILO Convention 19 of 1925 (Equality of Treatment (Accident Compensation) Convention) and, of wider application, ILO Convention 118 of 1962 (Equality of Treatment (Social Security) Convention): this latter Convention requires of Member States to guarantee equality of treatment of social security provisions for migrant workers for any or all of the 9 branches of social security that are in force in its territory and for which it agrees to be bound.

⁴ See among others Article 9 of the International Covenant on Economic, Social and Cultural Rights (1966) and the interpretation accorded to this Article by the UN Committee on Economic, Social and Cultural Rights in its General Comment No 19 on the right to social security (E/C12/GC/19 of 4 February 2008).

⁵ D Weissbrodt *Final report on the rights of non-citizens* (UN Doc. E/CN.4/Sub.2/2003/23 (2003)) accessed at <http://www1.umn.edu/humanarts/demo/noncitizens-2003.html> (June 2004) 4. In its General Comment 15 the UN Human Rights Committee explained that “the rights set forth in the Covenant [on Civil and Political Rights] apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness ... The general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens.”: See E/CN.4/Sub.2/2002/25/Add.1 paras 14, 50, 51, 63, 66.

⁶ See N Baruah and R Cholewinski *Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination* (2006) 154-155.

⁷ See Article 27 of the 1990 UN International Convention on the Protection of Rights of all Migrant Workers and par 6 of ILO Recommendation 202 of 2012, on National Floors of Social Protection, which suggests the extension, in principle, of a national social protection floor to “all residents”. And yet, the position appears to be particularly nuanced: there is a discernible trend, confirmed by both international standards and state practice, towards affording *enhanced protection to regular and longer-term migrant workers, often with reference to key principles operative in this domain, such as the lawful residence, lawful employment and means of subsistence criteria*: Olivier (note 1) 120.

of the EU Single Permit Directive⁸ provides an important example of a supra-national arrangement, which compels host countries (i.e. EU Member States) to extend both labour law and social security protection to lawfully residing migrants, in principle on the same basis of protection extended to their own nationals – as explained below.

Mainly as a result of the assumption that countries of destination will in accordance with international standards extend social protection to migrant workers, country-of-origin unilateral measures were deemed to be unnecessary: consequently, no binding international standards framework has yet developed. Nevertheless, increasingly reference to these measures is made in soft law and explanatory and implementing instruments, for example:

- 2007 ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers: Origin countries are encouraged to set up policies and procedures to protect their workers when abroad
- 2006 ILO Multilateral Framework on Labour Migration,⁹ which provides a comprehensive overview of principles and guidelines as to how labour protection for such migrant workers can be improved

Extended country-of-origin protection for national workers employed abroad: developing practice

In perhaps one of the most important and notable developments in recent years, several migrant-sending countries have introduced measures to provide some social security protection to their own workers abroad, invariably strengthened by an extensive raft of supporting measures, including a supportive, dedicated institutional and operational framework. For example, in ASEAN, no less than 6 out of the 10 countries have now done so.¹⁰ These measures include:¹¹

- Establishing special overseas workers' welfare funds by national and even (as in the case of India) state governments extending protection to workers and, at times, also their families (as in the case of India, the Philippines, Sri Lanka and Thailand). Examples include:
 - Philippines: Establishment of the (i) Social Security System (SSS) Programme to Overseas Migrant Workers, based on voluntary membership; and the (ii) Flexi-Fund Programme, on top of the voluntary SSS scheme, providing for individual worker accounts.
 - Sri Lanka: Contributory pension scheme for Sri Lanka's 2 million overseas migrant workers. Contributions may be paid monthly or as a lump sum, and are subsidised by government (60% of costs). The scheme provides an old age pension at age 60 and survivors' benefits.
- Voluntary affiliation in national social insurance schemes, for example, those of Albania, Jordan, Mexico, Mozambique,¹² the Philippines and the Republic of Korea.
- Exportability of social security benefits and the provision of related services (e.g. medical care) abroad.¹³

8 Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State.

9 ILO *Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach in labour migration* (ILO, Geneva, 2006).

10 Olivier (note 1) 115.

11 See also the three case studies below: Philippines, Indonesia and Thailand.

12 Mozambican workers abroad who are not covered by the compulsory social security system of the host country may register for compulsory social security in -Mozambique, but the more limited scheme for self-employed persons will be applicable to them: Article 14.4 of the Law on Social Protection 4 of 2007, read with article 18.2. The Social Security Act 34 of 1994 (Namibia) provides for the coverage of Namibian citizens and permanent residents who work for a Namibian employer outside Namibia: see the definition of "employee" in s 1 of the Act.

13 The legislation of countries, especially countries that conclude bilateral social security agreements, often regulates the exportability of social security benefits.

The extension has been achieved through, among others:¹⁴

- The adoption of constitutional guarantees and statutory frameworks facilitating the protection of migrant workers abroad, for example, the 1987 Constitution of the Philippines,¹⁵ recent Filipino legislation,¹⁶ the 2008 Constitution of Ecuador¹⁷ and Mexico's migration law and regulations.¹⁸
- Provisions in bilateral social security treaties providing for continued coverage of certain categories of migrant workers in the social security system of the labour-exporting country, for example, the Indian–Belgian agreement of 2009, which requires that posted workers be covered by the social security legislation of their country of origin and that they pay social security contributions to their country of origin's social security system, as long as the period of posting does not exceed five years.¹⁹
- Measures and schemes aimed at supporting the flow of remittances and social insurance contributions to the country of origin.

These extension mechanisms are often supported by a range of complementary measures, including a dedicated emigrant Ministry and/or specialized statutory bodies to protect the interests of their citizens/residents in the diaspora (e.g., India, Philippines, Bangladesh, Sri Lanka, Nepal), and information on recruitment contracts and consular support.²⁰ The Philippines, for example, has established the Office of the Undersecretary for Migrant Workers Affairs (OUMWA) at the Department of Foreign Affairs; the Filipino Workers Resource Center; Social Security System offices in several countries; and has invested in the screening of and provision of information to applicants. Generally, other support services are invariably made available to migrant workers at three stages: pre-departure, at destination (i.e., in the host country) and upon return (e.g., via return settlement programmes); and include lobbying for the protection of migrant workers.

Shortcomings of country-of-origin measures

These unilateral measures appear to be particularly problematic, in the absence of a rights basis and appropriate and effective monitoring, enforcement and persuasion mechanisms. Moreover, often reliance has to be placed on the contributions by workers only, which could make participation in these arrangements costly or subject to reduced benefit entitlement. They are also associated with limitations of extra-territorial implementation – therefore, on-line transactions, using embassies as vehicles, and even arranging with

14 A Hall *Migrant Workers' Rights to Social Protection in ASEAN: Case Studies of Indonesia, Philippines, Singapore and Thailand* (Migrant Forum in Asia/Friedrich-Ebert-Stiftung, 2011); ILO *Best practices on social insurance for migrant workers: the case of Sri Lanka* (ILO Asian Regional programme on Governance of Labour Migration, Working Paper 12, 2008); N Ruiz *Managing Migration: Lessons from the Philippines* (Migration and Development Brief No. 6) (World Bank, Washington, DC, 2008). See also R. Ofreneo and J. Sale "Social security and migrant workers in the Philippines: Social protection for the country's economic protectors" in *Social Security and Migrant Workers: Selected Studies of Cross-Border Social Security Mechanisms* (editors: Roger Blanpain, Pablo Arellano Ortiz, Marius Olivier, Gijsbert Vonk) (Kluwer, 2014) 167-186 on the Philippines. For a general overview, see W van Ginneken "Social protection for migrant workers: national and international policy challenges" *European Journal of Social Security* (EJSS), vol 13(5), 2013, 209-221 at 213-214.

15 The 1987 Constitution requires of the State to provide full protection to labour, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all. Article XIII, section 3.

16 Section 2 of the *Overseas Workers Welfare Administration Act* of 2015 stipulates: "It is the policy of the State to afford full protection to labor, local and overseas, organized and unorganized, and promote full employment opportunities for all. Towards this end, it shall be the State's responsibility to protect the Overseas Filipino Workers (OFWs)."

17 Ecuador essentially provides for a 'universal citizenship' irrespective of where a person may reside – every person is equal and shall possess the same rights, duties and opportunities, and nobody shall be discriminated against on any grounds, including his/her migratory condition (Constitution of the Republic of Ecuador, 2008, Article 11(2)). See also Articles 416(6) and (7)). The constitutional imperative to protect Ecuadorians abroad is further reflected in the National Plan of Foreign Policy (*Plan Nacional de Política Exterior*) 2006–2020, which establishes 'protection to emigrants' as one of the priority axes of Ecuadorian foreign policy."

18 Article 2 sets guidelines for the formulation of migration policy, including: (i) respect for the rights of both Mexican and foreign migrants; (ii) facilitation of international mobility; (iii) complementarity of labour markets with countries in the region; and (iv) full equality between nationals and foreigners, particularly as it relates to civil liberties.

19 Agreement on social security between the Kingdom of Belgium and the Republic of India, 2009, Article 8.

20 See Van Ginneken (note 12).

host country institutions (such as the Netherlands has been doing in relation to many of its social security beneficiaries abroad) may be required. Furthermore, contributions are often too low to provide meaningful coverage and may place too much burden on migrant workers, in countries where these workers have to contribute. Innovative funding solutions are needed, including allowing the channelling of remittances to help fund contributions. Also, the benefit range provided for by these arrangements is often too unwieldy and goes beyond social security provision – such as repatriation costs. Therefore, a more focused arrangement is needed to ensure and enhance appropriate social security coverage.

Furthermore, at this stage affiliation to social security institutions in and access to social security arrangements of the country of origin are mostly of a voluntary nature. Evidently this has an impact on the efficacy of unilateral mechanisms. In addition, these arrangements do not generally cover informal workers and undocumented migrants. As a result, they do not guarantee a rights basis for the treatment of these vulnerable categories.

Conclusion/evaluation²¹

Unilateral arrangements emanating from countries of origin are of relatively recent origin, but seem to be growing in extent and popularity. They cover sizeable numbers of migrant workers – for example, in the case of the Philippines, 8 million, and in the case of Sri Lanka, 2 million migrant workers. Yet, they cannot effectively provide for the full extent of social (security) protection which a host country would be able to extend and can, therefore, never replace what should be the primary source of the protection of migrant workers' social security rights, i.e. coverage under the laws of the destination country. In fact, the effectiveness of unilateral measures is often constrained by the weakly developed social security systems of less-developed countries of origin.

It should be noted that these arrangements and interventions imply a shift of the social security burden to the country of origin and its structures, despite the fact that migrant workers also contribute to the development of the destination country concerned.

On the other hand, unilateral arrangements emanating from countries of origin provide interesting and important avenues of coverage, protection and support, where none or little is available in the destination country concerned. These arrangements and interventions can provide some protection and may be easier to adopt than bi- and multilateral frameworks. As has been noted, such promotional measures would principally affect those involved in circular and temporary migration, and could be defined and strengthened through international migration agreements.²²

It is therefore argued that unilateral measures, important as they are, should remain measures of last resort, to be available to the extent that bilateral and other arrangements do not make the necessary provision. Nevertheless, whenever these measures are required, much can be done to improve the extension thereof by migrant-sending countries, by learning from the experience of other countries of origin, in both the global South and the global North.

It is also clear that many sending (and receiving) countries are in need of technical advice to develop and implement an appropriate framework for country-of-origin unilateral measures. A well-developed compendium of good practice examples may be of considerable assistance. Also, there is an evident need to develop a framework of international standards and guidelines to inform and strengthen the use of country-of-origin unilateral measures.

Finally, with some important exceptions (e.g., the Philippines and Indonesia), from a domestic perspective, a statutory mandate and often also a policy and programme framework may be absent. These need to be developed to provide clarity to beneficiaries and to those who have to implement the measures, and to provide the necessary rights basis for enforcement. Associated with this requirement is also the need to address the lack of awareness regarding the insurance contracted, and to address complex claim mechanisms.

21 See M Olivier, O Dupper & A Govindjee "Enhancing the protection of transnational migrant workers: A critical evaluation of regulatory techniques" (with O Dupper and A Govindjee) in *The Transnational Dimension of Labour Relations: A new order in the making?* (eds: E Ales and I Senatori) (Giappichelli Publishers, 2013), 291-343; Olivier (note 1) 131-132.

22 Van Ginneken (note 12) 214.

Appendices

Case study I: The Philippines²³

- Filipino workers recruited by foreign-based employers abroad may be covered by the Social Security System (SSS), provided for under the Social Security Act, 1997, on a voluntary basis.²⁴ In fact, Filipino migrant workers have two (2) layers of social security protection under the SSS:²⁵
 - A defined-benefit, social insurance scheme, providing basic pension as safety net – This is the same regular coverage programme available to local workers in the Philippines. It has been noted that voluntarily insured persons pay the combined insured person and employer contributions of 11% of gross monthly earnings, according to 31 income classes;²⁶ and
 - A defined-contribution, individual account scheme, serving as a supplemental pension-savings plan – This is the so-called SSS Flexi-Fund Program, a provident fund offered exclusively to Filipino migrants.
- Coverage flowing from membership of/registration with the Overseas Workers Welfare Administration (OWWA), which has been granted a key institutional role in the provision of benefits and services, including social security services to OFWs²⁷ – registration (on a two-yearly basis) is compulsory for OFWs whose employment contracts have been processed at the POEA and voluntary for nationals who left as non-contract workers and later acquired foreign employment. Social Security benefits available against the payment of a contribution include among others:²⁸
 - Death benefits
 - Disability (including total disability benefit in the event of a permanent disability) and dismemberment benefits
 - Burial benefit
 - Health care benefits (to be developed within a two year period, taking into consideration the health care needs of women).

23 See Olivier (note 1) 84-87.

24 Social Security Act, 1997, section 9(c). It has to be noted that *compulsory* coverage is only for sea-based OFWs. ILO comments on a previous version of this country profile indicated that, based on the ABND discussions, one of the gaps identified for SSS is that there are limited number of land-based OFWs covered under SSS because of the voluntary membership policy. It would appear necessary to address the gap is by covering land-based OFWs as compulsory members of SSS.

25 See, J (Senior Vice-President for International Operations, Social Security System (SSS) *Negotiating Bilateral Social Security Agreements: The Philippine Experience* (Presentation made at the 9th ASEAN Forum on Migrant Labor (AFML), Vientiane, Lao PDR).

26 ISSA and SSA *Social Security Programs Throughout the World: Asia and the Pacific* (2017) 197, also indicating that the minimum monthly earnings used to calculate contributions are 5,000 pesos for voluntarily insured overseas workers; the maximum monthly earnings used to calculate contributions are 16,000 pesos.

27 The Overseas Workers Welfare Administration Act, 2015 stipulates in section 34, which deals with "Guiding Principles" as follows: "Pursuant to its mandate, the OWWA shall provide gender-responsive reintegration programs, repatriation assistance, loan and credit assistance, on-site workers assistance, death and disability benefits, health care benefits, education and skills training, social services, family welfare assistance, programs and services for women migrant workers and other appropriate programs that provide timely social and economic services.

Nothing in this Act shall be construed as a limitation or denial of the right of an OFW to avail of any benefit plan which may be adopted in the employment contract, or offered voluntarily by employers, or by the laws of the receiving country, over and above those provided under this Act."

28 *Ibid*, section 35(3).

- Compulsory insurance cover provided and paid for by licensed recruitment agencies, should the OFW have been recruited by the agency. Social security benefits are provided for by *Republic Act No. 10022 of 2009*,²⁹ amending the *Migrant Workers and Overseas Filipinos Act of 1995*,³⁰ and include:³¹
 - Accidental death;
 - Permanent total disablement;
 - Medical evacuation and medical repatriation;
 - Subsistence allowance in the course of a case or litigation for the protection of the OFWs' rights in the receiving country.
- Social security benefits or insurance provided for in the employment contract between the foreign employer/principal and the OFW, again in the event that the OFW has been recruited by a licensed recruitment agency – for which the employer/principal and the recruitment or placement agency incur joint and several liability.³²
- Several other legal, institutional and operational measures and interventions support the extension of social security support to OFWs. These include the stipulation that the issuance of permits of deployment abroad by POEA is only allowed where the rights of Filipino migrant workers are protected. In this regard, the *Migrant Workers and Overseas Filipinos Act of 1995* recognises any of the following as a guarantee on the part of the receiving country for the protection of the rights of overseas Filipino workers:³³
 - It has existing labour and social laws protecting the rights of workers, including migrant workers;
 - It is a signatory to and/or a ratifier of multilateral conventions, declarations or resolutions relating to the protection of workers, including migrant workers; and
 - It has concluded a bilateral agreement or arrangement with the government on the protection of the rights of overseas Filipino
- Other legal, as well as institutional and operational arrangements provide a broader contextual framework *supporting* the extension of social security benefits to OFWs include among others the following:³⁴
 - Regulating and monitoring recruitment/placement agencies
 - Legal assistance
 - Hearing of and deciding upon OFWs' money claims

29 An Act amending Republic Act No. 8042, otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995, as amended, further improving the standard of protection and promotion of the welfare of migrant workers, their families and overseas Filipinos in distress, and for other purposes.

30 Republic Act No. 8042 of 1995: Migrant Workers and Overseas Filipinos Act of 1995.

31 *Ibid*, section 37A, inserted by section 23 of Republic Act No. 10022 of 2009.

32 Migrant Workers and Overseas Filipinos Act of 1995, section 10, amended by section 7 of Republic Act No. 10022 of 2009.

33 Migrant Workers and Overseas Filipinos Act of 1995, section 4, amended by section 3 of Republic Act No. 10022 of 2009; Ofreneo, R & Sale, J "Social Security and Migrant Workers in the Philippines: Social Protection for the Country's Economic Protectors" in Ortiz, P, M Olivier & G Vonk *Social Security and Migrant Workers: Selected Studies of Cross-Border Social Security Mechanisms* (Kluwer, 2014) 171.

34 See in this regard See, J (Senior Vice-President for International Operations, Social Security System (SSS) *Negotiating Bilateral Social Security Agreements: The Philippine Experience* (Presentation made at the 9th ASEAN Forum on Migrant Labor (AFML), Vientiane, Lao PDR) and Omnibus Rules and Regulations implementing the Migrant Workers and Overseas Filipinos Act of 1995, as amended by Republic Act No. 10022.

- Ascribing and delineating roles of a large number of government departments and other (in particular public) institutions, such as:
 - Departments of Health, Labour and Employment and Interior and Local Government
 - POEA, OWWA, NRCO (National Reintegration Center for OFWs), Migrant Workers and Other Overseas Filipinos Resource Centre; LGUs (Local Government Units), and an Inter-Agency Committee to implement a shared government information system for migration
 - A large number of SSS offices – 21 offices in 16 countries (seven in Asia-Pacific)
- Tailor-fit systems supporting the registration of OFWs, contributions modalities, and benefit payment arrangements
- A range of user-friendly service channels made available by the SSS to Filipino migrants (including: overseas e-payment centres; online access to records; SSS @ social media sites; unified multi-purpose ID; and dedicated contact centre).

Case study 2: Indonesia³⁵

Indonesia has been extending considerable support to Indonesian workers abroad. One of the key components of this support has been the establishment of a wide-ranging compulsory insurance scheme for overseas Indonesian workers (known as TKI insurance),³⁶ largely informed by several supportive regulatory instruments.³⁷ The lead provision is Article 68 of the 2004 *Act concerning the Placement and Protection of Indonesian Overseas Workers*. It stipulates that the private (recruitment/placement) agency is obliged to insure workers abroad in an insurance programme to be regulated per Ministerial decree.³⁸ The insurance premium is payable by the recruiting agency, although this is then recovered from the workers.³⁹

The insurance provided for by the law covers three stages: pre-placement, during placement and after placement.⁴⁰ At the pre-placement stage the following cover, in relation to the risks specified below, is provided for a period of five months:

1. Death;
2. Sickness and disability;
3. Accidents;
4. Failure to depart due to no fault of prospective migrants; and
5. Physical violence and rape / sexual assault.

35 See Olivier (note 1) 54-56.

36 See Ministry of Manpower of the Republic of Indonesia *Indonesian Workers Protection's Policy through TKI Insurance Program* (Powerpoint presentation, 29 September 2016), accessed at www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/presentation/wcms_533051.pdf on 28 April 2017. See also ILO *Social Protection for Indonesian migrant workers: Efforts and challenges* (Brief, 2015) 1-3. Presently, TKI insurance is managed by a consortium of private insurance companies. The migration of TKI compulsory insurance to BPJS-Employment is currently considered.

37 E.g., Law No. 39 of 2004 on Placement and Protection of Indonesian Workers Abroad; Law No. 6 of 2012 on Ratification of International Convention on the Protection of the Rights of All Migrant Workers and their Families; Ministerial Law No. PER-07/MEN/V/2010 on TKI insurance with its amended Ministerial Law No. 1 Year of 2012 on amended Ministerial Law on TKI Insurance; Ministry Law No. 22 of 2014 on the Implementation of the Placement and Protection Indonesian Overseas Workers; Ministerial Decree No. 212 of 2013 on TKI Insurance Consortium JASINDO; Ministerial Decree No. 213 of 2013 on TKI Insurance Consortium ASTINDO (amended by Ministerial Decree No. 20 of 2014 on Amendment of Ministerial Decree No. 213 of 2013); Ministerial Decree No. 214 of 2013 on appointment of TKI Insurance "MITRA TKI: *Ibid*".

38 See in this regard Ministerial Law No. PER-07/MEN/V/2010 on TKI insurance and its amending Ministerial Law No 1 Year 2012 on amended Ministerial Law on TKI Insurance.

39 ILO *Social Protection for Indonesian migrant workers: Efforts and challenges* (Brief, 2015) 3: " ..., as nor the recruiting agency, neither the employer are obliged by law to bear a part of it." The Brief also indicates other challenges being experienced, including lack of clarity and claims procedures.

40 Ministry of Manpower of the Republic of Indonesia *Indonesian Workers Protection's Policy through TKI Insurance Program*.

During placement, the following coverage is extended, in relation to the risks specified below, and for a period of 24 months (which can be extended, as indicated below):

1. Death;
2. Illness and disability;
3. Accidents inside and outside of working hours;
4. Termination of employment (PHK) individually or in mass prior to the expiration of labor agreements;
5. Unpaid wages;
6. Problematic deportations;
7. Legal problems;
8. Physical violence and rape / sexual harassment;
9. Insanity;
10. Transfer of migrant workers to another workplace / other places that are not in accordance with the placement agreement; and
11. Failed placement through no fault of migrant workers;

For the period after placement, the cover foreseen (for a one month period), in relation to the following risks, includes:

1. Death;
2. Illness;
3. Accident; and
4. Actions of others during the return trip to the area of origin, such as the risk of physical violence and rape / sexual assault and risk of loss of property.

The insurance coverage can be extended if the labour contract is extended. A one-year extension attracts a premium of 40% of the (initial) insurance amount, while a two-year extension attracts an additional 80% of the insurance amount.⁴¹

It should be noted that at the pre- and post-placement stages, it is possible (and could indeed be imperative, especially if the Indonesian worker works in the formal sector) to be a registered member of and paying contribution to the BJPS schemes. The provisions in relation to those schemes, outlined in the previous section, would in these circumstances be applicable to the worker concerned.

⁴¹ *Ibid.*

Case study 3: Thailand⁴²

An extensive framework for the protection of Thai migrant workers abroad has been put in place. The welfare protection available in this regard is perhaps less pronounced, but has steadily been developing. In particular, voluntary participation of a Thai national whose employer has offices abroad or who regularly travels to work abroad in the national contributory social insurance scheme provided for under the *Social Security Act, 1990* is possible, on the basis of a legislative amendment in 2015.⁴³

Various modalities for moving overseas exist,⁴⁴ although many Thai migrant workers migrate irregularly.⁴⁵ One of the channels concern the range of bilateral labour agreements/memoranda of understanding concluded between Thailand and other countries – including Taiwan, South Korea, Israel, Japan, Brunei, Malaysia and the UAE. It is not clear to what extent provision is made for social security protection by either the host country, or Thailand, in favour of the affected Thai migrant workers.

Of particular importance though is the assistance available under the Fund for helping Thai overseas workers, namely the Fund for Job-Seekers Working Abroad. This Fund was established in terms of the provisions of chapter VI the *Employment and Job-Seeker Protection Act, 1985*.⁴⁶ It has been reported that the following benefits are provided by the Fund:⁴⁷

- *Health care*, including health care for accidents occurred before leaving Thailand
- *Disability compensation* caused by an accident both inside and outside Thailand
- *Death benefits*

An extensive range of measures to support Thai overseas workers have been put in place over the years. Of particular importance is the institutional framework of support that has been rolled out, including⁴⁸ –

- Thailand Overseas Employment Administration (TOEA), in charge of supervising and facilitating the process for Thai workers wishing to work overseas; coordinating with host countries; and providing a protective framework via the Fund mentioned above, and by establishing several Labour Affairs offices located mostly in Thai embassies (to provide information and assistance to Thai workers);
- The Protection of Thai Nationals Abroad Division within the Department of Consular Affairs, Ministry of Foreign Affairs, responsible among others for providing assistance to Thai nationals in distress; and promoting and protecting Thai workers abroad;
- Office of International Peoples' Rights Protection (OIPP), responsible among others for giving legal advice; and collaborating with the Ministry of Foreign Affairs and the Ministry of Labour to provide legal assistance to Thai nationals.

42 See Olivier (note 1) 109.

43 See the Social Security Act (No 4) B.E. 2858 (2015).

44 I.e. via recruitment agencies; self-managed migration; via the Department of Employment/Ministry of Labour procedure; employers sending migrant workers abroad; and employers sending migrant workers abroad for training; and based on the provisions of government-to-government arrangements.

45 Monrawee, L *Report that reviews laws, policies, programmes related to social protection of migrant workers in Thailand* (prepared for the ILO, in file with author) (June 2016) 25.

46 Employment and Job-Seeker Protection Act B.E. 2525 (1985).

47 *Ibid*, 32-33.

48 *Ibid*, 28-30.

Extending social protection to migrant workers unilaterally: the example of the EU Single Permit Directive⁴⁹

The adoption of the EU Single Permit Directive⁵⁰ provides an important example of a supra-national arrangement, which compels host countries (i.e. EU Member States) to extend both labour law and social security protection to lawfully residing migrants, in principle on the same basis of protection extended to their own nationals. This Directive establishes a single application procedure for third-country nationals to reside and work in the territory of a Member State, together with a common set of rights (including decent basic working conditions and access to social security) for third-country workers *legally residing* in a Member State.⁵¹ Third-country nationals will specifically be granted treatment equal with that of EU nationals in matters concerning pay and dismissal, health and safety at work, the right to join trade unions, and access to public goods and services, if they are working legally in Europe.⁵² Equal treatment is also provided for as regards social security, subject to some restrictions, such as that Member States are permitted to apply restrictions in the field of social security to third-country workers with contracts of less than six months' duration. The Directive essentially guarantees, with reference to the principle of lawful employment, that "all persons working legally in Europe must have the same rights as European workers".⁵³ It is also important to note that this Directive appears to adopt an *integrated* approach towards the areas of labour law and social security coverage and application, which is potentially relevant for the construction of a more co-ordinated legal response to the challenges associated with migrant work.

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49 Taken from M Olivier, O Dupper and A Govindjee "Enhancing the protection of transnational migrant workers: A critical evaluation of regulatory techniques" (with O Dupper and A Govindjee) in *The Transnational Dimension of Labour Relations: A new order in the making?* (eds: E Ales and I Senatori) (Giappichelli Publishers, 2013) (p 291-343).

50 Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State.

51 Article 12 of the Directive. See Migration Policy Group "EU Single Permit Directive granting third-country workers rights passes final hurdle" in *Migration News Sheet* (undated) accessed at www.migrationnewsheet.eu/eu-single-permit-directive-granting-third-country-workers-rights-passes-final-hurdle.

52 *Ibid.*

53 Migration Policy Group 1.

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Supporting Communities Under Migration Pressure: The Role of Opportunities, Information and Resilience to Shocks

Linguère Mously Mbaye¹

Executive summary

International migration is at the core of the international debate. However, while a major part of the discussions focus on migration policies in receiving countries, it is important to recall that most people are not willing to migrate permanently to another country. It is thus crucial that policymakers also support those who prefer to remain in their communities of origin to resist the migration pressure they may be facing. Consequently, this analysis aims first to identify what drives this migration pressure, and second to formulate a set of recommendations to support those communities.

With regard to the drivers, evidence suggests that, contrary to a common belief, poverty reduction will not necessarily alleviate migration pressure. Reducing poverty is an aim, per se, no matter its effect on migration. However, it is not a panacea, and other factors explaining the migration pressure should be considered. The urge to move can be due to the fact that potential migrants, in particular those willing to migrate illegally, tend to formulate biased expectations about their earnings and living conditions abroad. For people who have not moved yet, expectations from the migration experience are often based upon perceptions of the living conditions of their families and relatives who migrated. Those relatives – through their remittances and the status their families that are left behind acquire within the communities – can lead some to think that success is guaranteed with migration. This in turn can spark the desire to move at any cost, raising the issue of relative concerns about what matters in the decision to leave. Another possible driver of migration pressure is negative shocks, such as adverse climatic conditions. Climatic factors and natural disasters can lead to more migration if other survival strategies have failed, when the severity of the shocks does not leave any other option than moving, and when people can afford migration costs.

It is important to recall that, in the face of adverse conditions, migration remains a mitigation strategy. Consequently, the best way to support sedentary communities is not necessarily by stopping them from migrating but enlarging their set of choices. To alleviate the migration pressure on communities, it is thus crucial to make migration one option among others, and not the only choice available. We thus formulate various recommendations to deal with the aforementioned causes and support people who would like to stay in their communities. Recommendations include creating opportunities which could guarantee that success is also possible at home. Innovative and affordable tools such as information and communications technology could be used to support such initiatives. Other options consist of improving the quality of the information potential to which migrants have access. This could be a good way of lowering misrepresentations of living conditions abroad. Finally, it is also crucial to build resilience to shocks through private and public mechanisms.

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I. Introduction

Population movement is more than ever at the core of the international debate. According to the Gallup World Poll, 710 million people, representing 14 per cent of the world adult population, were willing to migrate permanently to another country between 2013 and 2016. However, there are disparities between regions. Sub-Saharan Africa is the continent with the highest score, with one third of its adult population desiring to migrate. Moreover, although the share of the adult population in the Middle East and North Africa region willing to migrate permanently has increased compared to its 2010–2012 level (+3 percentage points), it is estimated at 22 per cent, which is comparable to that of the European Union, estimated at 21 per cent of its adult population.²

These figures reveal interesting features. First, they show, de facto, that 86 per cent and 69 per cent of the world and African adult population, respectively, do not want to migrate permanently. Subsequently, as receiving countries wonder about migration policies at the destination, policymakers should also care about ways to support the major part of the population which prefers to remain at home. Second, this survey highlights that, in some cases, the desire to migrate can be comparable between regions experiencing adverse shocks and those that are relatively more stable. This indicates that helping sedentary communities is a complex issue because there is not a single type of migration pressure. Supporting people who prefer to remain at home thus implies identifying what explains the pressure to move and tailoring answers and recommendations to each of these drivers.

The literature has explored various causes for people's displacement. However, in this study, we start by discussing why poverty reduction is not a panacea for decreasing migration. We then focus on other factors – such as relative concerns, climatic shocks and natural disasters – that are among the most challenging issues that could drive migration pressure. They can be identified as push factors, taking into account the drivers of migration from the source countries' perspective. However, migration decisions are also taken by comparing the situation between origin and destination countries, and the picture would not be complete if we do not also consider the pull factors from the receiving countries' perspective by looking at the role of potential migrants' expectations. Finally, we propose concrete and pragmatic measures that can be taken to deal with these issues in the short term and reinforced in the long term.³

The structure of the paper is as follows. Section 2 describes the relationship between poverty reduction and migration before exploring the role of expectations, relative concerns, climatic conditions and natural disasters in determining the migration pressure. Section 3 concludes and presents recommendations on the ways to support people who prefer to remain at home.

2. On the drivers of migration pressure

Identifying the drivers of migration pressure precedes knowing how to support sedentary communities. In this section, we start by discussing why poverty reduction will not necessarily reduce migration pressure. We then focus on the role of other determinants, such as expectations of potential migrants, relative concerns, climatic shocks and natural disasters.

2.1. Poverty reduction and migration

A piece of conventional wisdom is that development of poor countries will decrease their emigration flows. While this rhetoric has been widely used, it has not been empirically verified. Moreover, it is argued that a perspective that considers poverty as the only driver of migration would be too narrow.⁴ First, richer countries

2 N. Esipova, J. Ray and A. Pugliese, Gallup News, "Number of Potential Migrants Worldwide Tops 700 Million", 8 June 2017. Available from www.gallup.com/poll/211883/number-potential-migrants-worldwide-tops-700-million.aspx.

3 We do not focus on migration pressure due to conflict or institutional issues such as lack of democracy or political instability, because the implication of promoting peace-building and good governance in migrants' source countries is straightforward.

4 De Haas, H., "Turning the Tide? Why Development Will Not Stop Migration", *Development and Change*, vol. 38, No. 5, 2007, pp. 821–844.

do not necessarily have lower emigration rates than poorer countries. Second, the relationship between development and migration presents some non-linearities. Indeed, evidence suggests that development is associated with an increase in emigration among low- and lower-middle-income countries. The relationship between development and migration becomes negative among countries above an estimated level of income per capita of USD 6,000–8,000 adjusted for purchasing power parity.⁵ Put differently, this means that, in poor countries, development will first increase emigration and will start decreasing it only once the countries have reached a status of upper-middle- and high-income countries. Among the reasons explaining this non-linear relationship is the fact that, as people get richer, they can afford migration costs and have more expectations and incentives to migrate. This is consistent with the idea that immigrants are positively selected compared to the remaining population of their origin countries and do not necessarily belong to the lower part of the income distribution.⁶

Reducing poverty should be the priority no matter its effect on migration. However, these findings suggest that decreasing migration pressure is not about solving poverty issues only. Consequently, in the following part of this section, we discuss other drivers, such as the role of expectations, relative concerns and climatic shocks.

2.2. The role of expectations

Expectations can positively affect the willingness to migrate, in particular by using illegal methods. It is thus interesting to know how these expectations are formed. Migrants' networks play a crucial role in generating those expectations. In general, they help reduce migration costs, and share information on labour market conditions in the receiving country, border crossings and funding opportunities.⁷ However, their role goes further, since potential migrants also derive their expectations from the perceptions of their relatives' earnings abroad. Family and friends' relatives who have successfully migrated can send remittances and help people left behind, and also provide information on their living conditions, which may or may not correspond to reality. Subsequently, migrants' networks can misrepresent their situation in the receiving country and shape potential migrants' beliefs that success is guaranteed with migration. This is illustrated from findings of a survey conducted in Dakar, Senegal, between 2006 and 2007, where information on the characteristics and motivations of potential legal and illegal migrants was collected. Results of this study show that the expected earnings of people willing to migrate illegally are positively related to their migration intentions. Moreover, they are closely related to their perceptions of the earnings of their relatives who have successfully migrated. More interestingly, expectations with respect to earnings were quite high and did not necessarily match reality. The average and median expected monthly wages of potential illegal migrants were estimated at EUR 1,740 and EUR 1,218, respectively. For comparative purposes and according to the *Instituto Nacional de Estadística* of Spain, in 2007, the annual average income in this country – which was the preferred destination country for potential illegal migrants – of an immigrant coming from outside the European Union was estimated at EUR 5,792 per person, corresponding to EUR 483 per month.⁸

2.3. The role of relative concerns

The role of relative concerns is closely related to that of potential migrants' expectations. The aforementioned survey shows that 77 per cent of potential illegal migrants interviewed are willing to accept risking their lives. Moreover, half of them are willing to accept a risk of death equal to or higher than 25 per cent. This indicates that people willing to migrate illegally are fully aware of the risks, but also signals a large utility gap between staying in Senegal and migrating. The important question here is, "What explains this utility

5 Clemens, M. A., "Does development reduce migration?", *International Handbook on Migration and Economic Development*, 2014, pp. 152-185.

6 Chiquiar, D. and G.H. Hanson, "International migration, self-selection, and the distribution of wages: Evidence from Mexico and the United States", *Journal of Political Economy*, vol. 113, No. 2, 2005, pp. 239–281.

7 Dolfin S. and G. Genicot, "What do networks do? The role of networks on migration and 'coyote' use", *Review of Development Economics*, vol. 14, No. 2, pp. 343–359.

8 Mbaye, L.M., "'Barcelona or die': Understanding illegal migration from Senegal", *IZA Journal of Migration*, vol. 3, No. 21, 2014.

gap?” – in particular in a context where there is no conflict and the political situation is stable. A possible answer lies in the role that migrants play in their communities. In many countries, migrants have an important economic power through their remittances, which can contribute significantly to economic growth. For instance, in Tajikistan, remittances represented 41.7 per cent of gross domestic product in 2014, making it the number one remittances-receiving country with respect to the share of gross domestic product. For the same year, migrants’ transfers represented 24.6 per cent and 10.3 per cent of gross domestic product in Liberia or Senegal, respectively.⁹ In the context of Senegal, many households with good living standards, both in rural and urban areas, have migrants abroad. Migrants’ families also have a higher social status within their communities, which reinforces the idea that success is guaranteed with migration. This also highlights the role of relatives and peers as a source of information that is more trusted than official channels, such as media or local institutions.

2.4. The role of climatic shocks and natural disasters

The relationship between climatic factors, natural disasters and migration is a complex one. Migration responses to climatic factors and natural disasters depend on various factors, such as the nature and severity of the shock, the level of vulnerability of people and the liquidity constraints they face. Consequently, people will migrate only if other survival strategies have failed, if the nature of the shock (e.g. rapid onsets such as floods or storms) do not leave the option to stay, and if they are not bound by liquidity constraints and are able to afford migration costs.¹⁰ Moreover, climatic shocks can also affect migration through an indirect channel, such as their negative impact on agricultural productivity.¹¹

3. Moving forward: Recommendations on how to make migration an option among others

It is important to highlight that the aim is not necessarily to prevent migration, which remains a coping strategy and a way to diversify risk in case of adverse shocks, but to support communities whose people would not migrate if they were not forced to do so. We thus formulate recommendations on how to provide various options which could allow communities to resist the migration pressure.

3.1. Recommendation 1: Create opportunities in countries of origin

With the example of Senegal, we have seen that migration pressure can be high, even in countries that are politically stable. Illegal migration is an expensive project for many people; in the aforementioned survey, migrants were asked why they did not choose to invest the money they collected for migrating into a professional project at home. The answers revealed that among people willing to migrate illegally, 74.47 per cent declared that it was because they thought that, in any case, the project would fail. There were 57.45 per cent who declared that it was because they would not receive any assistance to start a business, while 31.91 per cent declared that they did not have the needed skills to do so. In this context, illegal migration is the result of the perception that success is only possible abroad. This suggests that potential illegal migrants perceive that the rate of return on investing abroad may be much higher than investing in a project at home. However, this is conditional on having a successful migration experience, implying high risk in the case of illegal migration. It is thus crucial to provide to the population – above all the youth – opportunities, incentives and favourable labour market conditions for succeeding in their countries of origin with good jobs that are safe and sustainable, and allow a decent life.

9 World Bank Group, *Migration and Remittances Factbook 2016*, third edition, (Washington, D.C., 2016). Available from <https://openknowledge.worldbank.org/handle/10986/23743>.

10 Mbaye, L.M., “Climate change, natural disasters, and migration”, IZA World of Labor, March 2017. Available from <https://wol.iza.org/articles/climate-change-natural-disasters-and-migration/long>.

11 Cai, R., S. Feng, M. Oppenheimer and M. Pytlikova, “Climate variability and international migration: The importance of the agricultural linkage”, *Journal of Environmental Economics and Management*, vol. 79, 2016, pp. 135–151.

3.2. Recommendation 2: Rely on tools such as information and communications technology

One way of enhancing the business environment is to rely on new tools, such as mobile phones or information and communications technology more generally, which are affordable and could be used to encourage and develop local initiatives. According to the International Telecommunication Union, 95 per cent of the world population lives in areas covered by mobile cellular networks. In developing countries, the penetration rate is estimated at 41 per cent and is growing very fast.¹²

It has been demonstrated that mobile phones and new information technologies help connect not only individuals, but also services and markets. They reduce information and communication costs in many sectors, such as the agricultural and service sectors. For instance, mobile phones can be used to provide price information in marketplaces or learn about job opportunities in different cities. Moreover, the pioneering initiative of M-PESA in Kenya has allowed the development of mobile banking and helped millions of people to use their mobile phones for financial transactions and money transfers.¹³

This example shows that mobile phones can become an important tool for financial inclusion, which indirectly also leads to social inclusion. Another way to use technologies could be through a television show demonstrating success in areas such as agriculture which is, a priori, not attractive to young people, and which could shape their expectations. This would also provide alternative narratives of success and showcase role models who succeed at home.

3.3. Recommendation 3: Improve the quality of the information delivered to potential migrants

A priori, it could seem contradictory that, in an era of globalization and wide use of mobile phones, as we have just discussed, people can still be misinformed on what to expect from their migration experience. However, in reality, there is no contradiction, if we consider that the nature of the information they get also depends on the filter through which they receive it. In section 2, we have explained how having relatives who have migrated can both decrease information asymmetry related to costs, job opportunities and travel procedures, and at the same time reinforce misrepresentations of the migration experience. It is thus crucial to design effective tools to improve the quality of the information mediated by trusted sources and received by potential migrants to help them formulate expectations closer to reality and adjust their migration decisions accordingly.

3.4. Recommendation 4: Build resilience to shocks

In a context of economic uncertainty and climate change, it is necessary to reinforce private and public mechanisms to deal with shocks to support people willing to stay in their communities. With respect to private mechanisms, previous community members who migrated can support those left behind through their remittances, in case they face adverse shocks. This will allow sedentary communities not to be forced to move when they have to deal with such risk. Such solutions could be supported with a reduction of the costs of sending remittances, which remain too high. Public mechanisms require that governments build resilience before and after the occurrence of shocks.¹⁴ Moreover, public mechanisms will help people who cannot necessarily rely on private insurance channels to deal with shocks, and are thus complementary with private mechanisms. Consequently, support should be provided to governments in source countries to build insurance mechanisms and better social protection, to face not only adverse climatic conditions, but also more generally economic instability. Finally, it is important to stress that, in most poor countries, the economy still relies heavily on the agricultural sector, which is sensitive to climatic factors and subject to commodity price volatility. Building resilience for populations highly dependent on these sectors will also require scaling up the sector from subsistence-oriented agriculture to business agriculture, and a diversification of the economy.

12 International Telecommunication Union, *ICT Facts and Figures 2016* (2016, Geneva).

13 Aker, J.C. and I.M. Mbiti, "Mobile phones and economic development in Africa", *The Journal of Economic Perspectives*, vol. 24, No. 3, 2010, pp. 207–232.

14 Mbaye, L.M., "Climate change, natural disasters, and migration", IZA World of Labor, March 2017. Available from <https://wol.iza.org/articles/climate-change-natural-disasters-and-migration/long>.

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How Should Migrant Smuggling be Confronted?

Jørgen Carling

Executive summary

Migrant smuggling is seen as antithetical to safe, orderly and regular migration. In fact, the fight against migrant smuggling stands out as a point of agreement in an otherwise fractured policy field.

This apparent unity obscures disparate motivations for counter-smuggling measures. Traditionally, concerns about illegal work and residence have been prominent. More recently, the fight against migrant smuggling is also driven by states' desire to minimize the obligations that follow from the 1951 refugee convention. These are just two out of eight motivations identified in the paper.

The eight motivations for counter-smuggling efforts differ with respect to explicitness and legitimacy. Insufficient clarity of purpose makes it more challenging to develop a sound response.

Counter-smuggling strategies can be divided between those that seek to suppress the supply of smuggling services and those that seek to suppress demand. The conventional law-enforcement approach concentrates on curbing supply.

Sustainable solutions are only possible with a reduced demand for migrant smuggling services. But demand-oriented policy approaches go to the heart of migration management and raise political, legal, economic, and ethical dilemmas.

Demand can be suppressed in two contrasting ways. First the use of migrant smuggling services can be rendered needless by providing prospective clients with alternative means for reaching their objectives. Second, the use of migrant smuggling services can be rendered futile by removing the benefits of being smuggled. The latter strategy can have worrying humanitarian implications.

Strategies for countering migrant smuggling have diverse consequences – beyond being more or less effective in reducing the volume of smuggling. A particular concern is that counter-smuggling measures can increase the vulnerability of smuggled migrants. Counter-smuggling measures should therefore not assume that if smuggling is repressed, then its undesirable consequences will also vanish.

Introduction

Migrant smuggling is widely seen as incompatible with migration management objectives. The *New York Declaration for Refugees and Migrants*, adopted by the UN General Assembly in 2016, includes a commitment to 'vigorously combat' migrant smuggling with a view to its elimination.¹ In Europe, the *European Agenda on Migration* refers to a 'robust fight' against smugglers.²

1 United Nations General Assembly (2016).

2 European Commission (2015).

These resounding calls for action raise a question: *how* should migrant smuggling be confronted? This brief paper addresses that question.³ It does not list operational priorities – which need to be developed in a context-specific way – but it provides the analytical foundations for addressing migrant smuggling in a strategic way.⁴

Migrant smuggling can be defined in general terms as *the facilitation of a person's unauthorized border-crossing in exchange for material benefits*.⁵ The phrase migrant smuggling presumes an inclusive definition of 'migrants' that covers everyone who has left their usual place of residence, regardless of their motivation for doing so.⁶ Many of the migrants who use the services of smugglers are refugees.

The term migrant smuggling tends to evoke particular images and examples. General principles for confronting migrant smuggling should be based on a broader perspective on migrant smuggling services, beyond its headline-grabbing manifestations. For instance, people who flee armed conflict or persecution may depend on smugglers for *getting out* of harm's way in the first place, and not only for *getting in* to the countries that are perceived to offer the best protection.⁷

Motivations

Why is migrant smuggling being fought? Since the fight against smuggling is a point of agreement in an otherwise fractured policy field, it appears that we should simply focus on *how*, not *why*. Yet, the effectiveness of counter-migrant measures can only be evaluated on the basis of more specific objectives. The reason is that strategies for countering migrant smuggling are diverse and have disparate consequences and implications – often problematic ones. Clarity about the motivations for counter-smuggling measures allows for better cost-benefit analyses and fosters an informed debate about ethical and political dilemmas.

What follows is an overview of nine distinct motivations for fighting migrant smuggling. They differ in terms of their salience, explicitness, and legitimacy, but they are all important in current counter-smuggling efforts. The normative evaluation of each motivation is partly a political issue. Regardless of diverging political opinions, bringing the totality of motivations into the discussion helps making sound decisions and ensuring accountability.

1. **Reducing illegal immigration** — When smuggling facilitates the unauthorized entry of people with no intention to seek asylum, it contributes to illegal residence and illegal work.⁸ Fighting migrant smuggling thus helps ensure that immigration is subject to the rule of law. This is the classical motivation for the fight against smuggling, tied to the State's ability to assume its responsibilities.
2. **Preventing unfounded asylum claims** — In many parts of the world, smuggling has shifted from being primarily a pathway to illegal work to becoming a pathway towards legal residence via the asylum system. When asylum applications are rejected, returning applicants to their country of origin is often costly and sometimes impossible. Reducing the number of unfounded claims is therefore beneficial to states as well as to migrants who are being returned, sometimes indebted from smuggling fees. Smugglers,

3 I am grateful to comments from participants at 'Ideas to inform international cooperation on safe, orderly and regular migration' Migration Research Leaders Syndicate, International Organization for Migration, Geneva, 28–29 September 2017. Input from Susan Martin and Travers McLeod has been particularly valuable for the revision.

4 More detailed analyses are available in the author's work elsewhere. See also Carling *et al.* (in press) for proposed actionable commitments.

5 The precise definition used by the United Nations (2000) is 'the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident'. However, the reference to 'illegal entry' can be misleading because many migrants being smuggled have a well-founded fear of persecution and should, under the 1951 Refugee Convention, not be penalized for entering the country of refuge without authorization. While the UN specifies that migrant smuggling involves some form of material benefit, national legislation in some countries defines migrant smuggling more broadly, without the requirement of a profit motive. See Gallagher and David (2014) for additional analyses of the international law of migrant smuggling.

6 See Carling (2017) for a discussion of definitions of 'migrants' and their implications.

7 Crawley *et al.* (2016).

8 The majority of undocumented immigrants in many countries are overstayers, rather than illegal entrants. Consequently, smuggling may play a minor role in the overall problems of illegal residence and illegal work.

however, have an incentive to *create demand* for their services by producing false expectations for the possibility of being granted asylum. The fight against migrant smuggling can therefore, in some cases, help reduce the number of unfounded asylum claims.

3. **Minimizing protection obligations** — The asylum system requires physical presence on a country's territory in order to launch an application. But if the application has merit and the state has signed the 1951 Refugee Convention, then protection must be granted. Most high-income countries endorse the Refugee Convention yet wish to minimize asylum immigration. These objectives have long been combined by ensuring that potential asylum seekers are blocked from accessing the national territory, and hence the asylum system. By allowing asylum seekers to overcome this blockage, smugglers frustrate states' ability to uphold the Convention and curtail its use at the same time. When many of the smugglers' clients have a well-founded fear of persecution, anti-smuggling measures can be motivated by the wish to minimize protection obligations.
4. **Expanding regular migration** — States that seek to accommodate substantial immigration may regard this as feasible only if smuggler-facilitated migration is kept to a minimum. For instance, large intakes of quota refugees may depend (economically and politically) on small numbers of asylum seekers. Similarly, expanded provisions for low-skilled labour migration might require reassurances that there will not be a parallel undocumented immigration flow.
5. **Averting exploitation, suffering and loss of life** — Migrant smuggling has staggering human costs, including thousands of deaths and widespread traumatization. The social and economic costs to migrants can also be grave if they incur large debts to smugglers. The unacceptable human toll is often invoked as a motivation for fighting migrant smuggling.
6. **Obstructing funding streams** — Migrant smuggling can be a valuable source of income for terrorist groups and criminal organizations. The elimination of this funding stream would therefore contribute to the broader fight against terrorism and organized crime.
7. **Preventing terrorist infiltration** — There is growing concern that smuggler-facilitated migration flows may allow terrorists to cross borders in order to carry out attacks. This possibility has been raised as a reason for intensified efforts to stop the smuggling.
8. **Showing political resolve** — Migration management is fraught with conflicts of interest and tenuous relationships in need of careful management. At the same time, there is often a sense of urgency and demand for strong leadership. In this context, counter-smuggling measures provide a welcome opportunity for demonstrating assertiveness and claiming moral superiority.
9. **Securing resources or bargaining power** — Counter-smuggling efforts create opportunities for individuals, organizations, and states to pursue material or political gains.⁹ For instance, certain law enforcement and paramilitary organizations have seen substantial growth in staff and budgets, and countries of origin and transit have been able to use the counter-smuggling agenda for increased bargaining power in bilateral relations with countries of destination. From an analytical perspective, it is important to recognize such motivations. The motivations, here, lie not in the elimination of migrant smuggling, but rather in the opportunities that the counter-smuggling activity itself creates.

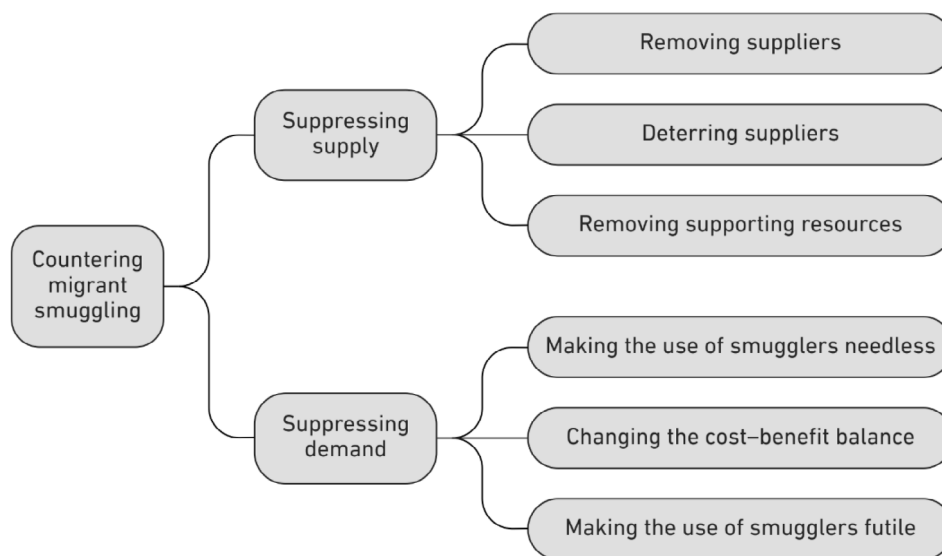
⁹ Benvenuti (2017), France 24 (2017), Lutterbeck (2013), Taub (2017).

Strategies

The process of developing the Global Compact on Migration (and the Global Compact on Refugees)¹⁰ is an opportunity to take a long-term strategic perspective on migrant smuggling. A strategic perspective implies making holistic assessments of the costs and benefits of different courses of action, including those that are difficult to implement in the near future but may provide more sustainable solutions.

Figure 1 displays an analytical taxonomy of strategies. The two main branches focus on suppressing supply and demand, respectively. This analytical distinction is well-established in criminological analyses of other fields, such as drug enforcement, trade in endangered wildlife products, and prostitution, but not in analyses of migrant smuggling. With respect to migrant smuggling, the object of supply and demand is the smuggling service.

Figure 1. A taxonomy of strategies for countering migrant smuggling



The next tier in the taxonomy are specific strategies towards the two aims of suppressing supply of, and demand for, migrant smuggling services. These strategies could be further sub-divided into concrete counter-smuggling measures. Such measures are not shown in the figure, but examples are mentioned below.

Suppression of supply can be pursued in three ways. The first strategy is to *remove suppliers* from the market, primarily through dismantling smuggling networks and arresting smugglers. Second, authorities can seek to *deter suppliers* from entering or staying in the market, typically through raising penalties or increasing the risk of being caught. Third, supply can be suppressed by *removing the supporting resources* that make smuggling possible. These resources include potential smuggling vessels, marketing resources (such as web sites and social media accounts), and corrupt officials.

As with many other forms of crime, it seems clear that as long as there is demand for migrant smuggling, it will be impossible to eliminate the supply. However, the demand side of counter-smuggling strategy has largely been addressed with scant analytical precision, resorting instead to vague notions of ‘addressing the root causes’ or ‘disrupting the smugglers’ business model’.¹¹ Affecting demand is challenging – in practical, economic, legal and ethical terms – but needs to be part of a sustainable, long-term approach.

In Figure 1, strategies for suppressing demand are split in three. First, it is possible to make the use the smuggling services *needless* by allowing potential clients to reach their objectives in other ways. In the case

¹⁰ Although migrant smuggling is placed within the process leading to the Global Compact on Migration, it is equally relevant to the Global Compact on Refugees.

¹¹ For critiques of these concepts, see Carling and Talleraas (2016) and Achilli and Sanchez (2017), respectively.

of migrants who seek protection from persecution or conflict, smuggling could be rendered needless by providing adequate protection closer to home, by carrying out large-scale relocation of recognized refugees, or by issuing humanitarian visas to asylum seekers. (Putting an end to the conflict and oppression that motivates migration is important in its own right and falls outside the scope of migration management.)

At the other extreme is the strategy of making the use of smugglers *futile*. In other words, authorities can seek to prevent potential clients from reaching the objectives that motivate the purchase of smuggling services. In cases of illegal labour migration, suppressing illegal employment in the country of destination can curtail the demand for being smuggled. Signing readmission agreements and ensuring rapid returns can have the same effect.

In the case of asylum seekers, making the use of smugglers futile is difficult without compromising responsibilities towards refugees. But that has not stopped states from pursuing this strategy. Prominent examples include the 2013 Regional Resettlement Arrangement between Australia and Papua New Guinea, which barred smuggled migrants from settlement in Australia regardless of their protection needs, and the 2016 agreement between the EU and Turkey that promised the return of all irregular migrants crossing from Turkey to Greek islands. The common element of these policies lies in the resulting futility of being smuggled.

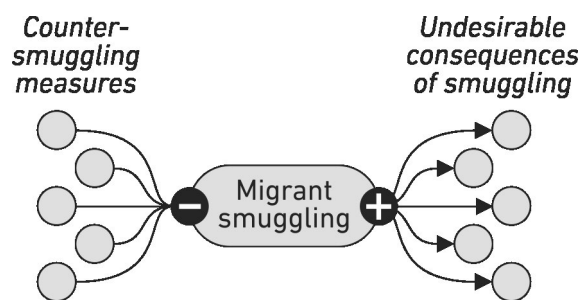
In between these two extremes of making smuggling needless or futile, it is possible to pursue a strategy of *changing the cost–benefit balance* for prospective clients of migrant smugglers. Such a strategy could involve making the (perceived) likely outcome of being smuggled less attractive, making the (perceived) cost of being smuggled higher, or making the alternatives to being smuggled more appealing. Perceptions are important, since they inform decisions, and authorities have therefore invested heavily in this sphere, too.

All six strategies and their associated measures have shortcomings and raise real dilemmas. Assessing the merits of each one requires going back to the *motivations* for countering smuggling and re-examining the connections between measures and consequences.

Measures and consequences

Dominant counter-smuggling approaches have been based on a simple logic: (1) migrant smuggling has undesirable consequences; (2) migrant smuggling must be eliminated. The implication is that if migrant smuggling is eliminated, then its undesirable consequences will also disappear. In other words, migrant smuggling sits at the heart of causal nexus between a range of possible counter-measures that can suppress migrant smuggling, and a series of undesirable consequences that will result if smuggling persists (Figure 2).

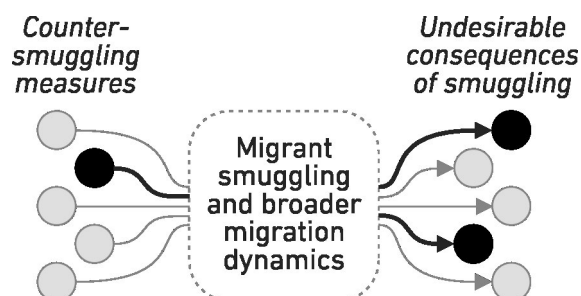
Figure 2. The conventional logic of counter-smuggling approaches



This model is misleading for several reasons. First, counter-smuggling measures do not simply *reduce* migrant smuggling, but alter the dynamics of migrant smuggling and migration more broadly. Second, specific counter-smuggling measures will have different effects on the various consequences of migrant smuggling. Third, these effects are not limited to the reduction of undesirable consequences, but could abate some consequences while aggravating others. For instance, erecting a fence along the most accessible sectors of a border might reduce the total number of unauthorized entries, but at the same time make smuggling more dangerous for migrants and more profitable for smugglers.

Consequently, the logic of counter-smuggling measures and their outcomes should be revised (Figure 3). The implications are clear: it makes a difference what motivates the fight against migrant smuggling, and which mix of counter-smuggling measures is adopted. These choices are not simply a matter of efficacy in the mission of eliminating migrant smuggling, but shape the distribution of gains and losses.

Figure 3. A revised logic of counter-smuggling measures and their outcomes



Conclusions

This brief paper leaves many questions unanswered. But it has prepared the ground for several concluding claims that are fundamental to developing better responses to migrant smuggling:

- The prospect of united and assertive action makes the fight against migrant smuggling a *seductive focal point* in a policy field that is often fraught with disagreement and incapacity. There is a resulting risk of failing to think critically and strategically about counter-smuggling measures and their role within migration management more broadly.
- The concerted call for a vigorous fight against migrant smuggling obscures a *diversity of motivations*. These motivations differ greatly in their explicitness and legitimacy. A lack of clarity and sincerity about motivations can have adverse effects for the efficacy of counter-smuggling measures and their indirect consequences.
- Migrant smuggling is a *humanitarian issue* in two ways: First, it results in large-scale suffering and loss of life. Second, the fight against migrant smuggling is increasingly motivated by states' desire to minimize their humanitarian protection obligations.
- It is widely recognized that migrants can be extremely vulnerable as a consequence of being smuggled. But the *connection between vulnerability and smuggling* is frequently misrepresented. First, the demand for smuggling is often driven by serious pre-existing vulnerabilities, which the elimination of smuggling would not resolve. Second, the vulnerabilities of being smuggled are not simply caused by the smugglers, but also result from the actions of other groups of individuals and from the overall context of smuggling.¹²
- Strategies for countering migrant smuggling have *diverse consequences* – beyond being more or less effective in reducing the volume of smuggling. A particular concern is that counter-smuggling measures can increase the vulnerability of smuggled migrants.

Recommendations

- The response to migrant smuggling should not be narrowly framed as a law enforcement issue. Such a framing increases the risk that counter-measures are ineffective, or even counterproductive, in a broader migration management context. The appropriate role of law enforcement is as a *component* in an overall strategy.

¹² See Carling *et al.* (2015).

- Policy measures should shift from a fixation on eliminating migrant smuggling itself to a concern with the undesirable *consequences* of smuggling. In this way, counter-smuggling efforts can be developed and evaluated in a sound way.
- Counter-smuggling measures should not assume that if smuggling is repressed, then its undesirable consequences will also vanish. Instead, each measure must be assessed with respect to its likely direct and indirect consequences.

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Whatever Happened to the Migrant Smuggling Protocol?

Anne Gallagher

Executive summary

In December 2000, the international community adopted a new legal framework to address transnational organised crime. Two treaties, one dealing with trafficking in persons and the other with migrant smuggling, were part of the package. The Trafficking Protocol has proved to be a game-changer – shaping international, regional and national legal and policy responses in profound ways. But the Migrant Smuggling Protocol has been much less influential, with State practice reflecting a strong desire to develop tailored responses to migrant smuggling unfettered by international legal rules that are not perceived to reflect and advance national interests. This paper uses evidence from a recent UNODC study into implementation of the international legal definition of migrant smuggling to expose the extent of the drift away from the Protocol and explore why States have responded in this way. It concludes by (i) considering the deeper implications of this rejection for global migration policy and practice; (ii) proposing several concrete measures that must be taken to reaffirm commitment to the Protocol, most particularly its agreed definition of migrant smuggling and its rejection of the criminalization of smuggled migrants.

I. Background and context

‘Smuggling of migrants’ is a new concept in international law and policy. Prior to the adoption of an international legal definition less than two decades ago, the term was used informally, often interchangeably with ‘migrant trafficking’ to refer to a range of conduct related to the facilitation of unauthorized entry into a country and sometimes also unlawful stay.

States have long criminalised certain aspects of illegally facilitated migration but the push for international legal regulation only began in the early 1990s: initiated and led by wealthy destination countries of western and central Europe, North America, and elsewhere that had experienced a significant increase in the number of “unauthorized arrivals”, apparently facilitated by criminal groups that were organized and sophisticated enough to exploit legislative, policy and law enforcement weaknesses.¹

Deficiencies in international law were seen as particularly acute and detrimental: there was no agreed definition of smuggling of migrants, no obligation of criminalization, and no obligation to extradite or prosecute perpetrators, resulting in a “legal lacuna under international law [that] is increasingly perceived as an obstacle to the efforts of the international community to cope in an efficient manner with the phenomenon of smuggling of illegal migrants for criminal purposes”.² The default position: a purely national approach to sanctioning those who facilitated such migration, supplemented by *ad hoc* and largely ineffective bilateral cooperation – was seen to be playing directly into the hands of smugglers.

1 See “Measures to Combat Alien Smuggling: Report of the Secretary-General,” UN Doc. A/49/350, 30 Aug. 1994.

2 “Letter dated 16 September, 1997 from the Permanent Representative of Austria to the United Nations addressed to the Secretary-General,” UN Doc. A/52/357, 17 Sept. 1997, at paras. 2–3 (transmitting a draft of the proposed convention).

Interest in developing an international regulatory framework around migrant smuggling gained momentum throughout the 1990s, finally coalescing around the UN Crime Commission's work against transnational organized crime. After initially agreeing to develop a treaty on "trafficking of migrants", the Crime Commission eventually decided that two instruments were necessary: one dealing with facilitated illegal movement of migrants and the other dealing essentially with the movement of individuals into exploitation. The *Protocol against the Smuggling of Migrants by Land, Sea and Air* (Migrant Smuggling Protocol) and the *Protocol against Trafficking in Persons, especially Women and Children* (Trafficking Protocol) were both adopted in late 2000 along with their parent instrument, the *United Nations Convention against Transnational Organized Crime* (Organized Crime Convention).

The Trafficking Protocol proved to be a game-changer, triggering unprecedented levels of action at the national, regional and international levels. Ratification was extremely rapid, allowing it to enter into force less than three years after adoption. And States very quickly began to incorporate its core provisions into national law. Today, "trafficking" – generally defined in accordance with the Protocol – is now criminalized in just about every country.³ Most national anti-trafficking legislation includes comprehensive provisions on victim protection and support – often going well beyond the lowest-common-denominator obligations set out in the Protocol. This trend has been sharpened by a raft of international and regional legal and policy instruments that affirm the central tenets of the Protocol while expanding its rather meagre human rights provisions.⁴ A vigorous, diverse and well-resourced anti-trafficking 'industry' ensured that responses to trafficking are under close scrutiny – and that the pressure on States to align their legislative and policy response with international standards is constant and intense.

While it has attracted substantial ratification (146 States Parties compared to 172 States Parties to the Trafficking Protocol as at 16 October 2017) the Response to the Migrant Smuggling Protocol could not have been more different. For example, apart from some desultory legal and policy development within Europe, the Migrant Smuggling Protocol has provided neither a trigger – nor a template, for further normative development. Certainly, there is no anti-smuggling 'industry'; no well-funded organizations focused on scrutinizing responses and holding States to account. That is especially significant because, in implementing their legislative and regulatory responses, States have moved substantially away from the core tenets of the Protocol. The following sections detail just two of the many examples of the Protocol's lack of influence. The first relates to the widespread failure to accept the international legal definition of migrant smuggling; the second concerns the trend towards criminalization of smuggled migrants and marginalization of their rights. In its concluding section the paper briefly considers the deeper implications of this rejection for global migration policy and practice.

2. Counter-trend: An expanded concept of migrant smuggling

Under the definition set out in the Protocol, migrant smuggling will occur if the offender engaged in the act (procuring illegal entry of a person who is not a national or permanent resident), and did so intentionally for the purpose of obtaining a financial or other material benefit. States Parties to the Protocol are required to criminalize migrant smuggling and smuggling-related production and possession of fraudulent travel or identity documents. They are also required to criminalize enabling illegal stay when this is committed intentionally and in order to obtain a financial or other material benefit.

The inclusion of "intention to obtain a financial or other material benefit" as an element of the crime of migrant smuggling was explicitly intended to narrow its scope by excluding the activities of those who facilitate migration for humanitarian or family reunification reasons. In the official records of their proceedings, drafters affirmed that: "It was not the intention of the Protocol to criminalize the activities of family members or

3 In 2003 only 33 countries had enacted specific legislation criminalizing trafficking on the basis of the Protocol's definition. By August 2016 that number had risen to 158. UNODC *Global Report on Trafficking in Persons* (2016), p. 48.

4 For a detailed overview of the international legal framework see Anne T. Gallagher, *The International Law of Human Trafficking* (Cambridge University Press, 2010).

support groups such as religious or non-governmental organizations”,⁵ and that: “the Protocol should not require States to criminalize or take other action against groups that smuggle migrants for charitable or altruistic reasons, as sometimes occurs with the smuggling of asylum-seekers”.⁶

A 2016 study by UNODC, led by the present author, sought to examine the extent to which States had incorporated the Protocol’s definition of migrant smuggling into their national law, with specific reference to the ‘financial or other material benefit’ element.⁷ The study examined national legislation and case law and interviewed 122 practitioners from a sample of 13 States.⁸

The results of the survey are unsettling. Of the States surveyed, none had incorporated the Protocol’s definition, unchanged, into their domestic law. Only two of the 13 (both countries of origin) included financial benefit as an element of the offence of facilitated entry. This means that 85% of surveyed States have retained legislative capacity to prosecute facilitated entry that is not motivated by financial reward.⁹ And nine of the 13 (70%) have retained the capacity to prosecute the act of facilitating the stay of a person who has been smuggled and/or who is otherwise irregularly present in the country. These deviations from the international legal definition were typically defended as necessary to ensure that States retained the flexibility to respond to *all* situations of facilitated illegal entry and stay. Practitioners interviewed for the study pointed to the heavy evidentiary burden that would result from the inclusion of the financial element in smuggling offences.

Countries participating in the study were carefully selected to ensure geographical balance; a balance of civil, common and mixed law systems; and a range of migrant smuggling experiences. It is therefore possible to safely extrapolate the results and conclude that most States Parties to the Migrant Smuggling Protocol have effectively dismantled one of the central tenets of the international legal framework: expanding the definition of migrant smuggling – and thereby the obligations of criminalization and cooperation – well beyond that intended by the drafters.

3. Counter-trend: Criminalization and marginalization of smuggled migrants’ rights

The Smuggling Protocol requires States to criminalize smuggling and related conduct as defined in that instrument; to strengthen their borders against smugglers; and to cooperate in preventing and combating smuggling. However, these obligations are tempered by a number of caveats and limitations that are too often forgotten. Article 5, for example, prohibits States Parties from prosecuting smuggled migrants themselves for having been smuggled. In the words of the Protocol’s drafters: “[smuggled] migrants [are] victims and should therefore not be criminalized”.¹⁰

Protection of the rights of migrants is identified as one of the three purposes of the Protocol. And States Parties are explicitly required to take all appropriate measures, consistent with their obligations under international law, to preserve and protect the rights of smuggled migrants including the right to life; the right not to be subject to torture or other cruel, inhuman, or degrading treatment or punishment; and the right to consular access. They are further required to afford migrants protection against smuggling-related violence and appropriate assistance if their lives and safety are endangered through the smuggling process.

The Protocol also includes a very specific savings clause to the effect that none of its provisions can impact on existing rights and obligations including those related to human rights, international humanitarian law and refugee law. The savings clause was hard-won and its significance and impact should not be trivialized.

5 Interpretative notes, UN Doc. A /55/383/Add.1, 3 November 2000, para. 88.

6 United Nations Office on Drugs and Crime, *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto*, UN Sales No. E.05.V.2 (2004) p. 333, para. 19.

7 United Nations Office on Drugs and Crime, *The Concept of “Financial or other Material Benefit” in the Smuggling of Migrants Protocol: Issue Paper* (UNODC, 2017).

8 Australia, Canada, Germany, Greece, Indonesia, Italy, Malaysia, Mexico, Morocco, Sri Lanka, Tunisia, the United Kingdom and the United States of America.

9 Note that the legislation of an additional three surveyed States does provide at least partial protection from punishment (not prosecution) for humanitarian motivated facilitate entry.

10 United Nations Office on Drugs and Crime, *Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (2006), p. 483.

While a collision of norms (for example between the right of States to control their borders and the obligation of *non-refoulement*) may still occur, the correct outcome has been clearly articulated: any State Party that acts against the letter or spirit of international law, including international refugee law, in implementing its obligations under the Migrant Smuggling Protocol is in violation of one of its central provisions.

It is not possible, within the confines of the present paper, to provide even a cursory assessment of international, regional and State practice against these standards. But there is abundant and compelling evidence of States Parties distancing themselves from the Protocol's goal of protecting smuggled migrants and ensuring their basic human rights. For example, almost all EU Member States have legislated to establish irregular entry and stay as offences, often punishable with custodial sentences.¹¹ In Australia and elsewhere, laws, policies and practices effectively punish migrants for the fact of having been smuggled – and humanitarian actors assisting recognised refugees to access protection have been prosecuted for smuggling.¹² Very few States would be able to defend their actions against migrant smuggling as conforming to the letter and spirit of the Protocol with regard to smuggled persons rights under that instrument including their right to consular access; to assistance; and to protection from inhuman or degrading treatment.

4. Implications for global migration policy and practice

The impetus behind the Migrant Smuggling Protocol is not difficult to fathom. For States that felt themselves especially affected, a focus on the facilitators of migration as a way of dealing with irregular migration made strong political sense. As subsequent experience has shown, criminalization of irregular migrants themselves is always an option. But this approach can be problematic for liberal democracies – especially given the reality that many asylum seekers, including those with genuine claims to refugee status, use the services of smugglers in their often-desperate search for protection. Criminalization of the facilitation of such migration can be seen and sold quite differently: less an attack on individual migrants than on those who are profiting from their vulnerability and desperation. And, by emphasizing the connection with transnational organized crime, States are more easily able to characterize migrant smuggling as a threat to public order and national security. This in turn helps to both explain and justify measures that might otherwise appear extreme, such as externalization of border controls and militarization of migration management.

The separation of migrant smuggling from trafficking in persons has been critical in shaping public perception of migrant smuggling as a crime against the State, and of smuggled migrants being complicit in their own misfortune and thereby not 'victims' deserving of protection and support. While the new international rules around migrant smuggling acknowledge the possibility of harm and the need to preserve the human rights of migrants, that has done little to dispel those entrenched perceptions. As a result, those protections that should, in theory, be available to smuggled migrants are rarely acknowledged or applied.

The very different fates of the migrant smuggling and trafficking protocols reflect a multitude of factors. Despite the complicated politics with which it has also been associated, trafficking is relatively straightforward for States. The ethics of human exploitation for private profit are not ambiguous or contested. Without compromising their core interests, all States can promise to support and protect victims; all can commit to addressing the root causes that make individuals and groups vulnerable to trafficking. An in-principle victim-centered and rights-based response has been further encouraged by abundant funding for anti-trafficking interventions; vigorous civil society involvement; and the existence of multiple external compliance mechanisms – not least the annual U.S. *Trafficking in Persons* report that evaluates the response of every country. None of these factors has been at play in relation to the Migrant Smuggling Protocol. The result is unsettling if unsurprising: a perceptible shaping of the Protocol and expectations around its implementation to meet the evolving policy preferences of States. This situation threatens the fragile international legal

11 European Union Agency for Fundamental Rights: *Criminalization of Migrants in an Irregular Situation and of Person Engaging with Them* (2014).

12 See Andreas Schloenhardt, "Non-Criminalization of Smuggled Migrants: Rights, Obligations, and Australian Practice Under Article 5 of the Protocol Against the Smuggling of Migrants by Land, Sea, and Air", *International Journal of Refugee Law*, 25 1: 39-64, (2013).

framework around this issue and consolidates the inexorable erosion of the rights and protections that the framework delivers to smuggled migrants.

5. Smuggling and the global compact for migration

Since the adoption of the Protocol in 2000, migrant smuggling has evolved from a fringe criminal activity into the 'new normal' in international migration: the means of movement for many migrants, including most asylum seekers.¹³ The Global Compact for Migration must address migrant smuggling openly and honestly. At a minimum, States and others negotiating this instrument have a clear responsibility to confront the drift away from commitments made in 2000 and agree to correct them.

In relation to the definition: corruption of the international legal definition of migrant smuggling threatens the integrity of the carefully constructed legal framework around migrant smuggling and undermines efforts to secure a common understanding of the problem and of what is required to address it. States and involved international organizations should clearly *affirm the internationally recognized definition of migrant smuggling: the intentional facilitation of irregular entry for financial or other material benefit.*

In relation to the criminalization of smuggled migrants: the international community must make clear, through the Global Compact for Migration that *international rules around migration and migrant smuggling do not provide any legal basis for the de jure or de facto criminalization of persons who have been smuggled.* Actions against migrant smuggling must be assessed against the international legal commitments that States have freely entered into. These commitments extend to those provisions of the Migrant Smuggling Protocol that affirm the preeminence of existing rights and obligations including those related to human rights, international humanitarian law and refugee law.

¹³ See further J. Carling, A. Gallagher and C. Horwood, 'Beyond Definitions: Global Migration and the Smuggling-Trafficking Nexus' http://www.regionalmms.org/images/DiscussionPapers/Beyond_Definitions.pdf



National Referral Mechanisms for Victims of Human Trafficking: Deficiencies and Future Development

Guofu Liu¹

1. Introduction

Trafficking in human beings constitutes a violation of human rights and an offence to the dignity and the integrity of the human being, and may result in slavery for the victims.² Hence, finding, identifying and assisting these victims are fundamental to anti-human-trafficking efforts. Governmental authorities, civil society organizations and international organizations are all involved in finding, identifying and assisting victims of human trafficking, so they must cooperate closely, coordinate with each other and support one another. Many developed countries, with international advocacy, have established and improved national referral mechanisms (NRMs) for victims of human trafficking, and are actively referring victims to the corresponding agencies that can help and serve them to better protect their basic rights. Other countries, however, mainly developing countries, have not established NRMs, or have only begun to explore the field. To protect basic rights, actively provide assistance and safely accommodate victims, each State should carefully review and evaluate the form of its anti-human-trafficking efforts, ensure the needs and requirements of a referral mechanism, and establish and improve its NRM, in accordance with relevant international covenants.

2. Background

The United Nations, the European Union³ and other international and regional organizations have adopted a series of legal measures requiring participating members to take positive steps to protect and respect the basic rights of victims by cooperating with civil society organizations, other corresponding organizations and the victims themselves.⁴

1 Guofu Liu, Professor, School of Law, Beijing Institute of Technology, China.

2 Council of Europe Convention on Action against Trafficking in Human Beings (opened for signature 16 May 2005, entered into force 1 February 2008), Preamble.

3 Europe's International instruments on the National Referral Mechanism for Victims of Human Trafficking include:

(a) Organisation for Security and Co-operation in Europe, *National referral mechanisms: Joining efforts to protect the rights of trafficked persons, a practical handbook* (Warsaw, 2004). Available from http://xueshu.baidu.com/s?wd=paperuri%3A%280478100e1ccf3e3cb71e9df80c265e22%29&filter=sc_long_sign&tn=SE_xueshusource_2kduw22v&sc_vurl=http%3A%2F%2Fci.nii.ac.jp%2Fncid%2FBA78027654&ie=utf-8&sc_us=16225603982682264142;

(b) Council of Europe Convention on Action against Trafficking in Human Beings (opened for signature 16 May 2005, entered into force 1 February 2008);

(c) The Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA; and

(d) European Commission, *EU Strategy towards the Eradication of Trafficking in Human Beings (2012–2016)*.

4 The United Nations' international instruments on NRMs for victims of human trafficking include:

(a) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000;

(b) Recommended Principles on Human Rights and Human Trafficking, 2002 (the Office of the United Nations High Commissioner for Human Rights);

(c) United Nations Global Plan of Action against Human Trafficking, 2010;

Developed countries are active in exploring NRMs and have achieved much success, providing a beneficial and constructive reference for the international community. The United States has established a referral mechanism for victims of human trafficking based on the needs of the victims, and works cross-departmentally to provide services to identify victims, work with other civil society organizations and offer funds. The United Kingdom established its NRM in 2009. The United Kingdom Home Office published the *Review of the national referral mechanism for victims of human trafficking*⁵ in November 2014, systemically analysing the existing problems and offering recommendations to resolve those problems. Australia established a cooperative mechanism between governmental authorities and civil society organizations based on the mechanism of a national anti-human-trafficking round-table meeting centred on identification, assistance and protection of victims of human trafficking.⁶

Taiwan Province of the People's Republic of China has expressed support and encouragement for a partnership among authorities and civil society organizations to fight human trafficking from legal, political and practical societal aspects.⁷

There is no standardized NRM in the world. Generally, the NRM refers to a collaborative effort among governmental authorities, civil society organizations and international organizations to jointly protect the basic rights of victims of human trafficking. Governmental authorities include grassroots agencies, and mid-level and central governments. Civil society organizations include social organizations and individuals. International organizations include intergovernmental agencies and non-intergovernmental authorities.

The basic purpose of the NRM is to respect and protect the basic rights of victims of human trafficking, and refer them to the correct agencies for assistance and services.

The main activities of the NRM are to properly identify, treat and refer the victims, efficiently coordinating their needs with civil society organizations, international organizations, criminal investigation agencies and procuratorate courts, as well as with interdisciplinary and inter-agency administrative anti-human-trafficking agencies.

The core of the NRM is to find, identify and assist victims of human trafficking, as well as to cooperate among governmental authorities, civil society organizations and international organizations.

The absence of advanced NRMs contributes to the limitation on close cooperation, coordination and support among governmental authorities, civil society organizations and international organizations in the world. This absence further leads to the harm caused by wrongful convictions done to victims of human trafficking by governmental authorities. Eventually, it fails to improve the policies and legal statutes on the finding, identifying and assisting of victims of human trafficking, or to fully protect the human rights of victims of human trafficking.

(d) Human Trafficking and Forced Labour Exploitation: Guidance for Legislation and Law Enforcement, 2005 (International Labour Organization);

(e) International Organization for Migration, Global Initiative to Fight Human Trafficking, London School of Hygiene and Tropical Medicine, *Caring for Trafficked Persons: Guidance for Health Providers*, Geneva, 2009;

(f) United Nations Office on Drugs and Crime, *International Framework for Action to Implement the Trafficking in Persons Protocol*, New York, 2009;

(g) Effective criminal justice responses to trafficking in persons centred on addressing the protection and assistance needs of different groups and types of victims, with particular reference to victims of trafficking within mixed migration movements, 2017 (United Nations Office on Drugs and Crime). Available from www.unodc.org/unodc/en/treaties/CTOC/working-group-on-trafficking-september-2017.html.

5 United Kingdom Home Office, *Review of the national referral mechanism for victims of human trafficking* (November 2014). Available from www.gov.uk/government/publications/review-of-the-national-referral-mechanism-for-victims-of-human-trafficking.

6 Australian Government Working Group of the National Roundtable on Human Trafficking and Slavery, *Guidelines for NGOs Working with Trafficked People* (2015).

7 In 2014, immigration and labour authorities working with civil society organizations set up 24 shelters to better provide protection and settlement for victims of human trafficking. National Immigration Agency of the Ministry of the Interior of Taiwan: *Report on results of anti-human trafficking in 2015* (2016).

3. Analysis

Many countries have established or explored NRMs in terms of plans, legal statutes, referral agencies and systems. Although they have gained some success, there remain obvious shortcomings.

3.1. Plans

Some countries formulated anti-human-trafficking plans, adopted work mechanisms and created databases, in which the finding, identification, reporting, assisting, settlement, recovery and return of victims are similar to those of NRMs. However, these action plans, mechanisms and databases are relatively general and lack corresponding regulations on practical operations, accountability or inter-agency coordination. What's more, some countries do not publish anti-human-trafficking statistics, such as the number of victims who were identified and those who received assistance, settlement and recovery services, or the files of implementing action plans, mechanisms and databases, thus making it difficult to evaluate the implementation and enforcement of those action plans, mechanisms and databases.

Afghanistan implemented its National Action Plan to Combat Human Trafficking 2015–2017 and an action plan for public awareness of human trafficking, but it still lacks supervision and reports on the implementation and enforcement of the action plans.⁸ Cambodia has at least 9 ministries or committees and 15 departments or bureaus involved in anti-human-trafficking work. It created the Law Enforcement Against Sexual Exploitation and Trafficking of Children database and an information-sharing system on actions and other information for anti-human-trafficking efforts. However, there lacks efficient coordination and comprehensive arrangement between governmental authorities and the informational systems.⁹

3.2. Legal statutes

Some countries have passed anti-human-trafficking legal statutes which cover their NRMs. The number of countries with legal statutes criminalizing most forms of trafficking in persons in line with the definition used by the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children increased from 33 in 2003 to 158 in 2016.¹⁰ However, many legal statutes for NRMs are superficial. They lack implemental regulations or rules, and can hardly resolve the existing problems with referrals for female, underage and disabled victims.¹¹ For instance, United States law enforcement has failed to achieve the goals, as prescribed in the Victims of Trafficking and Violence Protection Act of 2000, of identifying the victims, tracing and suing the traffickers in the United States and, as prescribed in the Trade Act of 1988, protecting labour rights and eliminating legal statutes on slavery.

In terms of compensation, some countries only have general legal statutes not specifically targeted at the victims of human trafficking. Due to the poor financial situations of the offenders, the low education of the victims, and the concealment and interregional aspect of human trafficking, general compensation legal statutes not specifically targeted at the victims could potentially result in a denial of the request for compensation to the victims.

As for the protection of the victims' privacy, legal statutes in most countries focus on the definition of the violation of the privacy and the legal consequences that the offender is responsible for, instead of ways to protect privacy and classified information of the victim. They fail to realize that the unique characteristics of victims of human trafficking thus make it difficult to pinpoint the methods and procedures of protecting the privacy and classified information of the victims.

8 United States Department of State, *Trafficking in Persons Report 2017*, p.56. Available from www.state.gov/j/tip/rls/tiprpt/2017/.

9 Strategic Information Response Network, *Anti-Human Trafficking Database of Cambodia*, the Third Phase of the United Nations Interagency Project on Human Trafficking. Available from www.notip.org.cn/Userimages/00000738.pdf.

10 United States Department of State, *Trafficking in Persons Report 2017*, p.29.

11 United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2014* (United Nations publication, Sales No. E.14.V.10).

3.3. Referral agencies

With the guidance of governmental authorities and the participation of civil society organizations, many countries have launched and made some achievements in the establishment of referral agencies for victims of human trafficking, especially agencies for assistance, settlement and recovery. Nevertheless, most countries do not have a specific agency or a specific fund for the protection of these victims, nor have they made the assistance, settlement and recovery of victims of human trafficking part of the daily task or future responsibility of their Governments. In Australia, there were no government-run shelters for victims of human trafficking and very few shelters in the country.

What's worse, civil society organizations have seldom or never worked to build agencies for assistance, settlement and recovery, since they are faced with limitations in mechanism, space, manpower and funding. International organizations are also not able to systematically or continuously refer victims of human trafficking, since there remains a lack of specific legal statutes on international cooperation in this field. For instance, although the United Nations Development Programme–Action for Cooperation against Trafficking in Persons, the United Nations International Children's Fund, Save the Children, World Vision, and the International Organization for Migration have already established cooperation with the Government of China, there is still a lack of systematic management and long-term service provided for the victims.

In addition, many countries lack qualified social workers and psychological consultants to help the victims, and often refer children to general shelters, such as social welfare houses, that are not in the best interest of the trafficked persons.

Local governments lack effective referral partnerships with civil society organizations and international organizations. This lack of partnerships makes it difficult for local governments to find and assist victims, publish information about the special shelters for victims of human trafficking that were built or managed by themselves or the civil society organizations they entrust, or publish files and information on the specific funding that they have allocated to helping victims of human trafficking.

3.4. Systems

Many countries actively assist and properly settle victims of human trafficking, protect their basic rights, and make efforts to establish NRM systems, which are embodied in the following aspects:

- a. Participation and advocacy from all walks of life in making and adopting anti-human-trafficking policies and legal statutes;
- b. Participation from all walks of life in assistance to victims, and their settlement, recovery and return to society;
- c. Management of anti-human-trafficking actions;
- d. Jurisdiction over anti-human-trafficking cases;
- e. Special funding for anti-human-trafficking actions;
- f. Determination of the nature of female and child trafficking;
- g. Identification of victims of human trafficking;
- h. Settlement and recovery for victims of human trafficking;
- i. Management of shelters of assistance, settlement and recovery for victims of human trafficking;
- j. Accompanying victims of human trafficking and encouraging them to accept interrogation and investigation, and attend court hearings;

- k. Witness protection for victims of human trafficking;
- l. Assistance for victims of human trafficking with foreign nationality; and
- m. Return of victims of human trafficking with foreign nationality.

However, most systems regarding NRMs remain general, regional and pilot, lacking specific prescriptions or detailed procedures, especially external supervision and follow-up reports. The referral of victims of human trafficking is, to a large extent, at the discretion of governmental authorities, which may make referring victims of human trafficking more flexible and unstandardized than it should be. For instance, the United Kingdom lacks simple and uniform standards and methods to identify and refer suspected victims of human trafficking, systematic and comprehensive anti-human-trafficking training, formal audit and supervision over assistance, settlement and recovery service providers, and regulations regarding the accountability of who makes conclusive decisions identifying the victims of human trafficking.¹²

4. Conclusion

A sole agency cannot solve the complex social issue of human trafficking. A State needs to establish the NRM to establish the partnership among governmental authorities, civil society organizations and international organizations to fulfil the needs of the victims and protect their rights. Governmental authorities involved in the enforcement of national laws should fulfil their duties in anti-human-trafficking, especially in the assistance, settlement and recovery of the victims. Civil society organizations are on the front line of the fight against human trafficking. With more affinity for the victims than governmental authorities have, they are essential in identifying victims, reporting and evaluating cases, providing services, referring victims and perfecting relevant legal statutes. The international community champions and supports the NRMs. Many countries' cases have proven that human trafficking is best handled only through the NRM.

The NRM shall be established and improved with a foundation of respect for and protection of the basic rights of the victims, especially their rights to be identified and assisted. The former refers to the right to be immediately and accurately identified as a victim of human trafficking; the latter refers to the right to assistance, settlement, recovery and compensation as a victim of human rights violations.

The principle of the NRM is to centre around the victims. We must respect and protect the basic rights of the victims, satisfy their reasonable needs and demands, provide them with assistance, settlement, recovery and compensation services, and help them return to society, integrate into local communities, and live as normal a life as others do.

To establish the NRM, the following six required activities shall be performed satisfactorily:

- a. Actively intervening;
- b. Fulfilling duties in accordance with the law;
- c. Providing one-stop service for the victims;
- d. Expanding the service scope of existing civil society organizations to cover the victims of human trafficking;
- e. Purchasing services related to assistance, settlement and recovery from civil society organization by governments; and
- f. Perfecting the systems and procedures of the NRM.

¹² United Kingdom Home Office, *Review of the national referral mechanism for victims of human trafficking* (November 2014), p.1. Available from www.gov.uk/government/publications/review-of-the-national-referral-mechanism-for-victims-of-human-trafficking.

5. Recommendations

Sixteen rules shall be followed for establishing and improving the NRM:

- a. An anti-human-trafficking advisory committee shall be established;
- b. Multiple and immediate early identification shall be carried out;
- c. Efficient and accurate official identification shall be carried out;
- d. Settlements shall be safe and secure;
- e. Comprehensive and professional consultation shall be provided;
- f. Immediate medical and health services with respect for the victims shall be provided;
- g. Necessary translation personnel and language support shall be provided;
- h. Privacy and classified information shall be protected at all times;
- i. Victims of human trafficking serving as witnesses shall receive full protection;
- j. Victims of human trafficking shall be accompanied by someone before accepting interrogation and investigation, or attending court hearings;
- k. Commutation or exemption shall be granted for the legal consequences victims of human trafficking may face due to their illegal activities;
- l. Compensation for losses of victims of human trafficking shall be provided;
- m. Restorative justice for victims of human trafficking and help for them to return to society shall be provided;
- n. Permission for foreign victims of human trafficking to stay, reside temporarily or reside permanently in the country where they are assisted shall be granted;
- o. Safe dispatch for foreign victims of human trafficking to return to their countries with dignity shall be provided;
- p. Special consideration for child victims of human trafficking shall be granted.¹³

The aforementioned 16 rules cover the assistance, settlement, recovery, return to society and other issues regarding the referring of the victims of human trafficking. To respect and secure the basic rights of victims of human trafficking, especially their rights to be identified and to be assisted, it is necessary to uphold the fundamental principle of centring around the victims of human trafficking, and to satisfy the requirements such as actively intervening and fulfilling duties in accordance with the law.

¹³ G. Liu, *The Law of Anti-Cross Border Trafficking in Persons and National Referral Mechanism for Trafficking Victims (Fankuajing Renkou Fanyun Falv Zhidu Yu Renkou Fanyun Beihairen Zhuanjie Jizhi)*. (Beijing, World Affairs Press, 2016), p. 431. Available from <http://product.dangdang.com/1154097247.html>.



Humanitarian Alternative Pathways for Protection for Forced Migrants in Latin America

Liliana Lyra Jubilut

Executive summary

In the current “migration crisis” combining States’ interests and migrants’ needs have been challenging, and the availability of legal pathways for migration have been scarce, especially if considering pathways with a humanitarian lens. As migration flows and migrants’ needs, however, do not cease to exist in face of lack of legal humanitarian avenues for migration, it is relevant to assess the existing few initiatives that, at the same time, combine the creation of novel legal pathways for migration and that adopt a humanitarian lens.

In this scenario, Latin America provides examples of some interesting initiatives, as the region has adopted and/or proposed alternatives for forced migrants’ displacement with humanitarian lenses, such as resettlement in solidarity, humanitarian entry visas, humanitarian residency permits, regional residency permits, and regional citizenship.

These Latin American initiatives have been able to benefit forced migrants both from within and outside the region and people fleeing from multiple causes. They have also been, in some cases, expressly based on humanitarian concerns assisting, thus, in untangling the migration narrative from security and economy concerns, with a shift in rhetoric to the human perspective.

Even if there is room for improvement, these initiatives can be seen as good practices, and inspire similar actions by other States. They can also be seen as positive steps in creating legal pathways for migration as well as instruments in expanding protection spaces by adopting a humanitarian lens to migration.

Introduction

The world is said to be facing a “migration crisis” in recent years, with record numbers of migrants¹ (either “voluntary” or forced²), a multiplicity of migration causes and the growth of mixed flows figures³. Dealing with the arrival of increased number of migrants in a way that combines States’ interests and migrants’ needs have been challenging, and the availability of legal pathways for migration have been scarce.

When legal pathways for migration are not in place, migrants’ rights (both as migrants and as human beings) are violated and States miss the opportunity to better integrate this population, avoiding social and economic

1 See, for instance, in relation to 2015, *IOM’s Global Migration Trend Sheet*, available at <http://gmdac.iom.int/global-migration-trends-factsheet>.

2 See, for instance, in relation to 2015 and 2016 and to people fleeing persecution, conflict, generalized violence or human rights violations, UNHCR’s Global Trend Reports (UNHCR. *Global Trends: Forced Displacement in 2015*. Geneva, 2016 and UNHCR. *Global Trends: Forced Displacement in 2016*. Geneva, 2017, respectively), available at www.unhcr.org/statistics/unhcrstats/576408cd7/unhcr-global-trends-2015.html and www.unhcr.org/statistics/unhcrstats/5943e8a34/global-trends-forced-displacement-2016.html.

3 See, for instance, The Migration Observatory. 2011. *Mixed Migration: Policy Challenges*, 24 Mar. 2011, available at www.migrationobservatory.ox.ac.uk/resources/primers/mixed-migration-policy-challenges/

issues, as well as to establish instruments of good migration governance. If legal pathways for migration are insufficient, those with a humanitarian lens – that would consider the humanitarian needs of vulnerable (especially forced) migrants and, thus, incorporate a human rights’ perspective to migration governance – are even fewer.

Migration flows and migrants’ needs, however, do not cease to exist in face of lack of legal humanitarian pathways for migration. Hence, it is relevant to assess the existing few initiatives that, at the same time, combine the creation of novel legal avenues for migration and have a humanitarian lens, highlighting their positive aspects⁴ as good practices in migration governance and in unpacking the migration conundrum of enhancing legal (and humanitarian) pathways for forced migrants.

In this scenario, Latin America provides examples of some interesting initiatives⁵ as the region has adopted alternatives for forced migrants’ displacement with humanitarian lenses, such as:

- resettlement in solidarity,
- humanitarian entry visas,
- humanitarian residency permits,
- regional residency permits, and
- regional citizenship.

These alternatives have already benefited persons fleeing situations in Colombia, Haiti and Venezuela (i.e. some of the main migration crisis in the region), as well as people fleeing the conflict in Syria, and could have their positive aspects replicated elsewhere.

Latin American humanitarian initiatives for forced migrants

Resettlement in solidarity

In the 1990s and early 2000s UNHCR established new partnerships to implement resettlement – a traditional durable solution for refugees alongside voluntary repatriation and local integration⁶ – in new countries, establishing in its words “emerging resettlement countries”⁷. This initiative included Latin America, where pilot projects were implemented. Brazil, for instance, started its current resettlement program with the arrival of Afghans in 2002.

In 2004 the practice of resettlement in Latin America gained new colors, with a proposed shift in focus from burden-sharing to responsibility-sharing and a regional approach to it. Latin America has a regional regime for refugees based on the Cartagena Declaration⁸ – a 1984 document that has been supported by the UN and the Organization of American States – that includes gross violations of human rights as a ground for the recognition of refugee status. Every 10 years since the adoption of the Cartagena Declaration, the States of the region meet and adopt follow-up documents to tackle forced migration challenges in Latin America. In 2004, in the celebration of the 20th anniversary of the Cartagena Declaration, the Mexico Declaration and Plan

4 As the goal of this paper is to point out good practices in humanitarian alternatives for forced migration, in an effort to inspire similar approaches elsewhere, it will focus only on the positive aspects of the practices that it narrates.

5 Latin America initiatives for the protection of forced migrants have been praised. See, for instance. Grandi, F. 2017. Foreword: Regional solidarity and commitment to protection in Latin America and the Caribbean, *Forced Migration Review* 56: 4-5.

6 See: www.unhcr.org/solutions.html

7 See, for instance, UNHCR. New Directions for Resettlement Policy and Practice. 14 Jun. 2001. Available at www.refworld.org/docid/3da1b32b2.html

8 Available at www.unhcr.org/about-us/background/45dc19084/cartagena-declaration-refugees-adopted-colloquium-international-protection.html

of Action⁹ was adopted¹⁰. In this document, Latin America adopted resettlement in solidarity as a regional new approach to a traditional durable solution for refugees¹¹.

Resettlement in solidarity was established with a view to allow Latin American States to assist with Colombia's refugee crises, showing solidarity both to the refugees that still needed protection albeit being in countries of first asylum and to countries of first asylum receiving large number of refugees. Additionally, it focuses on vulnerable refugees as the preferred candidates for resettlement.

Resettlement in solidarity schemes have been implemented in Brazil, Chile, Argentina, Paraguay and Uruguay so far. Moreover, the regional focus has been expanded to allow for the protection of extra-continental refugees, mainly Palestinians and Syrians.

Albeit benefiting small numbers¹² of a specific group of forced migrants (refugees), resettlement in solidarity can be seen as a Latin American humanitarian legal pathway for migration into the region.

Humanitarian entry visas

Another humanitarian legal pathway for migration in Latin America was established in 2010 in light of the earthquake in Haiti and the environmentally-induced displacement that followed. To facilitate the entry into its territory of Haitians Brazil adopted humanitarian visas for them *in lieu* of traditional tourist visas that were more demanding in terms of requirements.

Humanitarian entry visas were meant to ease entry into the country and not as a way to guaranteeing legal status once in them. However, it was an instrument in facilitating mobility for these forced migrants (in this case environmentally displaced persons), both in term of admissions policies and by making the access route to the host countries safer, and can be seen as a tool in complementary protection.

They can also benefit refugees. This is so given that, in 2013, persons affected by the Syrian conflict started also to be entitled to humanitarian entry visas to Brazil¹³ as a way to facilitate their coming to the country. It is relevant to note that even though refugees should not need a visa to enter, in today's world and especially in long-distance and airway travels, visas are required for a person to board means of transportation and, therefore, humanitarian visas can be seen as expanding the protection space for forced migrants.

Also in the region, Argentina has established a similar program of humanitarian entry visas for Syrians.

Humanitarian residency permits

In light of humanitarian crisis in the region, Latin American States also developed the practice of granting humanitarian residency permits: in this instance, not as a way to entering their territories but as a means of legal stay within them.

This practice has benefited, for instance, Haitians and Venezuelans and, therefore, is not based on a specific cause of migration but rather on the humanitarian character of the displacement.

Each State that has adopted this legal pathway for migration has created its own regulation and criterion for the humanitarian residency agreements, but, due to the fact that this has been a practice embraced by more than one State in the region, it can be regarded as a Latin American attitude toward humanitarian migration.

9 Available at www.refworld.org/docid/424bf6914.html

10 It was adopted by 20 States: Argentina, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay, and Venezuela.

11 Jubilut, L. L. & Carneiro, W. P. 2011. "Resettlement in Solidarity: A New Regional Approach Towards a more Humane Durable Solution". *Refugee Survey Quarterly* 3(1): 63-86.

12 In its first 10 years (2004-2014) a little over 1500 persons were resettled in the region (Ruiz, Hiram. 2015. *Evaluation of Resettlement Programmes in Argentina, Brazil, Chile, Paraguay and Uruguay*. Geneva: UNHCR).

13 For more on Brazil's humanitarian entry visas see: Jubilut, L. L. & Sombra, C. A & Madureira, A. de L. 2016. "Humanitarian Visas: Building on Brazil's experience", *Forced Migration Review* 53: 76-78.

It needs to be highlighted, though, that the best use of humanitarian residency permits would be as a form of complementary protection (i.e. to forced migrants that fall outside the scope of the international refugee regime)¹⁴ and that they should not be used as a way to diminish States' responsibilities towards refugees.

Regional residency permits

South America counts on with a few regional organizations among which is MERCOSUR, an economic organization that aims to establish a free market among its Members¹⁵. Albeit primarily focused on trade issues, MERCOSUR has adopted two agreements on residency permits¹⁶ that can be seen as new legal pathways for migration among its Members.

These agreements allow for nationals of Argentina, Brazil, Uruguay, Paraguay, Bolivia, Chile, Colombia, Ecuador, Peru and Venezuela to live and work in another State member of MERCOSUR for two years. The process to obtain the permits are less bureaucratic than the general rules with the only requirements being proof of nationality and of lack of a criminal record.

This initiative is not presented by States as having a humanitarian or human rights basis but it does allow for new pathways for migration among nationals of MERCOSUR's States, and given some forced migration scenarios in the region, can be seen as having humanitarian results.

Regional citizenship

Another South America regional organization is UNASUR (Union of South American Nations), which has developed a proposal for regional citizenship. This still not implemented proposal is based on freedom of movement within South America, with gradual recognition of rights (civil, political, economic and social), leading up to full citizenship¹⁷.

This initiative can create a new legal pathway for migration for South Americans within the region, based on the implementation of human rights, and as in the case of the MERCOSUR residency permits, can have humanitarian results also benefiting forced migrants.

Can these practices be “exported”?

There are 5 main reasons (based on why States could find them palatable to adopt, while, at the same time, expanding the humanitarian protection space) for which one should think that these Latin American practices can be exported. They are:

1. as they are tailored to forced migrants they benefit specific groups of migrants and rely on the humanitarian rhetoric as their basis, thus having a particular scope of protection
2. being based on humanitarianism they can aid in enhancing States' soft power, hence providing an extra incentive for their adoption apart from their benefit for forced migrants
3. as they can be *ad hoc* practices they speak to States' control of migration governance in their territories (as States can scale them up or down, can design them respecting their national practices and legal systems, and can tailor them to specific groups according to their interests), while, in practice, expanding the humanitarian protection space

14 For more on complementary protection see: Manda, R. 2005. “Protection Mechanisms Outside of the 1951 Convention (“Complementary Protection)”. *Legal and Protection Policy Research Series*. Geneva: UNHCR.

15 All States of South America belong to MERCOSUL, either as Members (Argentina, Brazil, Paraguay and Uruguay) or as Associated States (Bolivia, Chile, Colombia, Ecuador, Guiana, Peru and Suriname). Venezuela status in the Organization has been suspended.

16 The agreements are: *Acordo sobre Residência para Nacionais dos Estados Partes do MERCOSUL* and *Acordo sobre Residência para Nacionais dos Estados Partes do MERCOSUL, Bolívia e Chile*, to which the other States have also adhere (so now the agreements are known as *Acordo sobre Residência do MERCOSUL e Associados*).

17 For more on this see: Villareal Villamar, M. C. Ciudadanía Suramericana. “La Apuesta por una Ciudadanía Común en América del Sur. Entrevista con Jaques Ramírez”, *Latin America: integración & desarrollo* 2 (7): 28 – 29.

4. the practices that are of a complementary protection nature bring along forms of protection that are more temporary in nature than refugee status and benefit other migrants than refugees
5. they were created as regional approaches and have benefited mainly (but not only) forced migrants from within the region, and as such may be an incentive to other regions to tackle their own forced migration crisis with regional humanitarian initiatives.

Conclusion

Latin America has created humanitarian initiatives that can provide legal pathways for migration, especially benefiting forced migrants and refugees.

These practices were adopted based on regional initiatives stemming from the Cartagena Declaration or regional organizations, on existing ties between the involved countries and on human rights and/or humanitarian concerns. Some have been adopted collectively by a group of States, while others are national practices (albeit in some cases adopted by more than one State). Some have similar proposals in other regions of the globe, while others are peculiar to Latin America.

The Latin American initiatives have been able to benefit forced migrants both from within and outside the region and people fleeing from multiple causes (from natural disasters to war and complex political scenarios). They have also been, in some cases, expressly based on humanitarian concerns assisting, thus, in untangling the migration narrative from security and economy concerns, with a shift in rhetoric.

Even if – as in all humanitarian practices – there is room for improvement, these initiatives can be seen as good practices and inspire similar actions by other States – either individually or through regional arrangements. These humanitarian alternatives for migration crisis in Latin America can be seen as positive steps in creating legal pathways for migration as well as instruments in expanding protection spaces by adopting a humanitarian lens to migration.

Recommendations

- Legal pathways for migration need to be created, especially for forced migrants, as a way to both protect migrants' rights and create instruments of good governance of migration for States
- A humanitarian lens should be adopted in creating legal pathways for migration. This would shift the migration narrative to benefiting the needs of forced migrants and, at the same time, enhance the humanitarian protection space
- The humanitarian alternatives for migration adopted in Latin America (resettlement in solidarity, humanitarian entry visas, humanitarian residency permits, regional residency permits and regional citizenship) can be seen as mainly good practices and should be replicated elsewhere
- These alternatives should be adopted by individual States, regional initiatives and international organizations, with a focus on both regional and global migration crisis

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A Sectorial Approach to Labour Migration: Agriculture and Domestic Work

Anna Triandafyllidou

Executive summary

Today more than ever, the European Union needs a comprehensive albeit differentiated approach towards legal labour migration, which responds to the varied needs of domestic labour markets and at the same time discourages effectively irregular migration. The segmented structure of domestic labour markets and the demographic deficit of Europe lead to increasing demand for a migrant labour force. This labour force is concentrated in specific sectors, such as cleaning, catering and care jobs for women; and construction, agricultural and semi-skilled manufacturing jobs for men.

Such labour shortages are better catered to by a demand-led approach that takes into account the different economic cycles of Member States, their different economies and labour markets, while at the same time responds to long-term sociodemographic processes, including:

- a. The ageing of European societies;
- b. The configuration of nuclear families without extended support networks to cover needs for care of children or elderly/disabled people;
- c. The participation of women in paid work outside the home;
- d. These trends are irreversible and persist even in periods of economic downturn or weak growth.

A flexible albeit proactive regulatory framework that would allow for demand and shortages to drive recruitment of migrant workers, while also being adaptable to territorial and sectorial variations, would be optimal. Of course, the thorny issue also needs to be addressed of how to match flexibility with worker protection from exploitation, setting up a clear and realistic set of rights and duties for both employer and employee. A framework sectorial approach can be tested in niche sectors such as domestic work or agriculture, complementing existing directives regulating training, research, students, intracompany transferees, high-skill migrants and seasonal employment.

Introduction

This policy paper is based on a number of previous studies¹ on irregular migration and irregular work in Europe. Here I am focusing specifically on two sectors where demand for migrant labour has been high and where the risk of irregular employment is pervasive. In addition, these are sectors that have not benefitted from a sectorial approach such as the highly-skilled sectors covered by the Blue Card Directive, or the directives covering intracompany transferees, researchers or paid trainees, with the exception of the seasonal employment directive, which is expected to address agriculture work shortages but not domestic or care work.

¹ Triandafyllidou and Bartolini, 2016; Triandafyllidou and Marchetti, 2013; 2015; Triandafyllidou 2013.

The two sectors are of course different in terms of their integration in international migration patterns and the global economy. Migrant domestic and care work has developed in what has been termed as global care chains.² Relevant research has documented how migrant women from less affluent countries move to those more affluent ones to fill gaps in social welfare and increased needs of care. While social robotics are in the process of creating machines with sufficient artificial intelligence to work as carers of old people, young children or people who are not self-sufficient, the path for such an invention becoming commercialised is still long and hence there seems to be no structural competition between technological innovation and international migration for domestic and care work employment.

By contrast the agricultural sector is much more susceptible to technological developments and to automated processes of cultivation, irrigation or harvesting and packaging. Thus in this sector migrant labour may be seen to serve the interests of unscrupulous employers, interested in maximising profits and reluctant to invest in technological change for their crops. In other words facilitating migration may be seen as counterproductive, impeding technological innovation. However, the demand for (migrant) labour force in agriculture has largely persisted in Europe despite technological advances and the lack of legal migration channels has contribute to problems of (severe) exploitation of both non EU citizens and intra EU migrants in those agriculture sectors where production is most intensive, and the products small in size and delicate (e.g. strawberry, tomato, mushroom and other small fruit cultivations and greenhouses).

Taking these structural issues into consideration this policy paper puts forward some concrete proposals for a proactive approach to sectorial labour migration.

Domestic and care work

According to the International Labour Organization³, 80 per cent of migrant domestic workers are concentrated in high-income countries (9.1 million of the 11.5 million estimated). The increase of paid domestic work in many European and Organisation for Economic Co-Operation and Development societies is associated with the increasing labour market participation of (native) women. Their greater flexibility and availability to work outside the home depend in the abstract on the provision of care and domestic services by someone else. Especially in countries where there is low male participation in reproductive roles and household chores, the availability of cheap, irregular work to provide for domestic and care works at home has allowed more women to find paid employment outside the home.⁴

The turn towards paid care, however, has also been caused by ageing societies, along with the restructuring of long-term care provision. Different countries have opted for different solutions to these contrasted pressures (of increased care needs and welfare cuts) in relation also to their previously existing regimes, which ranged from systems that largely relied on the non-paid assistance of family members (particularly women), as in Italy or Spain, to publicly-provided assistance, as in Belgium, Slovenia or the Czech Republic.

In a recent study on Italy, the Netherlands and the United Kingdom, Van Hooren⁵ argues that different welfare systems lead to different types of migration, care arrangements and specific “care markets”. Thus, she finds that the Italian familistic care regime, which provides cash allowances to families without controls on how they spend the funds, provides incentives for the emergence of a “migrant-in-the-family” model of care, whereby families become employers of migrant care workers. In the British care regime, where care is increasingly transformed into cash payments, a double market emerges, with more affluent families that resort to the private market for paid care and less affluent families that use care allowances to cover food or transportation costs and directly provide care to the elderly person, only in a few cases with the help of a paid care worker.⁶ As the Government of the United Kingdom checks how the allowances are spent, hiring an irregular migrant care worker is not an option. In the case of the Netherlands, care services are provided by the public welfare

2 Hochschild, 2000.

3 ILO, 2015.

4 Ambrosini, 2013.

5 Van Hooren, 2012.

6 Van Hooren, 2012: 141.

system and there is thus no market for privately purchased personal care services, with a very low demand for migrant care workers.⁷

Within the overall reorganization of care regimes, there has been a notable shift in the State's view of users, transformed from service recipients to customers who actively consume a service.⁸ This reflects the households' need for greater flexibility in the support provided by the welfare State, but also an overall shift towards a neoliberal understanding of citizenship which cuts across both familial and State-centred welfare regimes.

Indeed, in a larger study on the care sector⁹, find that Germany, Austria, Italy and Spain rely mainly on migrant care workers at home, while the Netherlands, Norway, Sweden and the United Kingdom tend to rely more on the formal sector and on services provided by public or private entities. The distinction between familistic regimes leading to migrant-in-the-family, and liberal regimes leading to migrant-in-the-market models can also be partially explained in the case of Austria and Germany by the limited public resources, the public preference for cash programmes, and the segregation of migrants in low-skilled jobs.¹⁰

In Italy and Spain, the scarcity of cash-for-care programmes is complemented by a notable level of undocumented flows and informal work arrangements.¹¹ Da Roit and Weicht¹² find that segregated labour markets and the presence of irregular migrants are sufficient factors leading to a migrant-in-the-family model even in the absence of generous cash-for-care benefits. At the same time, they find that, in the absence of uncontrolled cash benefits and of a large informal economy, a migrant informal care model can arise, as in the case of the Netherlands, France, Sweden and Norway. At the same time, these conditions are not enough per se, as in the case of the United Kingdom, which is characterized by a strong presence of the private sector and formal care arrangements through private providers.

The emergence of informal migrant work in the care sector is hence shaped by a combination of factors: the overall public expenditure on formal care services, the presence or absence of uncontrolled cash-for-care programmes, and the presence or absence of irregular migrants or indeed of migrants who can afford to work without a formal contract (European Union citizens, naturalized or with a permanent permit, third country nationals whose permits are linked to their spouses, and all those who do not necessarily need to prove they are employed in order to keep/renew their residence permit).

In addition to these dynamics, migrant domestic workers face specific language and cultural barriers to access information on administrative procedures, labour laws and rights which facilitate indirectly their informal employment. They tend to be more isolated from peers, service providers and the host society in general, limited in their freedom of movement. Live-in immigrant domestic workers are probably more at risk of exploitation, abuse and lack of access to fundamental rights (privacy, dignity and freedom), but live-out immigrant workers may also suffer the same if they are in the position of irregular resident.¹³ Moreover, this is a particularly gendered area of irregular employment for migrant workers, and it attracts both irregular migrant women (often but not always working in live-in arrangements) and regularly residing migrant women who have no other work opportunities besides care or domestic work.¹⁴

7 Van Hooren, 2012: 142.

8 Shutes, 2012.

9 Da Roit and Weicht, 2013.

10 Da Roit and Weicht, 2013: 479.

11 See also León and Pavolini, 2014.

12 Da Roit and Weicht, 2013: 481.

13 European Union Agency for Fundamental Rights, 2011; Triandafyllidou, 2013.

14 Triandafyllidou, 2013.

Ideas for change

The brief analysis above shows that there are several features of domestic/care work and challenges related to it shared by different countries, and that there can be new avenues for proactively regulating the sector and combatting irregular employment.

First, there is a need to open up legal migration channels for workers in the care and domestic sectors, where demand is high and local supply is low. Such openings would generally be easy to pass, being more favourably seen by public opinion than others.¹⁵ They could be regulated through bilateral agreements (between specific countries of origin and destination) or through regional agreements (for instance, between a number of European Union countries and one or more countries of origin).

There is a need for these workers to have a migration status not tied to their employers, to avoid exploitation in a context of growing privately-funded care markets. We may encounter in such cases formal contracts that do not correspond to real working conditions and wages, as the employers have the upper hand and can threaten the employees with discontinuing the work and making them lose their migration status.¹⁶ Thus, there is a need to create overarching guidelines, perhaps at the level of the United Nations, on what safeguards a bilateral or regional agreement on migration for domestic/care work should include. The United Nations could play an important role here by either pushing for the ratification of the relevant ILO Convention concerning decent work for domestic workers (C189 – Domestic Workers Convention, 2011 (No. 189)), or for taking the main elements of this Convention and using them as a blueprint.

Care work regulations need to strike a balance between protecting the workers and responding to the needs of employers for practical and affordable care arrangements. For instance, in Austria, the legalization of rotational 24-hour care work, with significant flexibility to agreed free time and shifts, has allowed citizens of the European Union (for example, from Slovakia or Bulgaria) who were previously informally employed to have legal contracts and full social protection rights.¹⁷ The regulation of this type of work as self-employment kept it practical and affordable for families, but left migrants to their own devices, as they had little bargaining power over work and pay (which was eventually decided by employers/families and placement agencies).

Flexibility in the migrant labour arrangements in the domestic and care work sectors must be coupled with migrant workers' access to labour rights and social protection, not only on paper (because of the existence of a formal contract), but in their actual working conditions and salaries. This is a policy challenge in terms of commitment and enforcement, as private homes are workplaces that are difficult to control. Thus, rather than enforcement, there is a need for implementing periodic monitoring (e.g. once a year) by labour inspectors of registered contracts; or, for instance, there could be ad hoc random monitoring visits. Families as employers would have to accept such a periodic control and do everything possible to facilitate this.

The role of trade unions is also of paramount importance in providing for legal counselling to both migrant domestic workers and the households employing them.

Agriculture

Agriculture in several European countries has been characterized by a declining local or primary labour market and an increasing demand within a secondary labour market for temporary hard and low-pay work. Natives are increasingly reluctant to engage in agricultural work, because of the low prestige and low pay associated with it, and of the general internal migration to urban areas. This situation has opened up opportunities for migrant workers, both regular and irregular, who have found in agriculture a source of income for survival along with hope for later upward mobility to other sectors. As a matter of fact, locally considered meagre wages may still be higher than in origin countries (even in the case of migrants from Central and Eastern Europe).

¹⁵ Triandafyllidou and Marchetti, 2013; Ambrosini, 2013.

¹⁶ Cangiano et al., 2009: 2; Shutes, 2012.

¹⁷ Österle and Bauer, 2015.

The connection with commercial networks, agro-entrepreneurs, intermediaries and the final consumers pushes for lowering the prices of vegetables and fruits at any costs and with difficult traceability of products. The dynamics of irregular employment in agriculture are thus shaped by a number of factors that include but are not confined to labour migration management. Agriculture is a sector characterized by difficult working conditions, low prestige and low pay. It is a sector where work is mainly seasonal and requires a supply-and-demand mechanism that is ultra-flexible. People need to be available on call, can be easily dismissed, work under adverse conditions, and have little possibility of upwards mobility, as labour costs are kept low.

Today's agriculture is characterized by intensive pressures to keep production costs low to be competitive. Large corporations in the retail and agrifood sectors push for low prices to maximize their own benefits and, given the large volume of products that they can absorb, they can impose their conditions on producers. Producers are faced with some costs that are irreducible, such as the increasing need to mechanize the sector, the cost of water and energy for production, and the cost of fertilizers, seeds and feed. Thus, squeezing the cost of labour appears almost a necessary choice, particularly to smaller producers. The swings of national and international food markets do not encourage long term investments in mechanised production when they can recruit among the most vulnerable strata of the migrant population a plentiful and inexpensive labour force. Indeed, in this context, migration policy plays an important role by restricting channels for legal labour migration with a secure status, thus creating a plentiful, young male labour force with an irregular or insecure legal status, that is available for work – and exploitation.¹⁸

In Northern Europe – Ireland, the United Kingdom, Germany and the Nordic countries – the demand for labour in agriculture has been largely met through intra-European migration from the new Member States. While this migration was linked to seasonal contractual employment, recent research has shown that employment was formally legal but actually exploitative and irregular, often involving substandard conditions in terms of working hours, low wages and safety conditions. Potter and Hamilton¹⁹ document how mushroom pickers coming from the new Member States worked initially without papers, either because they were unaware of needed documentation or because they trusted their employers' promises of later regularization. Even in case of regular workers, they are often unaware of their rights and accept payslips not in line with their actual pay, the quantity of mushrooms picked and the overall conditions of work.

In Southern Europe, migrants employed in agriculture are predominantly from Africa and the Balkans, and are extensively employed in seasonal work. Seasonal work permits often involve complex bureaucratic procedures and their terms are abused both by the employer and the prospective migrant.²⁰ The quota system applied in Italy and Greece is actually not aligned with the real needs in cultivations which are mostly seasonal and not always foreseeable, but always higher than what the formal entry quotas permit.

In addition, there is a plentiful, flexible migrant labour force with irregular or insecure migrant status. This labour force involves young men from sub-Saharan Africa, North Africa or South-east Asia, who are rejected asylum seekers or asylum seekers with their applications pending, or over-stayers of seasonal permits. Various forms of exploitation and precariousness are constantly reported by non-governmental organizations and third-sector associations.²¹

However, this is only part of the story, as what is often observed – in the United Kingdom²² but also, for instance, in Italy or Spain²³ – is that irregular work in agriculture is provided by European Union citizens and often by young women who are subject not only to exploitation but also to sexual abuse.²⁴

18 Rigo, 2016; Amnesty International, 2012.

19 Potter and Hamilton, 2014.

20 See Maroukis and Gemi, 2011, on Greece; Amnesty International, 2012 or Cillo and Toffanin, 2014, on Italy.

21 See the latest reports from Italy by Caritas, 2015; MEDU, 2015.

22 Potter and Hamilton, 2014.

23 Cillo and Toffanin, 2014; Rigo, 2016.

24 Palumbo, 2015.

Ideas for change

Reversing this trend of exploitation and irregular work in agriculture requires not only a change in migration policy, but also wider measures related to the wider agrifood sector and to regulation of the labour market:

- a. Enforcement of employment legislation, controls, inspections, verification of contracts, working conditions, accommodation and actual pay²⁵: Whistle-blowing is not sufficient, as migrant workers, including intra-European Union migrants, are often unaware of their rights;
- b. Intensified controls of large retailers and the agrifood businesses, where a corporate responsibility policy is important: Supermarket chains should be pushed to use ethical supply sources and to check subcontractors and producers²⁶;
- c. Licensing and proper monitoring of cooperatives and gang-masters of different types, to make sure that cooperatives are not exploitative intermediaries in disguise: Naturally, there is a need here to distinguish between the role and regulation of such intermediaries in different countries and different labour regulation systems;
- d. Better regulation of seasonal employment in agriculture through the enforcement of bilateral agreements that are simple and easy to respect by both employers and workers: This is particularly the case where seasonal migrant work involves neighbouring countries (e.g. Greece or Italy and their Balkan neighbours, and Spain and Morocco). Positive examples have been implemented in the past in Spain.²⁷

Where agriculture is embedded in multifunctional economies of rural regions which involve also construction and tourism industries, this is likely to produce models that are in the longer run viable both for rural regions and for migrants. As Kasimis, Papadopoulos and Pappas²⁸ argue in reference to the case of Greece, migrants can become important supporters of overall aged populations, especially in mountainous areas. However, here too the role of the State is important in protecting the labour rights of migrant workers, thus ensuring that they have an incentive to stay and settle. Pressures such as those described above of compressing wages and engaging in exploitative labour lead to a higher turnover of workers and an attraction of always-new irregular migrants, making agriculture an ugly but necessary step for labour market insertion for (rejected) asylum seekers, vulnerable European Union citizens and irregular foreign residents.

Concluding remarks

European labour markets are highly segmented; they are characterised by a structural demand for a migrant labour force not only in selected high-skill sectors, but also in specific low-skill sectors where demand is constant and supply is often provided through irregular work. A proactive approach seeking to address demand through bilateral or regional agreements could be beneficial. Such framework agreements would provide for the main conditions for entry and employment. They should be flexible and seek to strike a balance between the needs of employers and the protection of migrants.

As a rule of thumb, it is important to keep migrants independent from specific employers, even if they may be tied to employment in a specific sector. There is also a need of constant monitoring of the agreements and schemes to avoid exploitation and abuse, and to ensure that migrant workers effectively have access to the agreed rights. Overall, such schemes should not be confined to temporary or seasonal migration, but should regulate entry and employment for initial periods of two or more years. They could then be integrated into general frameworks for migration shifting to long-term residence. There is already a critical mass of scholarly and policy analysis of both sectors – agriculture and domestic/care work – on which a sectorial regulation framework can be based, provided there is political will.

25 Scott, Craig and Geddes, 2012.

26 Potter and Hamilton, 2014; daSud, Terra! and Terrelibere.org, 2015.

27 González Enríquez and Reynés Ramón, 2011.

28 Kasimis, Papadopoulos and Pappas, 2010.

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For Their Own Good? Addressing Exploitation of Women Migrant Workers

Jenna Hennebry

Executive summary

Migrant workers often experience precarity in their migration journeys, and the state structures and programs designed to ‘protect’ migrants have the potential to increase migrant vulnerability to exploitation; financial exploitation, enduring physical harm, rights abuses or various forms of coercion. The increased use of managed migration programs to control migrant flows have introduced a thriving private sector migration industry which facilitates the employment and migration needs of migrants in sending countries, and caters to government and industry (employer) requirements in receiving countries. Migrant workers can be subject to economic exploitation and even violence at the hands of private intermediaries, employers and government authorities. This vulnerability is exacerbated by migrants’ limited access to information and support networks in countries of destination and insufficient levels of social protection and gaps in the governance frameworks in countries of origin.¹ In addition to these common risks, women migrant workers (WMWs) face gendered and specific forms of exploitation and human rights abuses associated with gender norms and stereotypes. Their labour is highly concentrated in devalued, gendered and often invisible labour sectors that are plagued by labour abuse (including excess hours and poor pay), physical and psychological abuse and sexual violence.²

Context

Women constitute roughly half of all people who live and work outside of their countries of birth with growing numbers migrating autonomously for work.³ In the context of this feminization of migration, WMWs face gendered vulnerabilities and risks that differentially impact all stages of migration (pre-departure, transit, employment, return and integration). Though evidence suggests that many WMWs are highly educated and skilled, most are concentrated in low-skilled and precarious labour including textile manufacturing, agriculture, small-scale entrepreneurial endeavours, service, and domestic and public care work (i.e. nursing, elderly and childcare, cleaning).⁴

Factors contributing to WMWs’ vulnerability to exploitation can be traced to persistent structural issues in countries of origin, transit and destination, yet most efforts at regulation have focused on tweaking migration policy and border security regimes, rather than addressing root causes. While civil society groups and international organizations have taken steps towards recognizing and protecting migrant’s human rights, many state-led initiatives focus on protecting persons, rather than on applying a gender lens to assess and uncover root causes of exploitation that prevent migrants from exercising their rights. Governance structures

1 See: Hennebry, J. (2014). Falling through the cracks? Migrant workers and the Global Social Protection Floor. *Global Social Policy*, 14(3), 369-388; Hennebry, J., Grass, W., & Mclaughlin, J. (2017). Women migrant workers’ journey through the margins: Labour, migration and trafficking. United Nations Entity for Gender Equality and the Empowerment of Women (UN Women). Retrieved from www.unwomen.org/en/digital-library/publications/2017/2/women-migrant-workers-journey-through-the-margins

2 Ibid, 2017.

3 See: Women, U. N. (2015). *Progress of the World’s Women 2015-2016: Transforming Economies, Realizing Rights* (No. id: 7688).

4 Hennebry, et. al, 2017.

and initiatives, often framed as protecting WMWs, have translated into reducing WMWs access to education and healthcare, limited employment opportunities in formal labour markets, financial exclusion (property ownership and access to credit), curtailment of mobility rights, and limited opportunities for empowerment.

Private sector actors (recruiters and brokers) have become *de facto* migration mediators and gateways to migration in the face of increasingly restrictive migration frameworks. WMWs face gender specific barriers to migration and limited legal migration routes, and often become reliant on such actors to facilitate migration. This creates additional vulnerability to labour and rights exploitations, exorbitant fees and trafficking. Restrictive governance intended to ‘protect’ WMWs by limiting migration pathways therefore has the unintentional effect of pushing WMWs further underground, exposing them to greater risks and vulnerabilities.

Limiting WMW’s mobility rights “for their own good”?

Several efforts by states in countries of *origin*, *transit* and *destination* intended to ‘protect’ migrants, conversely serve to increase their vulnerability to exploitation⁵ and often involve the curtailment of mobility rights, particularly with respect to WMWs. For example, deployment bans have become a practice employed by countries of *origin* in the face of exploitation of WMWs abroad, they are generally imposed on women and are meant to serve as ‘protective policies.’⁶ Bans are based in trafficking discourses and directly curtail women’s mobility rights. For example, several highly documented cases of exploitation and trafficking of Nepali WMWs have emerged over the last decades and the Nepali state has reacted to these cases by periodically deploying travel bans that deny exit permits to WMWs. Between 1997 and 2008, the government of Nepal enacted at least ten different migration policies targeting women, from complete to partial migrant bans.⁷ Similarly, the Indonesian government banned migrant domestic workers, a sector dominated by WMWs, from travelling to work in 21 different Middle Eastern countries in May 2015 after the execution of two Indonesian workers found guilty of murder in Saudi Arabia.⁸ The Philippines has also experimented with deployment bans on domestic migrant workers to countries that the government deems unsafe, and this has included Saudi Arabia, Lebanon, and other countries in the Middle East and the Gulf.⁹

Rather than protecting the rights of WMWs, travel bans implemented by countries of origin decrease legal routes of migration making it more difficult for women to migrate through official channels. Bans do not address persistent economic need and gender inequality in countries of origin (important migration push factors), and often result in increasing unsafe and undocumented migration through irregular channels, often with the assistance of profiteering smugglers.¹⁰ Indeed, in a report written by the United Nations Special Rapporteur on extreme poverty and human rights, Professor Philip Aston, after his visit to Saudi Arabia in January 2017, estimated that there were roughly 500,000 undocumented Indonesian domestic workers in the Kingdom of Saudi Arabia as a result of Indonesia’s deployment ban.¹¹ Irregular migration and undocumented status increases vulnerability to exploitation and abuse by isolating WMWs from authorities and the protection of laws.

5 For an examination of trafficking enforcement’s impact on migrants’ rights see: Anderson, B. (2012). Where’s the harm in that? Immigration enforcement, trafficking, and the protection of migrants’ rights. *American Behavioral Scientist*, 56(9), 1241-1257.

6 See: Carling, J. (2005). Gender dimensions of international migration. *Global migration perspectives*, 35, 1-26.

7 See: Grossman-Thompson, B. (2016). Protection and Paternalism: Narratives of Nepali Women Migrants and the Gender Politics of Discriminatory Labour Migration Policy. *Refuge*, 32(3), 40.

8 See: Walden, M. (2017, September 7). Despite migration ban, Indonesian domestic workers still face forced labour and abuses in the Gulf. Retrieved September 11, 2017, from www.equaltimes.org/despite-migration-ban-indonesian

9 See: Campbell, K. (2013, September 9). Protection Through Restriction: Controlling Women’s Mobility in Asia. Retrieved September 11, 2017, from www.asiapacific.ca/blog/protection-through-restriction-controlling-womens-mobility

10 Grossman-Thompson.

11 Alston, P. (2017). End of mission statement Special Rapporteur on extreme poverty and human rights, Professor Philip Alston on his visit to Saudi Arabia. Riyadh: United Nations Office of the High Commissioner of Human Rights. Retrieved from <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21094>

In the face of travel bans or limited migration options, many WMWs seek alternative routes to migrate often traveling (and working) through numerous countries to reach their intended destination. Women irregular migrants in *transit* are particularly vulnerable to exploitation, abuse and human trafficking.¹² For example, Mexico, a source and transit country for WMWs, has seen growing numbers of women migrants from Central America crossing borders to the South and the North, and in response, the government has increased the security presence at their Southern border with the USA sponsored 'Programa Frontera Sur'.¹³ The securitization approach has increased the use of smugglers by WMWs attempting to navigate perilous transit routes and driven up the price of the clandestine journey. The net effect has led to increasing WMWs debt and exposure to violence and exploitation.¹⁴ Similarly, for Ethiopian WMWs transiting through Djibouti and Yemen to reach the Gulf states, rising fees and unexpected expenses demanded by migration brokers and smugglers mean that WMWs engage in precarious working conditions in transit countries in order to earn enough money to pay for the remainder of their journey.¹⁵

Measures taken by *destination* countries to 'protect' women migrants from exploitation can also result in heightening exploitation or curtailing rights. Canada, a top destination country for migrant workers with approximately 250,000 entries in 2015,¹⁶ introduced regulatory frameworks in response to international pressures to address and stop trafficking, and exploitation from labour recruiters. However, these policies and regulations have been criticized for providing the state with the authority and discretion to profile, deny entrance and deport WMWs who are viewed as undesirable or "vulnerable" migrants (particularly WMWs who are suspected of being employed in industries related to sex work).¹⁷ These regulatory frameworks have not addressed poorly enforced occupational health and safety standards for WMWs, nor have they addressed the lack of federal regulations for recruiters and recruitment practices in Canada. This regulation, coupled with minimal penalties for exploitative or non-compliant employers, is more likely to lead to the underreporting of crimes against the most vulnerable of WMWs in Canada (those in the sex industry) and to increased clandestine migration rather than reducing exploitation.

Managed bilateral or multilateral labour migration agreements between origin and destination countries can also have negative consequences for migrant rights. Such agreements typically focus on labour market issues, and may address areas like finance, trade and development,¹⁸ but on a whole remain largely gender-blind and neglect human rights concerns. Bilateral agreements (BLAs) or memoranda of understanding (MOUs) that structure guest worker or temporary worker programs tend to specifically limit mobility rights for migrant workers in countries of destination. In some cases such programs can also enable gender discrimination in recruitment. For example, Spain's agricultural guest worker program with Morocco specifically recruits WMWs who are mothers, largely due to perceptions that such workers are compliant, docile workers with delicate hands suited for small fruit, and are likely to return to their countries of origin to care for their children at the end of their contracts; women must also secure their male spouses consent to participate in this

12 See: Düvell, F. and F. Pastore. 2006. Transit, migration and politics: Trends and constructions on the fringes of Europe. COMPAS and IMISCOE, Retrieved from www.compas.ox.ac.uk/fileadmin/files/Publications/Reports/Duvell%20transit%20IMISCOE%20report.pdf.

Tayah, M.-J., & Atnafu, A. (2016). Promoting and protecting the rights of migrant domestic workers in transit: The case of Ethiopian women migrants (GLOBAL ACTION PROGRAMME ON MIGRANT DOMESTIC WORKERS AND THEIR FAMILIES). International Labour Organization (ILO).

13 See: Casillas, Rodolfo R. (2016). Entre la política deseada, la practicada y los flujos migratorios emergentes: respuestas en construcción y los desafíos duraderos. Mexico D.F.

14 Hennebry et al., 2017; IMUMI (2014). Las Trabajadoras Migrantes Centroamericanas en Chiapas: Recomendaciones de política pública para garantizar el ejercicio de sus derechos. Entidad de las Naciones Unidas para la Igualdad Género y el Empoderamiento de las Mujeres, ONU Mujeres.

15 Tayah & Atnafu, 2016.

16 See: Immigration, Refugees and Citizenship Canada (IRCC). (2016). 2016 Annual Report to Parliament on Immigration. Government of Canada. Retrieved from www.cic.gc.ca/english/resources/publications/annual-report-2016/index.asp#s2

17 See: Citizenship and Immigration Canada (CIC). (2014, May 28). Temporary Foreign Worker Program and International Mobility Program: Protecting workers from abuse and exploitation. Retrieved from www.cic.gc.ca/english/resources/tools/temp/work/vulnerable.asp

18 See: Hennebry, J. L., Grass, W., Williams, G., Williams, K., Chikanda, A., Walton-Roberts, M., & Crush, J. (2015). Bilateral Labour Migration Agreements, Development and Trade: Complexity, Contradiction and Coherence. Waterloo.

program.¹⁹ Though the Morocco-Spain BLA has remedied some of the most egregious human rights violations that occurred when employers previously employed mostly undocumented migrants,²⁰ the program restricts mobility rights between employers, upward employment mobility, and offers no path to permanent status or family reunification.²¹ Similarly, gender assumptions and discrimination are found in the Mexican-Canadian Seasonal Agricultural Worker Program (SAWP) with WMWs accounting for only three percent of SAWP workers due to recruitment biases, leaving WMWs needs and risks unconsidered.²² The gender discrimination in both programs has remained unaddressed.

The Philippines, with roughly 0.89 million WMWs outside the country in 2016 (OECD, 2016), has actively sought BLAs with destination countries, most with an eye to ensuring labour market access and remittance flows, though some have addressed human rights concerns.²³ The 2013 Philippines-Kingdom of Saudi Arabia BLA for domestic workers, signed on the heels of a human rights scandal which received media coverage, is an example of tangible gains made towards protecting the rights of women migrant workers (e.g. establishing that employers shall not withhold migrant passports, outlining housing and wage expectations, paid leaves, etc.), but it falls considerably short of international human rights frameworks including CEDAW and Convention 189, and does not address employer-tied permits and pathways, leaving migrant workers bound to a single employer/sponsor.²⁴

Conclusion

Restrictive migration policies and pathways limit women's mobility rights and are often based on assumptions about women's autonomy, agency and self-determination, framing WMWs as helpless victims. It is the lack of access to decent work and regular migration pathways that creates conditions for exploitation, coupled with securitization, rather than some inherent vulnerability, that leads to exploitation. Such policy responses involve the securitization and criminalization of migration, and explicitly symbolize the co-opting of the trafficking discourse by states to enhance sovereignty under the guise of offering 'protection' to WMWs.²⁵

Reactionary policies that restrict or ban migration because of concerns over exploitation of WMWs fail to address unscrupulous recruiters and recruitment practices, unenforced bilateral labour agreements, contract switching, a lack of information and education about migrant rights, discriminatory laws and institutions, bilateral labour agreements that tie workers to a single employer and legislated power imbalances, etc. Enhancing access to regular migration and decent work represent the only way forward to address systemic patterns of exploitation and discrimination.

19 See: Mannon, S. E., Petrzalka, P., Glass, C. M., & Radcliff, C. (2012). Keeping them in their place: migrant women workers in Spain's strawberry industry. *International Journal of the Sociology of Agriculture and Food*, 19, 83.; Zeneidi, D. (2017). *Gender, Temporary Work, and Migration Management: Global Food and Utilitarian Migration in Huelva, Spain*. Springer.

20 Zeneidi, 2017.

21 Mannon et al, 2012; Zeneidi 2017.

22 See: Otero, Gerardo, and Kerry Preibisch (2010). *Farmworker Health and Safety: Challenges for British Columbia*. British Columbia, Canada: WorkSafeBC.; Preibisch, K. L., & Grez, E. E. (2010). The other side of el Otro Lado: Mexican migrant women and labor flexibility in Canadian agriculture. *Signs: journal of women in culture and society*, 35(2), 289-316.

23 See: Hennebry et. al, 2016.

24 See: International Labour Office, & Labour Migration Branch. (2016). *Gender sensitivity in labour migration-related agreement and MOUs*. Geneva: ILO.

25 See: Napier-Moore, R. (2010). *Beyond Borders: Exploring Links between Trafficking and Migration*, (GAATW Working Papers Series 2010) (pp. 1–31). Thailand: Global Alliance Against Traffic in Women. Retrieved from www.gaatw.org/publications/WP_on_Migration.pdf

Recommendations

Restricting women's access to labour markets, and curtailing their mobility rights does not address the causes and sources of exploitation, but rather increases vulnerability to abuse and exploitation by forcing women to navigate increasingly precarious migration journeys and pathways. For the Global Compact to enhance safe, regular and orderly migration pathways for women migrants it must do the following in both documentation and implementation:

1. **Endorse recommendations for addressing women's human rights in the global compact for safe, orderly and regular migration**²⁶ resulting from the outcome of an experts' meeting hosted by UN Women and the Office of the High Commissioner for Human Rights (OHCHR) on 21 and 22 November 2016 in Geneva.
2. **Reaffirm commitment to ratification and enforcement of international conventions** pertaining to migrant workers;²⁷ create mechanisms to enhance commensurability across instruments.²⁸
3. **Create a new enforceable protocol under CEDAW and ICRMW which specifically addresses rights of women migrant workers** in all stages of migration, across all sectors. This instrument can address the gaps²⁹ in the patchwork of protections provided in IHRL, and address the shortcomings of anti-trafficking and anti-slavery law.³⁰ Importantly, this new protocol should speak across these instruments.
4. **Address contemporary forms of slavery and forced labour by strengthening and enhancing existing International Human Rights Law (IHRL) and instruments**³¹ to better reflect gendered realities of forced labour.
 - 4.1. Ensure that the immigration status of migrant women workers, particularly domestic workers, is not conditional on the sponsorship of a specific employer or other individual (e.g. recruiter, spouse, parent), since any such arrangement may unduly restrict the freedom of movement of women and increases their vulnerability to exploitation and abuse, including in conditions of forced labour or servitude.
 - 4.2. Implement standardized contracts (which include states as parties) that are consistent with ILO guidelines and IHRL.

26 UN Women. (2016). *Recommendations for addressing women's human rights in the global compact for safe, orderly and regular migration - Outcome of expert meeting in Geneva*. Geneva. www.unwomen.org/en/digital-library/publications/2017/3/addressing-womens-rights-in-global-compact-for-migration

27 Convention on the Elimination of Discrimination Against Women (CEDAW), as elaborated in General Recommendation 26 (GR26) and CEDAW Optional Protocol (2000); the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), as further elaborated in General Comments No. 1 (2011) on Migrant Domestic Workers and No. 2 (2013); International Convention on the Elimination of Racial Discrimination (ICERD), as elaborated in General Recommendation No. 25 (2000) on gender-related dimensions of racial discrimination; the International Covenant on Economic, Social and Cultural Rights (ICESCR); and the International Covenant on Civil and Political Rights (ICCPR); the ILO Conventions 97, 143, and 189 (among others).

28 For example, in 2016 UN Women facilitated a collaborative effort between CEDAW and ICRMW committees, to strengthen gender-responsiveness within the LOIPR of the ICRMW, and similarly to enhance language pertaining to women migrant workers in CEDAW with references to ICRMW. Such efforts will strengthen accountabilities to existing frameworks, using those more widely ratified instruments (such as CEDAW or ICERD) to address issues pertaining to migrant workers.

29 C189 on domestic workers was not designed to explicitly deal with women migrants. The ICRMW promotes the equal treatment of migrant workers, including women and men as well as undocumented migrants, but does not deal with specific gendered vulnerabilities of WMWs and is thus less effective at ensuring protection against gender based discriminations and exclusions. The Palermo Protocol does not adequately protect the human rights of women outside of providing aid to victims of trafficking. CEDAW GR26 does not provide binding articles on the treatment of WMWs.

30 United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking in Persons Protocol) and the Protocol against the Smuggling of Migrants by Land, Sea and Air (Smuggling of Migrants Protocol), supplementing the United Nations Convention against Transnational Organized Crime (UNTOC); 1926 Slavery Convention and 1956 Supplementary Convention.

31 The Special Rapporteur on contemporary forms of slavery has made recommendations regarding responses to the vulnerability of migrants to contemporary forms of slavery in situations of domestic servitude (A/HRC/15/20), forced labour in supply chains (A/HRC/30/35) and debt bondage (A/HRC/33/46).

5. **Enable access to migration pathways which promote empowerment of women and protect their rights.**
 - 5.1. Remove restrictions or exclusions in law or practice that limit opportunities for women to migrate (e.g. gendered labour migration streams or programs; marital status requirements; etc.), and enhance access to permanent residency.
 - 5.2. Eliminate sex-specific bans and discriminatory restrictions on women's migration which limit the mobility rights of women migrants on the basis of age, marital status, migration status, pregnancy and/or maternity status, among other factors.
 - 5.3. Encourage professional associations to develop bridging programs to enable internationally educated nurses (IENs) decent work opportunities without deskilling, or the use of BLAs.
 - 5.4. Reduce embedded role of private recruitment and employment agencies and immigration consultants.
6. **Regulate, license and monitor recruitment and employment agencies, brokers and intermediaries, to stop exploitative and fraudulent recruitment practices including deception (primarily about working and living conditions), charging unauthorized fees to workers, retention of identity documents, violence, abuse, intimidation or control of workers, wage retention, etc. Ensure that such measures are consistent with International Labour Standards.**
 - 6.1. Develop joint liability schemes, bilateral or multilateral agreements to prevent abuses and institutionalize cooperation across countries aligned with international human rights standards.
 - 6.2. Encourage states to implement national regulatory frameworks of recruitment practices for labour migration and to develop registration processes specific to sectors (e.g. domestic work).
7. **Prevent and combat trafficking and exploitation of women, recognising and identifying its causes, and in particular the increased risk of trafficking that women and girls face during conflicts and post-conflict contexts and natural disasters.**
 - 7.1. Ensure that measures aimed at addressing irregular migration and combating transnational organized crime do not adversely affect the human rights of women, do not criminalise them and do not securitize their movement, including before departure, during transit, at borders, in destination countries and upon safe return; recognising that restrictive and securitised policies foster the vulnerability of women to trafficking and sexual exploitation.
8. **Ensure BLAs include enforcements of human and labour rights and access to social protection for WMWs.** Such agreements must be guided by and specifically reference IHRL and be enforceable, and gender-responsive language.
 - 8.1. Ensure that BLAs and visa schemes do not discriminate against women, such as by restricting their employment to gendered job categories, or by excluding female-dominated occupations from visa schemes.
 - 8.2. Create human rights and gender impact assessments to be carried out in the creation of future BLAs, and to be periodically undertaken for current BLAs. BLAs should be assessed by multi-stakeholder committee (including WMWs and CSOs) to ensure that the language and content complies with IHRL.
9. **Involve WMWs and non-governmental advocates in formulating gender-sensitive and rights-based migration policies** that promote safe migration and facilitate WMWs access to decent work, human and labour rights. Such groups must also participate in monitoring and evaluation of these policies.

10. **Conduct robust gender-responsive research, enhance data collection, acquisition, analysis and accountability measures guided by human rights in order to enhance gender-responsive and evidence-based policies, inform advocacy, challenge perceptions and prevent abuses and exploitation.**
 - 10.1. Collect and share sex-disaggregated data on exploitation and trafficking, migrants in transit and at border-crossings, including interceptions, denial of entry, detentions, deaths, abuse and injury at maritime, land or air borders.
 - 10.2. Data gathering must ensure privacy rights are protected and should not be used for immigration enforcement purposes.



The Human Development Visa Scheme: Applying Practical and Sustainable Policy Levers to Actively Encourage Migrants to Undertake Safe, Orderly and Regular Migration

Marie McAuliffe¹

Executive summary

The need to adapt to globalisation and related transformations that are changing people's lives around the world is placing increasing pressure on States to reform and adjust national policies and practices, including on migration. Likewise, there is increasing pressure at the international level to strengthen existing mechanisms and find new ways to facilitate and support regular migration and prevent and reduce large-scale displacement and irregular migration. Regular pathways are often proposed as a major part of the solution. But what does this mean in practice and how can unintended consequences be avoided?

This paper sets out an approach to enhancing international cooperation through actionable commitments that are aimed to be more effective for both migrants (and their communities) and States (and their residents and citizens). The paper argues for a shift in how we formulate incentives and disincentives, with a clearer focus on accounting for increasing migrants' ability to undertake migration, particularly irregular migration. By focusing more on non-State actors as active participants in migration processes, most especially migrants themselves, and utilising a hybrid approach to incorporate national and multilateral policy levers, a mix of incentives and disincentives can be formulated to encourage regular migration. Policy levers could include ballots, quotas, visa conditions (such as accompanying family) and links to development assistance.

This short technical paper explores why and how incentives and disincentives at the individual/family level could be better incorporated into structural (policy) settings that are more attuned to migrants' views, decision making and behaviours. It draws heavily on literature on specific aspects of international migration—irregular/forced migration, migrant smuggling and (irregular) migrant decision-making—as well as knowledge accumulated in (irregular and regular) migration policy development and immigration/visa programming.

Introduction

In modern history, for the most part, the prevailing governance of international migration has served many nations reasonably well. Orderly movement has been largely the norm and has contributed to growth in economies, increased human development, the capacity to protect large numbers of people facing persecution, and the ability of hundreds of millions of people to forge meaningful lives abroad. There is growing concern, however, that the less desirable aspects of international migration are increasing in significance and magnitude. The growth in irregular migration (including migrant smuggling and human trafficking); the increasing restrictiveness of entry policies, including for those in need of protection; a sense that national identities are being threatened (not just that they are changing); rising exploitation of migrants

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all the way along the migration pathway; and increasing harm to migrants, including substantial numbers of deaths during journeys; all threaten the overall positive dividends of international migration. Understandably, irregular migration has in recent times become a significant public policy issue and the focus of considerable human, financial, diplomatic, technological, intelligence, operational and other efforts. Of particular salience are the responses to irregular migration—or more specifically, the entry, movement, and stay of people into, through and in countries without authorisation. The importance of the issue is reflected in the New York Declaration for Refugees and Migrants of September 2016, which sets out the commitment to develop a global compact for migration and a global compact on refugees. This technical paper, with its focus on irregular migration journeys, discusses movement and entry, rather than irregular stay.

Research and analysis indicate that in recent years the pace, scale and diversity of some irregular migration flows—and irregular maritime migration more visibly—have intensified and increased, in part because of transformations associated with globalisation and human development (e.g. advances in telecommunications technology, population increases and the emergence of more/larger diaspora). People, communities and societies are more interconnected and interdependent now than at any other time in history and while this is resulting in the expansion of opportunities and benefits for many (but not all), it is also resulting in considerable challenges for governance and the regulation of migration.² One of the consequences is that current policy thinking on irregular migration must increasingly account for the potential for irregular migration flows that can change quickly but that are in general *larger*, more *diverse*, increasingly *inter-connected* and increasingly *enduring* than those seen in the past.

There continues to be much discussion on the need to create more, and expand existing, regular migration pathways in order to reduce irregular migration, including during the informal thematic consultations conducted as part of the global compact process. This would appear reasonable, with the logic being that if people could travel regularly, they would be less likely to have to resort to irregular migration and use migrant smugglers. However, this may not be so straightforward. One fear is that, for example, the demand for regular migration will further exacerbate issues of demand outstripping capacities, and risks unintended consequences, such as increases in irregular migration and smuggling along specific corridors. Some migrant smugglers, for example, have been found to exploit positive messages expressed by political leaders and governments, such as increases in regular pathways, acceptance of asylum seekers, etc, as a means of marketing their services and expanding their activities.

What underlies the ‘problem’?

Irregular migration presents ongoing challenges and continues to raise compelling humanitarian, political, social, economic and security concerns. It can be daunting for policymakers to try to balance these concerns while developing effective and sustainable strategies to manage regular migration and mobility, irregular migration and borders. Irregular migration often poses a ‘double-edge sword’ for migrants: financial costs are high, risks substantial and potentially catastrophic, uncertainty inherent, but the chance to realise a better life (however defined) for migrants and their families can outweigh the potential downsides.

Notwithstanding many States’ strong preferences for managed, orderly entry of people into their territories (including as reflected in media discourses), the harsh reality is that for many people throughout the world, orderly entry is not available to them because they have limited/no ability to get a visa.³ This significant limitation on regular and orderly migration is most keenly experienced by stateless persons but also affects many other populations. For example, refugees and asylum seekers in pursuit of safe and meaningful lives may resort to irregular migration as a last, viable option - one that may be possible only through using migrant smugglers, including those who exploit and abuse migrants with impunity.

² See, for example, discussion in Friedman (2016) and McAuliffe & Goossens (2017).

³ Please note that while ‘regular’ migration does not necessarily require visas, the discussion refers to visas because it is often a requirement and most especially for migrants from developing countries. In addition, the term ‘visa’ is much more widely understood than ‘regular’ by migrants and the general public.

The country in which a person was born, and the passport they hold, in large part reflects their ability to secure a visa. The “lottery of birth” is both at once real and currently very difficult to overcome, most especially for those from unstable and highly fragile countries (see the table in Appendix 1 for related indices on selected countries).⁴ Increasingly, with tremendous advances in telecommunications technology, the issue of relative deprivation (in terms of wealth, opportunity *and* mobility) is more visible and perhaps better understood than ever before, including by people in some of the most marginalised and remote communities globally.⁵ For many who are unable to access visas, irregular migration is a feasible alternative, notwithstanding the risks, potential dangers and uncertainty it presents.

A strong leaning towards States

Historically, international governance has generally involved setting normative frameworks, standards and obligations that are cumbersome to adapt, revise and adjust for broader changes occurring globally; and they are certainly impossible to adapt quickly. The contexts—technological, environmental, functional (political, economic, security)—in which migration is occurring have evolved significantly and will continue to do so at an accelerated pace.

International responses continue to be largely State-centric (i.e. driven/drafted from a State perspective and with State-focused incentives structures) and stem from a regulatory system that is rooted in an earlier era, with much less account for migrant experiences and perspectives. Some have reflected that the development of the international protection system and the Refugees Convention, for example, was more about shoring up States’ position in the context of “an international system of States that is threatened when States fail to fulfil their proper roles” and was not based on a sense of humanitarianism.⁶ At a more practical level, it has been argued that when the Convention was devised, it was done so within a particular context that favoured States and reflected a period during which States had much greater authority and control:

One of the fundamental principles of the international refugee regime is that people must have crossed a border in order to be refugees; there is also an implicit right to claim asylum in another country. When the Refugee Convention was finalized in 1951, industrialised states had significant control over media and public information, resettlement was controlled by states (including under the UN), and states largely controlled movements of people beyond immediate areas of displacement. In this environment, the system that was developed made sense geopolitically to destination countries—people could not in reality get very far. A system that incentivised movement when movement was very constrained and highly controlled was perhaps more about maintaining the status quo.⁷

International cooperation on migration will increasingly need to take greater account of the self-agency of migrants, and the ability of more people to realise migration outcomes as access to information, money, advice and travel services proliferates. While this should not be overstated, changes in migration and mobility (regular and irregular) indicate that even small shifts in feasibility can result in significant impact, such as large-scale irregular migration flows, including of refugees and asylum seekers.

Approaches that place more emphasis on migrants’ self-agency and access to greater choice

Balanced approaches that draw on existing knowledge of how (potential) migrants and their households and communities contemplate migration, including irregular migration (and in the context of forced migration⁸)

4 Monson, 2010; Shachar 2009.

5 Research, for example, conducted in Cox’s Bazar in 2014 found that the vast majority of respondents wanted to migrate regularly (86 to 94%) but understood their chances of being able to do so were very low - just 2 to 6% indicated they were likely to migrate regularly.

6 Keely, 1996, pp. 1057.

7 McAuliffe, 2016a.

8 For example, refugees who migrate irregularly, such as Syrian refugees in Turkey who travelled to Greece by boat in large numbers in 2015 and 2016, as well as asylum seekers who migrate irregularly (and who may or may not be in need of international protection).

while recognising the need for States to protect sovereignty and manage borders are likely to be more effective and sustainable in the longer term.

It is increasingly recognised—and particularly since the large-scale irregular migration of people from Turkey to Greece, and on to other parts of Europe, in 2015—that migrant self-agency is becoming a more important aspect of migration dynamics, and that it is intensifying (albeit unevenly).⁹ Supported by changes in transnational connectivity, for example, people now have greater access to information and advice to (mis)inform their decisions about migrating. The enhanced ability of non-State actors (such as smugglers) to operate transnationally is providing for irregular migration options that have become more feasible over time but with little regard to risk and harm.

What is valued by migrants at risk of undertaking irregular migration?

There has been substantial research undertaken over many years on migrants' motivations, decision making, smuggling processes and impacts (amongst other things), which has shed light on how people think about and contemplate irregular migration (including from different locations, with different protection and other needs and in different circumstances).¹⁰ While there is always more to learn—especially in such highly dynamic environments—it is possible to make the following general observations based on empirical research, particularly in relation to people from fragile, least developed and insecure States¹¹:

1. Acting within the law is generally preferred.
2. Visas, and the form of protection they bring during journeys, entry and stay, are valued highly.
3. High risk irregular migration journeys are more likely to be undertaken by males (aged from 15 years or older, depending on the cohort).¹²
4. People are increasingly able to access information in real-time before and during irregular migration journeys.
5. Many migrants take into account long-term considerations (including of the next generation) as well as those related to family and community.
6. There exist (increasing) pressures to migrate internationally in some locations/corridors.
7. Family separation (parents from children) takes its toll, has gender dimensions and while usually unavoidable, is often not preferred.

Adaptable and sustainable solutions for migrants and States: A human development visa scheme that employs practical policy levers

Ideas to better reconcile the inability of people from some countries to access visa and immigration options while at the same time managing the potential demand will be central to any expansion or enhancement of regular migration pathways. This would be in addition to existing international frameworks and agreements (such as the international protection system) and regional, bilateral and unilateral programs and agreements.

Maximising **positive incentives** that exist within potential/actual migrant communities—migrants' desires to "seek a better life"—are important elements in responses to irregular migration. Recasting and revising such incentives based on what we know about irregular migration decision making would be effective in alleviating

9 McAuliffe and Jayasuriya, 2016; Triandafyllidou, 2017.

10 There are many works but notable examples include Carling 2002, Robinson & Segrott, 2002; Van Hear et al 2012; van Liempt, 2007.

11 These general observations necessarily vary between different groups, including by country/location of origin, age, sex, ethnicity, etc.

12 While data are limited, Italian Coast Guard data, as published by UNHCR, show this aspect starkly (UNHCR 2016); Khoo et al 2017.

pressure on some communities to migrate and shaping preferences toward regularity. Ways to recast and strengthen incentives to positively influence migrant decision making is summarised in the text box below. Models of international cooperation that incorporate incentives that are of high value to migrants would better enable a ‘tipping of the balance’ away from unsafe, irregular and disorderly migration options.

Likewise, maximising **negative disincentives** that exist, particularly within smuggling and trafficking networks, administrative authorities (such as involving corruption) as well as potential/actual migrant communities also remain critical aspects of approaches that are designed to encourage regular migration. Knowledge from counter migrant smuggling agencies as well as migration researchers would ideally support the formulation of disincentives focusing on smuggling and trafficking networks. The provision of alternatives that are more attractive to and highly valued by migrants (and managed by States) would make it more difficult for smugglers to market services, however, counter migrant smuggling measures would remain critical.

To support this, the application of policy levers developed at the national and sub-national levels could help manage migration and assist in preventing irregular migration through international cooperation at sub-regional, regional or global levels. Core elements, for example, could be set at the international level, and complemented at the national level, providing adaptability in response to changes in migration dynamics. In terms of specific elements, **core common settings** could include:

- visa applicant eligibility based on citizenship of participating States (not policy category such as student, migrant worker, etc),
- centralised ballot-based selection of migrants,
- accompanying family provisions,
- links to additional development assistance (e.g. community-based projects or schemes).

Additional elements would be set by individual (destination) States, such as:

- an annual quota that could be revised depending on factors such as migration dynamics and labour market conditions,
- specific health and security checks, and
- specific visa conditions (such as those related to work, study and length of stay).

Why would the scheme be valued by migrants?

- Opportunity to secure a better life for family/self
- ‘Visa’ concept easily understood and highly valued
- Greater certainty than other options
- Able to stay within the law
- Prestige in community
- Safer, regular, easier travel
- Provides strong incentives to stay in origin until a visa is offered

What are the incentives for migrants?

- Migrants in participating States can apply for a HD visa
- No minimum skill level required
- Genuine visa (valuable entry & stay)
- Family inclusion
- Ballot selection means opportunity remains real and possible
- Remaining on the ‘application list’ tied to access to *additional* development assistance
- If selected for a visa, migrants have access to work, education, ability to remit and higher mobility (enabling return visits to origin)

Implementation could draw upon the existing expertise in visa program and related IT systems that exist in some States as well as acknowledge and manage current weaknesses and potential risks in some States (such as corruption and fraud). Exploitation of social media by States and migrants would assist in communicating visa schemes that are of high value to migrants. Aspects of the Human Development Visa Scheme could be implemented through apps and social media platforms as well as play a key role in dissemination. The key features of the Human Development Visa Scheme are set out in [Appendix B](#) (see Figure 1 in the appendix). Importantly, such approaches to better manage regular migration for people historically unable to access visas would be one component of a multi-faceted response to irregular migration that operates in the interests of migrants (including refugees and asylum seekers) as well as States, such has been acknowledged and articulated in a range of analyses of irregular migration.¹³

Multi-faceted responses are more pressing for populations who are at risk of irregular migration and/or further displacement, such as refugees in host countries, people under pressure to migrate as migrant workers as well as young people, including children, who are growing up in ‘cultures of migration’ where migration is becoming an expectation and/or a symbol of success.¹⁴ In addition, models that incorporate regular pathways should not be considered a cure-all or ‘silver bullet’ for a complex transnational issue, but one approach that incorporates and better reflects current knowledge along with the ability to adjust policy settings (at the national and multinational levels) in response to changing migration dynamics.

In *Resolving policy conundrums: Enhancing humanitarian protection in Southeast Asia*¹⁵, a total of 15 recommendations were made to policymakers to improve the region’s ability to prevent and respond to migration-related crises in a sustainable way. This paper focused on the May 2015 crisis involving Bengali and Rohingya irregular maritime migrants, and while recommendations were tailored for this case study, most recommendations have general application beyond the region. Recommendations included the development of a regional visa initiative with quotas and ballots to provide a viable and attractive alternative to irregular migration. Other recommendations included, for example:

- promoting regional bilateral and multilateral efforts to improve protection infrastructure,
- expanding resettlement countries,
- supporting track-two processes in the region¹⁶,
- establishing a regional humanitarian migration response unit,
- improving the day-to-day lives of people at risk of irregular migration through increased aid,
- supporting inter-faith dialogue and initiatives to prevent violent extremism (particularly relevant to Myanmar), and
- continuing counter smuggling and trafficking initiatives as well as anticorruption programs.

13 Please see, for example, Carrera 2007, GCIM 2005, Papademetriou & Somerville, 2014.

14 See, for example, discussion in McAuliffe, 2017 and McAuliffe et al, 2017.

15 McAuliffe, 2016b.

16 ‘Track one’ diplomacy involves official channels of communication and negotiation, whereas as ‘track two’ diplomacy involves discussions between non-governmental, informal and unofficial contacts, often on issues that have been difficult to resolve through traditional ‘track one’ efforts.

Could such an approach be applied globally?

Arguably yes. However, the application of regional or sub-regional approaches may allow for development of effective models that could better reflect migration dynamics of specific geographic and geopolitical areas. Advantages of regional/sub-regional models with common 'core' elements may include that:

- agreement on a meaningful action-oriented model would be more likely,
- implementation may be more feasible in regional settings,
- adjustment/adaptation linked to evaluation and review may be viewed more positively between regional partners.

Countries currently linked to high-pressure irregular migration corridors from West and Central Africa to Europe, for example, may benefit from such 'hybrid' models that incorporate international and national level elements as summarised in [Appendix B](#).

Conclusions and recommendations

This brief technical paper provides a high-level discussion of an adaptable Human Development Visa Scheme that could be used regionally or globally to actively and effectively encourage safe, orderly and regular migration while discouraging unsafe, disorderly and irregular migration. It is focused on people who are at greater risk of irregular migration and how we might be able to develop adaptable models of international cooperation that can be adjusted to take account of changes in migration dynamics while better reflecting the present realities facing migrants and potential migrants.

It is recommended that in deliberations on regular migration pathways, consideration be given to exploring and formulating international cooperation models, including a Human Development Visa Scheme, that:

- take greater account of what we know about migrants' decision making as well as irregular migration patterns in policy deliberations with a focus on creating clearer incentives and disincentives, including through the use of policy levers such as visas, ballot selection, quotas and family accompaniment;
- involve adaptable models of international cooperation, including for regions and sub-regions, that have a common 'core' supplemented by national-level elements;
- include 'hybrid' approaches utilising aspects of international/multilateral responses as well as national-level policy be considered and explored;
- are designed to complement existing operational counter migrant smuggling measures in origin/transit countries, which remain a crucial disincentive to smugglers.

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Appendix A

Table 1: Human development, fragility and visa rankings, selected countries

	Country (in HDI rand order)	Human Development Index 2016	Visa Restrictions Index 2016	Fragile States Index 2016
		Rank	Rank	Rank
Very High Human Development	Norway	1	4	177
	Australia	2	7	172
	Switzerland	2	6	174
	Germany	4	1	165
	Denmark	5	3	175
	Singapore	5	4	161
	Canada	10	6	169
	United States	10	3	159
	Sweden	14	2	171
	UK	16	4	162
High Human Development	France	21	4	158
	Italy	26	3	148
	Greece	29	6	130
	Malaysia	59	13	115
	Iran	69	95	47
	Turkey	71	52	79
	Sri Lanka	73	95	43
	Lebanon	76	96	40
	Mexico	77	26	107
	Thailand	87	67	74
Medium Human Development	Tunisia	97	73	88
	Libya	102	99	25
	Egypt	111	88	38
	Indonesia	113	79	86
	Iraq	121	103	11
	Morocco	123	78	89
	India	131	87	70
	Bangladesh	139	95	36
	Pakistan	147	102	14
	Low Human Development	Syria	149	101
Haiti		163	86	10
Sudan		165	97	4
Yemen		168	98	4
Afghanistan		169	104	9
Ethiopia		174	96	24
Eritrea		179	98	18
Somalia		n/a**	100	1
A number 1 ranking means:		Very high human development	Most mobile passport citizenship	Most fragile country
The lowest ranking means:		Low human development	Least mobile passport citizenship	Least fragile country

Sources: UNDP, Human Development Index 2016 (Human Development Report 2016); Fund for Peace, Fragile States Index 2016; Henley & Partners, Visa Restrictions Index 2017.

Notes: Somalia is not included in the HDI. According to UNDP, to include a country in the HDI requires recent, reliable and comparable data for all three dimensions of the Index. For a country to be included, statistics should ideally be available from the national statistical authority through relevant international data agencies.

This table is from a chapter in the forthcoming World Migration Report 2018 titled 'understanding migration journeys from migrants' perspectives' (IOM, 2017).

Appendix B

Key features of a Human Development Visa Scheme

Table 1: Human Development Visa Scheme

	Migrants	Participating States	Interests
Interests	<ul style="list-style-type: none"> • Securing a better life for family/self • Greater certainty • Staying within the law • Prestige in community • Safer, easier travel • 'Visa' concept easily understood 	<ul style="list-style-type: none"> • Voluntary initiative • Hybrid model with 'core' elements & national-level elements • Respects States' and migrants' needs, rights & obligations • Encourages safe, orderly & regular migration AND discourages unsafe, disorderly & irregular migration • Supports human development and capacity building 	<ul style="list-style-type: none"> • Managing orderly entry & stay • Discouraging irregular migration • Positive international cooperation • Relevant control & review mechanisms
Incentives	<ul style="list-style-type: none"> • Apply and remain on an application list • No minimum skill level • Genuine visa (valuable entry & stay) • Family inclusion • Access to work, education & ability to remit 	<ul style="list-style-type: none"> • Participation voluntary • Reflects existing knowledge/evidence • Domestic political support achievable • Balances sovereignty and migrants' rights • Does not affect existing norms 	<p>Illicit migration agents/smugglers</p> <ul style="list-style-type: none"> • smugglers less relevant as people have other, safer options to migrate and <i>not</i> migrate • harder to market services to migrants • marginalised but still present • operational responses to counter smuggling remain crucial
Policy levers	<ul style="list-style-type: none"> • Visa entry & stay conditions • Ballot system • Security & health (extreme) vetting 	<ul style="list-style-type: none"> • Quota controls • Support for visa applicants in origin • ODA eligible/offsets (support in origin) 	Policy levers
Implementation	Social/traditional media & messaging; origin country participation and operational management; NGOs/CSOs service providers; maximises domestic support for participation	Social/traditional media & messaging; origin country participation; destination country participation and operational management; NGOs/CSOs service providers; maximises domestic support for participation	Implementation
Review	Built in review and evaluation processes; participating States' own review mechanisms	Built in review and evaluation processes; participating States' own review mechanisms	Review

The Human Development Visa Scheme is a voluntary ‘hybrid’ approach that draws on:

- aspects of (national level) visa programming, systems and compliance as well as aspects of (international/multilateral) movement agreements (e.g. Schengen, Australia-New Zealand agreement, ECOWAS¹).
- An approach that focuses on implementation that is non-normative but is aligned with current international norms; an approach that can operate with a small or large number of participating States.
- An adaptable approach that respects and supports migrants’ rights and State sovereignty, and accounts for the different but overlapping interests of States and migrants as well as possible incentive structures and policy mechanisms (e.g. ballots, quotas, inclusion of immediate family) that can be used to maximise its effectiveness and sustainability, and reduce the likelihood and impact of unintended consequences.
- It would comprise common core elements (e.g. centralised ballot-based selection) as well as specific national-level settings (e.g. security and health vetting, specific visa conditions).
- It could involve operational management by States with a high degree of expertise, experience and resources; oversight by a governing body that could comprise participating States and service delivery partners (such as NGOs, IOs and CSOs) with a strong implementation focus.
- It could involve one or more forms of development-related assistance in origin countries for visa applicants; assistance that would ideally be ODA eligible and so more easily able to be supported by donor countries.
- It could incorporate several implementation elements, such as the use of positive social/traditional media messaging and the use of technology, such as apps, to reach potential/actual visa applicants.

¹ ECOWAS stands for the Economic Community of West African States.



Migrants' Integration in Host Societies, and Return to Home Countries: The Case of the Middle East and South Asia

Mohammad Jalal Abbasi-Shavazi¹, Rasoul Sadeghi² and Abdullah Mohammadi³

Key issues

In recent years, voluntary and forced migrations originating from some Asian countries, particularly the Middle East and South Asia, have contributed to the global scale and complexity of international population movements. The long presence of refugees and migrants has led to the birth of a new generation of migrants in the host countries as a result of which the receiving countries have been faced with challenges to either repatriate the first and second generation of migrants back to their home countries or integrate them into the host communities.

The integration of migrants and refugees in host society and their sustainable return to home are, thus, among the major policy conundrums at regional and global levels. The two processes are interlinked, faced with challenges, and have policy implications for migrants and communities.

Insecurity and political instability influence both, the decision-making process for return among migrants and refugees who are willing to return to their country; and the decision-making process for re-migration among returnees who have already returned and are planning for their future. Lack or low investment caused by insecurity has led to high unemployment, particularly among returnees with less experiences in their home society.

The governments in host and home countries should develop long-term and sustainable migration policies. Repatriation should not be considered as a single policy, but rather it should be envisaged as a transnational process in which both integration and reintegration policies are also included.

The perception of economic development, political stability, and the rule of law in home countries is critical to migrant's decision-making about return. Without progress on the development of the home society, second-generation migrants who can be the engine development in their home country are expected to be more willing to remain in host communities.

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I. Introduction

The integration of economic migrants and refugees in host countries, and their return to origin countries, are considered as two of the major migration policy challenges in the region. In the past, urbanization and industrialization led to the movement of large groups of labor migrants between various countries, the majority of whom have neither returned nor been integrated in the host societies. In recent decades, as a result of political instability, conflicts and civil wars in such countries as Afghanistan, Syria, and Iraq continued waves of forced migrants and refugees fled to their neighboring countries. In addition to these outward movements, many of the war affected population have been displaced within their own countries, resulting in unprecedented levels of internally displaced persons (IDPs).

Host countries have pursued different policies towards migrants and refugees. Some countries consider migrants as an opportunity for economic development while others see them as a threat to national security. The common strategy in host government policies is that they consider migrants, refugees and IDPs as temporary guests who will/have to go back to their home in the foreseeable future. In the case of economic migrants, host countries try to send the workers back to their homes and prevent the entry of more workers during economic downturns or when the need for foreign workers is satisfied. Similarly, for refugees, return is considered as the preferred solution. With this strategy, it is not surprising that there have been many voluntary return or deportation programs enforced in host countries throughout the region. However, in most cases, the attempts of the host governments to either integrate or to repatriate migrants and refugees have failed; many economic migrants have not only stayed in the host countries but also brought their family members to the host country. On the other hand, repatriation programs have been launched but after a while the pace of return decreases and due to the unstable political situation of the region, new waves of refugees and IDPs are produced. The complicated situations in Afghanistan, Iraq, Syria, and Yemen exemplify the situation where neighboring host countries have faced many problems regarding the return of migrants and refugees.

The conditions in home countries is not better. Almost all migrant/refugee sending countries in the Middle East region have experienced civil war, conflict, and political turmoil. Although the return of refugees is seen as a political legitimacy and sign of stability for governments, due to lack of proper social and economic structures and shortage of resources, these mass returns of returnees are usually burdensome for the governments and local communities. After ending (civil) wars, usually many migrants/refugees return to their country of origin either themselves or through voluntary repatriation programs. However, if migrants are repatriated in a context where their home country is still unsafe, or the living conditions are not improving, and if the post-conflict conditions are not favorable to meet the expected living standards, the returnees face with many challenges. *Sustainable return* refers to the conditions in which returnee is well integrated within origin community, socially and economically. In many cases, government policies regarding the reintegration of returnees and sustainable return have failed and many returnees have re-migrated or are willing to migrate. In addition to the returnees, a considerable proportion of IDPs do not return to their region of origin and some of them consider leaving the country as refugees.

Given the economic and political setting and dynamic nature of movements in the Middle East, the movements of economic/forced migrants and IDPs are among the most critical issues faced by governments and communities of both sending and receiving countries. In fact, the return of migrants, refugees and IDPs is still a preferred solution to the issue. This paper accentuates the importance of 'integration' and 'reintegration' as the key to sustainable return. In doing so, findings of two recent surveys of Afghans in Iran and Afghanistan are presented to better understand the social and demographic dimensions of integration, return and reintegration processes. The experience of Afghanistan is relevant to this context because of the mixed nature of its international migration. Afghans have been migrating due to various competing reasons: escaping from conflict and insecurity, finding a job and sending remittances back home, pilgrimage, and reunifying with family members among other reasons. The reasons for return or staying in the host country vary. Thus, integration and reintegration of Afghans in Iran and Afghanistan provides an ideal opportunity to examine the solutions for the integration and re-integration conundrums that have prevailed in the MESA region.

2. Background

Trends and levels of forced migration in the region

In recent years, voluntary and forced migrations originating from some Asian countries have contributed to the global scale and complexity of international population movements. According to a recent report by the UNHCR, there were 67.7 million persons 'of concern' in the world at the end of 2015, 46 per cent of whom (29.4 million) were from Asia. The Middle East has also experienced a dramatic flood of refugees and forced migration over the last fifteen years. The wars in Iraq and Syria have produced the greatest share of the Middle East's refugees in recent years, but many more have fled wars and failed states in Afghanistan, Libya, Somalia, Sudan, and Yemen. More than 28 per cent of the population of concern are in this region, including 2.6 million refugees, 15.1 million IDPs and returnees, and an estimated 372,500 stateless (2016 UNHCR Global Report). Neighboring states have faced severe challenges in absorbing millions of refugees, while North African states and Turkey have emerged as key transit hubs for refugee flows into Europe. At the end of 2016, there were nearly 5 million Syrian refugees in neighbouring countries, including in Turkey (2.86 million), Lebanon (1 million), Jordan (685,200), Iraq (261,900) and Egypt (213,900) reflecting the continued strong commitment and generosity of host countries (Lynch and Brand, 2017). By 2013, Afghanistan had been one of the highest refugee-sending countries for more than three decades, and Iran and Pakistan were the two highest refugee-receiving countries during this period. In addition, the United Arab Emirates and some other countries in the Persian Gulf region have been hosting labour migrants. The long presence of refugees and migrants has led to the birth of a new generation of migrants in the host countries as a result of which the receiving countries have been faced with challenges to either repatriate the first and second generation of migrants back to their home countries or integrate them into the host communities.

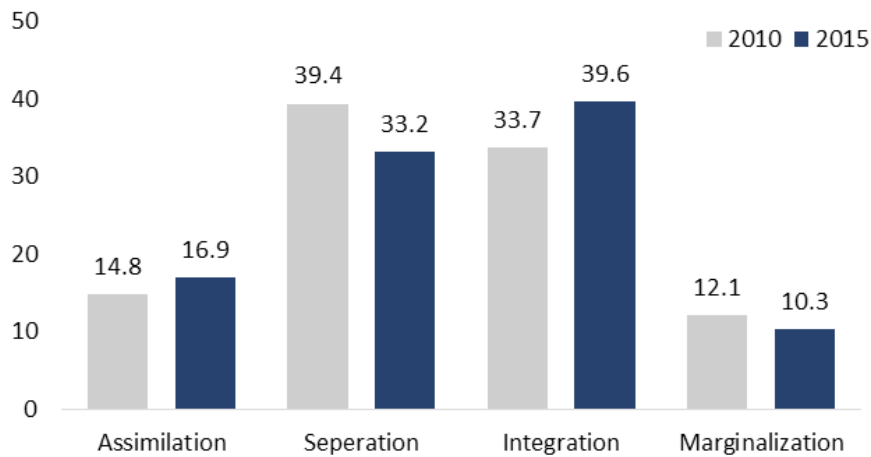
Adaptation of migrants and refugees in host countries

One of the main issues regarding migrants and refugees is the degree to which they adapt into the host society. In the MESA region, most of the migratory and refugee movements arise from countries with very poor socio-economic or even war-torn structures in which the prospect of gaining a stable and proper life for the migrant/refugee is very slim. Therefore, many migrants/refugees are not willing to return to their homeland at least in the foreseeable future. Thus, integration in host countries has become an important and durable option for migration in the region as it has implications for a sustainable settlement of migrants/refugees in the host society, their return to their homeland, and for their secondary movement to other countries.

Migrants usually experience various patterns of adaptation based on their migration history and socio-demographic and economic backgrounds. Their adaptation pattern depends upon the duration of residence in the host country as well as the degree of their attachment to the home and/or host society. *Integration* occurs when individuals maintain a positive attachment to a new society as well as to their original culture and community. *Assimilation* refers to rejecting the individual's cultural identity and accepting the host society's identity and culture. *Separation* refers to retaining the original culture while rejecting the new culture. *Marginalization* involves non-adherence to either cultures (Berry 1992, Abbasi-Shavazi and Sadeghi 2015).

The context within which refugees live has considerable implications for their adaptation patterns. For instance, the majority of Afghan migrants and refugees in Pakistan have been settled in camps while only three per cent of their counterparts in Iran reside in camps and the rest live within community. More than 70 per cent of Afghans in Iran are settled in urban areas. Most Syrian refugees are also settled in camps in such neighbouring countries as Jordan, Lebanon and Turkey, and therefore, their integration into the host societies is not easily attainable. In addition, the length of stay in the host society and generation are two determinant factors of integration.

Figure 1: Adaptation patterns of Afghans in Iran (%), 2010 and 2015

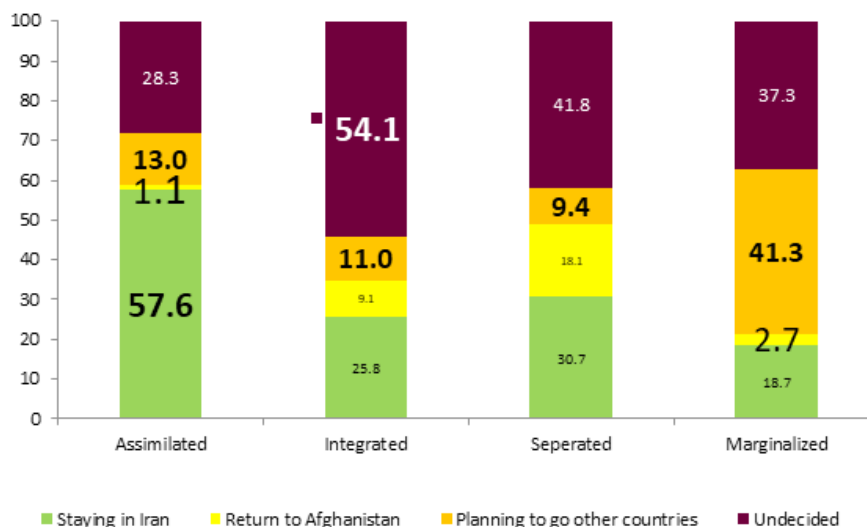


Note: The 2010 survey includes 620 Afghans aged 15–29 (Abbasi-Shavazi and Sadeghi, 2015), while the 2015 survey includes 1,202 Afghans aged 18–44 (Abbasi-Shavazi et al., 2016).

Figure 1 illustrates adaptation patterns of Afghan migrants and refugees in Iran, as a host of more than three million Afghan migrants and refugees for the last three decades. Integration and separation are the two dominant patterns of adaptation, followed by assimilation and marginalization. The level of integration and assimilation has increased over time. Access to education and employment have direct effects on these patterns. Improved access to education will lead to higher integration and assimilation of migrants while further legal, social and economic restrictions will hinder the integration process and results in separation and marginalization of migrants into the host society.

In turn, these patterns have a direct impact on the migration intention of migrant/refugee. Those who experience assimilation pattern are expected to have higher intention to stay in the host society. On the other hand, those who feel separated prefer to return to their home country. Marginalized migrants/refugees seek an opportunity to leave the host country, but not to go back home, and instead move towards a third country. Figure 2 depicts that close to two third of Afghans in Iran who were assimilated intended to stay in the host society, while 41 percent of those who were marginalized were planning to go to other countries. In recent years, European countries and Australia have been the preferred destinations for Afghans in Iran (Abbasi-Shavazi et al. 2016).

Figure 2. Migration intentions of Afghans in Iran by adaptation patterns, 2010



Note: The 2010 survey includes 620 Afghans aged 15–29 (Abbasi-Shavazi et al, 2013).

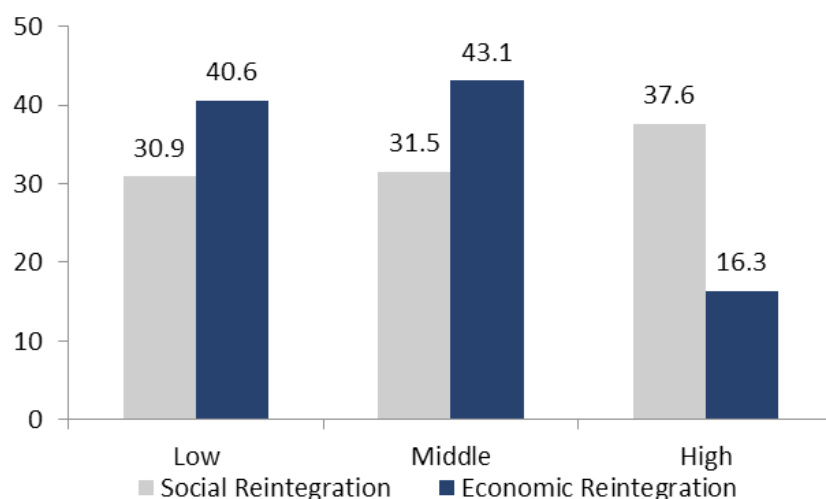
The integrated group of migrants usually have attachment to both host and home countries, and thus, they experience dilemma in choosing the opportunities that they may have in either of the societies. It is not surprising that a large proportion (54%) of the integrated Afghans were undecided about return (Figure 2). The adaptation patterns and return strategies of migrants and refugees vary by generation, as the first generation usually has different social and demographic characteristics than the second generation. The latter is more attached, assimilated and integrated into the host society and its intention for return to home is usually less pronounced. With the long period of residence in the host country, the possibility of adaptation and integration increases and there will be less intention to return to the home country. This is particularly the case for the second generation of refugees and migrants who were born and raised in the host society many of whom have not had any contact or visit to their parent's country of origin (Appendix Figure 1). Legal status of migrants also affects their adaptation pattern into the host society, and may lead to various return strategies.

Reintegration and sustainability of return

Contrary to the classical view of return, in which people are bound to a geographical location on their return to home country, returnees usually face an environment which has gone under social, economic, and political changes (Bakewell, 1996). In fact, return is not an end to the migration process, but a new beginning for a returnee who has to be integrated again within the socio-economic, political structure of origin country in order to have a sustainable return. If the returnee could find a proper job in labor market and gain a respectable income, they will remain and settle in the country and there will be less intention to re-migrate to the previous host or another country. Also, if the returnee could integrate socially in the society by feeling attached to home, and if the structural and contextual conditions are favorable to the reintegration process, they will be able to adapt to the values and behavioral norms of origin society without major challenges. In such circumstances, the reintegration is successful and '*sustainable return*' has occurred. However, if the situation deteriorates and the returnee fails to achieve economic and social stability, the possibility of sustainable return is reduced and migrants may re-migrate either to the earlier host or to a new destination.

According to the 2015 Survey of Afghan Returnees, around 40 per cent of returnees had low level of economic integration and were less able to find a good job or earn sufficient income (Mohammadi et al. 2017). Around 43 per cent of respondents had a relatively satisfactory life economically; i.e. they could find a respectable job and income; and though they afford to pay their living expenses, they occasionally faced some financial problems (Figure 3). Only 16 per cent of the respondents were able to fully integrate into Afghan society economically. In terms of social reintegration, almost 38 per cent were well-integrated in Afghanistan, but a considerable proportion (62 per cent) experienced middle or low level of social integration.

Figure 3: Social and Economic reintegration of Afghan returnees from Iran in Afghanistan (%), 2015

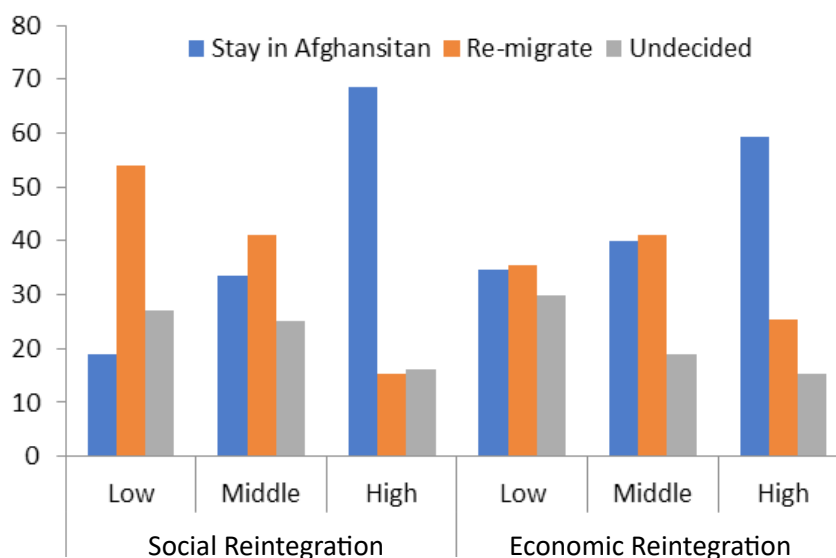


Note: The 2015 survey includes 425 Afghan returnees aged 18 to up (Mohammadi et al, 2017).

Reintegration patterns have implications for future migration intentions. It is expected that with the increasing level of social and economic reintegration, the intention for staying in home country rises. Indeed, in countries with long history of cultural, religious, and ethnic conflicts, such as countries in Middle East, the social aspects of reintegration are more important, and thus, social acceptance in the origin society plays an important role on reintegration. However, in contexts where there is not ethnic or religious divide, the economic aspects of reintegration becomes more important.

Our results from the Afghan returnees (not shown) revealed that 43 per cent of Afghan returnees indicated that they want to stay in Afghanistan, 22 per cent were still undecided and were waiting to see whether the conditions improve or not, and 36 percent had plans to re-migrate to Iran or to a third country. Overall, more than half of returnees were planning to re-migrate or were not sure about their staying in Afghanistan.

Figure 4. Migration intentions of Afghan returnees in Afghanistan by reintegration levels, 2010



Note: The 2015 survey includes 425 Afghan returnees aged 18 to up (Mohammadi *et al.* 2017).

Further analysis shows that most of those who desire to stay in Afghanistan are socially and economically in good condition and have high level of social and economic reintegration (Figure 4). On the other hand, most tendency to re-migrate to a third country is seen among those who have middle or low levels of social and economic reintegration. In fact, the better the social and economic situation of returnee, the less intention he/she has to re-migrate.

The results also reveal that those who are highly integrated socially, are most likely to stay in Afghanistan. The low-integrated group had less desire to stay in Afghanistan and they want to emigrate to a third country or Iran. A considerable proportion of those with middle level of social reintegration also have tendency to stay in Afghanistan or re-migrate. Indeed, those who are undecided about their intention for future are mostly among low levels of social and economic reintegration.

3. Conclusions

Generally speaking, insecurity and political instability have expanded to different parts of the Middle East region. The governments are unable to provide a situation in which people feel safe and secure. These factors influence both, the decision-making process for return among migrants and refugees who are willing to return to their country; and the decision-making process for re-migration among returnees who have already returned and are planning for their future. The economic and political deterioration of the home society do not provide a positive ground for the reintegration of those who have returned or repatriated to their home society. Lack or low investment caused by insecurity has led to high unemployment, particularly among

returnees with less experiences in their home society. Furthermore, for those who lived in a host country for a long time and have had access to a better education, health systems and other social services, it will be difficult to reintegrate into home society easily. Thus, security in post-war societies is a key issue that has a great role on the sustainability of returns. If security remains unstable, despite the relatively successful socio-economic reintegration, not only the returnees but the non-returnee population may also consider [re] migration as a survival strategy; a case which is clearly seen in Afghanistan and Syria today.

4. Recommendations

Successful implementation of policies and durable solutions for migrants in host societies rests on the diversity of the adaptation patterns of the second generation. Any possible return and integration policies need to take into account the distinct demographic composition of the first and second-generation migrants, their period of residence, their level of integration and adaptation as well as their attitudes toward their host country vs. home and possible future aspirations about return. Restrictions on employment opportunities will lead to downward assimilation and marginalization of some migrants in host societies. Improvement in labour laws would promote further integration of legal migrants and particularly the second generation into the host society. Peace and political stability in home countries are the key determinants of return to, and reintegration in home countries. Social and economic reintegration is a durable solution for both host and home countries. Improved service and security provisions for women would ensure their voluntary repatriation from host and their reintegration into home countries. The timing of repatriation programs should take into account the socio-economic conditions of the home countries in post-conflict situations.

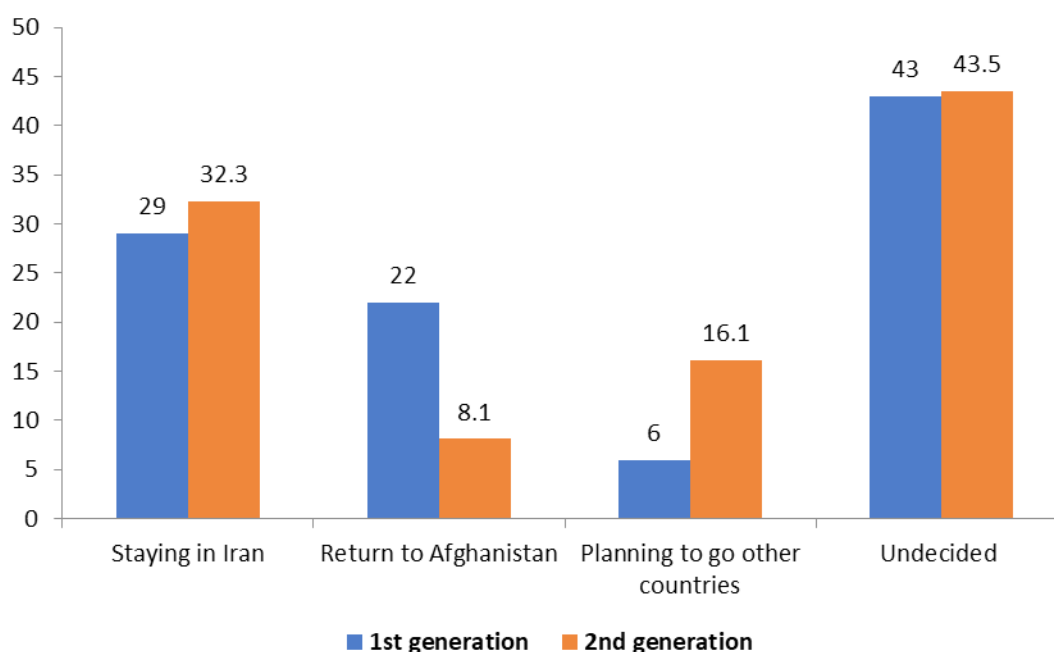
While the attention of the governments is focused on repatriation policies, both the home and host countries should collaborate to formulate integration and/or reintegration policies for those who remain in home or return to host countries. Conflicting interests for both host and origin societies on the integration, return and reintegration processes makes it difficult to reconcile the views of the two government in a joint policy approach. As there is no institutionalized mechanism for such collaboration, one way forward would be to envisage some research supported by national and international donors to investigate the mechanisms by which integration and re-integration policies can be formulated and implemented by the host and home countries. Establishing a regional center for refugee studies would facilitate such research collaborations.

The governments in host and home countries should develop long-term and sustainable migration policies. Repatriation should not be considered as a single policy, but rather it should be envisaged as a transnational process in which both integration and reintegration policies are also included. Accordingly, it is recommended that integration and re-integration programs be included in the development plans in both host and home countries. Cost sharing and other social and legal support for such programs should be envisaged by the international community and potential third country destinations.

The perception of economic development, political stability, and the rule of law in home countries is critical to migrant's decision-making about return. The decision to return may, however, depends upon the duration of residence in the host society and differs by generation. Without progress on the development of the home society, second-generation migrants who can be the engine of social and economic change and development in their home country are expected to be more willing to remain in host communities.

Appendix

Figure 1. Migration intentions of Afghans in Iran by generation, 2010



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Integration that Values Diversity – Exploring a Model for Current Migration Dynamics

Gervais Appave and Inês David

What is the issue with integration?

Integration is a process that lies at the very heart of the migration experience and is therefore of key interest to migration stakeholders – notably the migrants themselves and their host societies. Lacking a consensual definition,¹ when reduced to its simplest expression, “integration” may be said to refer to the encounter between the migrant and the host society, and to the development of a relationship between them. This raises a number of fundamental policy questions: a) who defines the nature of the relationship between migrants and their host society (the government? the host community? the migrants?); b) what is the nature of that relationship and c) what should its outcome be?

The questions are particularly significant because the nature of the encounter has arguably changed significantly over time. When societies were considered to be homogenous and the percentage of migrants in the population was low, assuming migrants would take on a new “national identity” to become part of the host countries’ social environments seemed plausible. It did not seem unreasonable to assume that they would eventually adopt the lifestyle and values of their host society, the more so because communication with their country of origin was difficult – sometimes impossible. The integration equation is rather more complicated today.

Recent changes posing challenges to integration policies

First, there are more people on the move. Despite fluctuations and geographic asymmetries of migrant flows, the number of people migrating has nearly tripled in the last 50 years.² In tandem, migration patterns have become more complex. Driven by both forced and voluntary circumstances, migrants now come from a much larger number of countries of origin and socio-economic backgrounds, their motivations to move are more complex, and the durations of their journeys less certain. Programmatic categories such as “labour migration” or “family reunion” overlap and interact, and both are affected by patterns of regularity and irregularity. Once they have left, with greater transnational interconnectivity and ease of travel, migrants are also more able to adapt and adjust their migratory objectives – possibly prolonging their stay, bringing their family, returning and/or re-migrating – while at the same time developing both affiliations to multiple “homes” and plural identities. This has resulted in increased heterogeneity within host societies and among immigrant populations themselves, with second and third migrant generations further contributing to the richness of the social tapestry. Such changes call for a reinterpretation of the nature and purpose of migrant integration in the 21st Century.

1 Favell, 2001: 116.

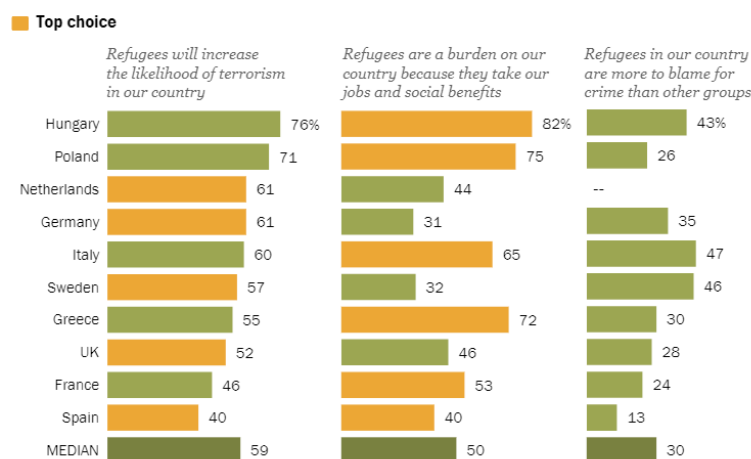
2 McKinsey Global Institute, 2016: 2.

Second, public discourses on both migration and integration have become highly politicized, including in so-called traditional countries of immigration. Increases in immigration in Europe, resulting from the mass arrivals over the last two years,³ have sparked fears about the “dilution” of national identities and the host countries’ abilities to accommodate diversity, not least because the flows have been largely composed of populations with visibly different cultural and religious practices.⁴ Latching on to the irregular patterns of movements, the migrant-related terrorist attacks and employment-related apprehensions in the aftermath of the economic crisis, politicians and media actors have been frequently tempted to view the migration debate through security and economic stability lenses. Consequently, citizens tend to overestimate the number of migrants (and particularly Muslim migrants) present in European countries⁵ besides associating migration with terrorism, crime and economic concerns (figure 1), even if opinions vary among respondents (figure 2). Discomfort about social diversity and the damage it might cause to social cohesion is then easily triggered by preoccupations with job displacement, lowering of wages, depletion of the welfare system and the general sluggishness of the global economy. The concerns are widely spread but particularly apparent in industrialized countries.

Third, integration policy debates have been strongly influenced by the evolution of the international human rights framework. The International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights are particularly relevant to integration policy because they prohibit practices that discriminate against cultural and religious difference or preclude equal treatment before the law. Global trends towards individualization and interconnectivity have also contributed to the emergence of greater sensitivity towards personal freedom and human dignity. Pro-migrant constituencies have defended the universality of human rights and pressured governments to show greater attention to the rights of migrants when developing policies on integration. This has been recently apparent in [the surges of online activism in support of migrants and refugees](#),⁶ [international demonstrations](#), and local instances of mobilization for migrants (e.g. lawyers working pro-bono to counter American [bans on immigration](#) and [support beneficiaries of the Deferred Action for Child Arrivals program](#)).

These competing dynamics create a conundrum for integration policy: how to coherently incorporate difference while preserving the distinctiveness of established cultural narratives? How to balance the rights and responsibilities of the host society and those of the migrants?

Figure 1: Europeans’ concerns regarding refugees in 2016



Source: PEW Research Center.

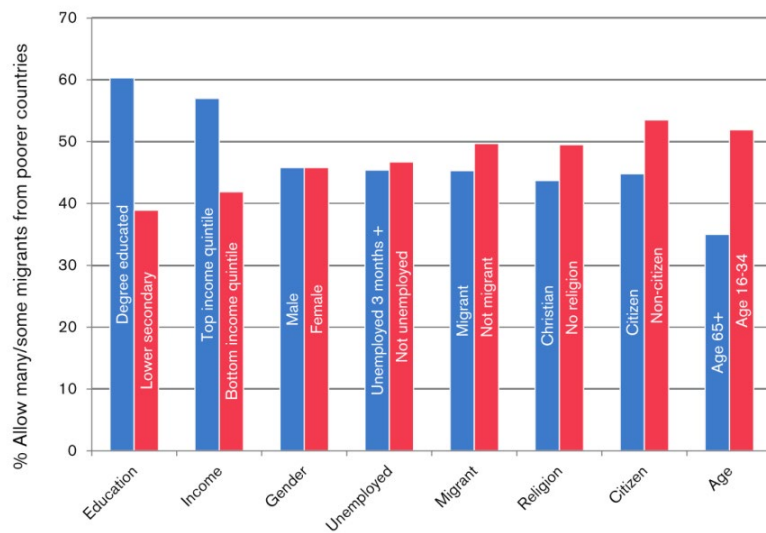
3 OECD, 2017: 7.

4 Banalescu-Bogdan and Benton, 2017.

5 See, for instance, Ziebarth, Wunderlich and Raisher, 2014: 16, and Ipsos Mori, 2014.

6 See also Hall, 2017.

Figure 2: Socio-demographic differences in willingness to allow many or some migrants from poorer countries outside Europe.



Source: Topline results from Round 7 of the European Social Survey 2014.

Failing to accommodate diversity

Over time, integration policy models have tried to answer the questions mentioned above. In broad terms, the models can be aligned along an uneven chronological continuum bookended by assimilationist and pluralist policy approaches. While they have tried to respond to changing migration dynamics, they have arguably all had difficulty coming to terms with the challenges of diversity and are therefore inadequately suited to manage current realities.

Assimilation policies were developed as far back as the 1920s and 1930s, when migrant relocation had an overwhelmingly permanent resonance.⁷ They placed the onus of change squarely on the migrant. Despite well intentioned goals to decrease possibilities of discrimination and to promote equality by drastically reducing the salience of ethnic difference, assimilation pre-supposed the shedding of past lifestyles, languages and values as a condition of membership.⁸ As largely practiced in the so-called traditional countries of migration after the Second World War, it required full adaptation to social, cultural and linguistic environments. Assimilation in its extreme form prescribed the abandonment of pre-existing cultural values, and the acquisition of a new cultural identity. This approach sits uneasily with current social diversity in most countries and goes against the inclination of migrant communities to maintain communication and cultural linkages with their countries of origin.

At the other end of the spectrum is multiculturalism, a model that, in its most generous acceptance, welcomes the preservation, expression and sometimes even the celebration of cultural diversity. This approach, largely practiced in the 1980s and the early 2000s, encourages migrants to become full members of society while retaining their cultural identities. They combine the recognition of varied backgrounds, traditions and ways of seeing the world with certain universalist values, such as the rule of law or gender equality, that override cultural differences and guarantee the same rights for all. The integration relationship is then best captured in the image of a mosaic enabling minority ethnic groupings to live side by side with the majority constituency. However, efforts for migrants' inclusion may trigger disquiet among the host society if the perception arises that minority groups have taken advantage of the system to acquire undue political influence or an

⁷ Castles and Miller, 1998.

⁸ Hersi, 2014: 592.

unfair share of public resources. Like the assimilationist approach, multiculturalism also presumes that the majority culture remains largely intact, engaging little with the diversity around it.⁹ Emphasis on respecting and tolerating difference without reaching across it has been criticized as favouring a dynamic of seclusion that does not foster cohesion.¹⁰ Critics accuse proponents of multiculturalism of focusing on showcasing superficial but palatable markers of diversity like food, attire or music, and of avoiding dealing with cultural practices that clash with liberal values, such as arranged marriages. Understood in this way, multiculturalism also falls short of coming to terms with current realities of migration. Increasingly plural societies require deeper understandings of the dynamics of diversity. Moreover, negotiations of tensions stemming from cultural divergences must be able to go far beyond the notion of tolerance.¹¹

In between these two models are a number of variants that have been clustered under the umbrella term “integration”.¹² The approach gained traction in the 1970s and was meant to convey the expectation of a two-way adaptation process. In short, migrants and members of the host society share responsibilities to not only observe each other’s rights and obligations but also to adapt to each other, jointly finding a way to reconcile their differences. In that sense, integration can be understood to be successful when migrants and other members of society enjoy the same opportunities for social and economic expression and have a common sense of recognition, participation and legitimacy. Some multicultural arrangements have incorporated this model into their co-existence frameworks, such as Korea, Canada, the UK, the Netherlands, Sweden or Australia.¹³ Yet, efforts to operationalize mutual adaptation have never quite resolved the vexing question of the onus of change. Does it lie equally with the host society and its migrants or primarily with one of the two parties?

Contemporary integration policy borrows elements from each of the above orientations. However, responding to recently growing concerns with how “too much diversity” can threaten to undercut national cultures and make people “feel like strangers in our own country”, a number of governments have fostered, albeit to varying degrees, civic integration approaches.¹⁴ Favoured, for example, by Denmark, Germany, the UK and the Netherlands, such approaches have established language and integration courses, tests and contracts as the obligatory pathway to membership in the national polity. More than supporting migrants during the arrival stage, such requirements are taken as proof of both migrants’ willingness and ability to become part of the host society.¹⁵ Notably, failing to meet the requirements may have punitive consequences, such as the loss of extensions to residence permits or welfare benefits. Courses and tests then constitute a form of compulsory cultural apprenticeship, which, if successfully completed, provides the government with the assurance that the neophyte has met the established and often demanding non-negotiable conditions of membership. Ultimately, these regulations, along with recent restrictions unevenly targeting migrants’ religious practices,¹⁶ signal a clear shift towards the placement of the onus of change on the migrant and a return to assimilation-based approaches. They also construe the integration relationship in superficial terms when reducing it largely to an administrative act and privileging the learning of expected responses over the development of an organic relationship based on shared experiences. In increasingly diverse societies, the imposition of such requirements risks sending a message to migrants that they are not welcome and thus

9 Li, 2003.

10 For a discussion on competing interpretations of multiculturalism and on the shortcomings and potential of this approach see Kymlicka, 2002.

11 For a nuanced discussion of tolerance approaches see Triandafyllidou, 2012.

12 It is important to differentiate between the use of this term as a “mutual adaptation” policy model and its more generic meaning as a descriptor of the encounter between migrants and their host society.

13 Respectively, Yoon, 2014; Li, 2003; Spencer, 2011; Penninx 2010; Westin, 2016.

14 For an analysis of varying degrees of both change in policies and of restrictiveness of policies see Goodman, 2010.

15 Penninx, 2010: 26.

16 For a discussion of recent changes in legislation restricting Muslim attire and the implications of establishing Christian symbols as neutral elements of the national cultures that migrants need to adjust to, see Banulescu-Bogdan and Benton, 2017.

fuel social tensions, especially when selectively not applied to all migrants in the same way.¹⁷ Requirements may even hamper integration when fees of courses and tests are prohibitive and language requirements too high.¹⁸ Also, while such policies intend to ensure migrants' commitment to the host society, it is not at all clear whether migrants who demonstrate knowledge of language and of purported national values are in fact willing and able to adhere to them.

A model that values diversity

Despite their shortcomings, these approaches usefully signal important developments. For instance, when [the Dutch integration test sparked controversy about how migrants' knowledge of the national culture was being assessed](#), it hinted at a larger emerging debate related to how national collectivities redefine themselves in the 21st century. As migrants are expected to "integrate", the question inevitably arises of what exactly should they be integrating into? Although societies engage daily in the negotiation of values and mores underscoring national distinctiveness,¹⁹ the challenge of immigrant integration has been turning the identification of such defining characteristics into an intentional collective exercise. This exercise must come to terms with today's intensified global mobility, interconnectivity and international interdependence as well as with the ensuing larger presence of migrants and second and third generations in countries' populations.

To assist such emerging public debates and foster social cohesion, we suggest exploring an approach that responds to contemporary realities of international mobility and promotes integration *in the midst of diversity* rather than integration that is intended to overcome diversity. This approach strives to take the multiculturalist model one step further while taking the concerns underpinning civic integration approaches seriously. To do so, it asks whether it would be possible to envisage integration as a twofold process consisting of a) the construction of a common destiny based on common core values; and b) the acknowledgement and nurture of a national narrative. In other words, this approach conceives of integration as a process whereby culturally diverse societies seek "ways in which the joint requirement of global equality of opportunity and collective self-determination can be coherently upheld".²⁰

The assumption under a) would be that it might be possible for any society, even one characterized by a high degree of diversity, to identify a set of core values. These could evolve over time, but above all, they would provide a strong sense of unity, a coherence of vision and purpose. The further assumption is that these deep fundamental values would leave room for the expression of differences in lifestyle, behaviour and cultural practice. We would suggest that at least some of these values could be drawn from the Human Rights framework and its universalist principles, such as the rule of law, the practice of democracy, freedom of expression, gender equality and protection of the rights and freedoms of others. Underscoring our shared humanity, these can be the underlying deep ties binding members of society across and beyond multiple expressions of difference that may be visible "at the surface". In other words, adherence to common values based, essentially, on universal human rights would not in any way preclude the nurturing of cultural distinctiveness.

The assumption under b) is that, complementing bedrock values, there are national narratives offering an additional and important collective asset. While national identity construction is slippery ground, fraught with the pitfalls of identity politics,²¹ we suggest that it is possible, essential even, to chart a course that helps the migrant to find entry points into the national narrative. Such a course would refer both to a valued "having

17 Not all nationalities are required to take courses and tests before arrival in the Netherlands, for instance (see Goodman, 2010). Significantly, this accentuates the gap created by policies designed to explicitly attract highly-qualified workers and affluent migrants by facilitating their access to residency and citizenship (for examples of such policies see OECD, 2017: 43-47).

18 www.mipex.eu/permanent-residence.

19 Billig, 1995.

20 Kollar, 2016: 727.

21 Munz, 2017.

been” and an equally important “will be” component. However, it would depart from current civic integration preoccupations with the *necessity* for the migrant to join a purportedly established fixed way of living. This model supports the importance of migrants’ commitment to the host society and the need for them to learn and understand both its past itinerary and its perspective for the future. It emphasizes, therefore, that, like identities, societies are hardly fixed and homogenous, but are rather constantly undergoing a process of change that repositions a nation’s sense of where it comes from and whither it is bound. Notably, promoting the sense that national identities are dynamic and negotiated does not mean losing sight of historical factors forging distinctive modes of social, political and economic organization. It does, however, re-direct the gaze from focusing on origins, and seeking guidelines in the past, to facing current realities and preparing the future ahead. Additionally, it recognizes how immigration has been, and can positively continue to, contribute to re-shaping culturally specific frames of reference.

In practice, while the model acknowledges that integration necessarily involves adaptation, it shifts the focus away from the allocation of responsibility for change, the prescription for change and the verification of change. If the core of any integration policy depends on how the receiving society defines itself and whether it is able and willing to change,²² this approach posits integration is more a matter of *becoming* rather than *being* (with a much lesser focus on having been) and a result of the process of creating and maintaining an *identification* with the society rather than on acquiring a new *identity*. Such an approach acknowledges that migrants often cultivate multiple affiliations to their various homes, which are very much compatible to their allegiance to the host country (and even beneficial to the latter).²³ Ultimately, instead of wondering how migrants may fit into society, this model focuses on how society evolves with them.

Challenges include finding ways to welcome, acknowledge, respect, accept and embrace the various faces of diversity in a coherent way. Furthermore, contextually specific resistances to integration will call for different ways to negotiate the limits of acceptable difference. Encouraging a sense of ownership in the process of identifying common values that grant migrants a place in a common “we” may be an important incentive for both migrants and non-migrants to nourish a commitment to the country and to each other. Similarly, objectively creating conditions for social equality and participation in society can importantly complement symbolic exercises. Without losing sight of specificities shaping migrants’ incorporation (e.g. temporary work, asylum seeking, family reunion, second and third generations) measures could privilege needs over groups, thereby targeting also the host population. The appendix lists ideas that seek to permit variable applications of this model according to different national realities.

Ultimately, contemporary migration dynamics call for a deliberate re-conceptualization of tomorrow’s societies. Granted, the ways to engage with diversity will be a matter of choice and framing of the public debate. Yet, despite anti-diversity voices, “vernacular cosmopolitanism” (i.e. a genuine openness to internalize others’ values and cultural practices into one’s way of making sense of the world and of one’s place in it) is already practiced across the world.²⁴ Deliberately promoting nationally specific ways to embrace diversity that build on universalist bedrock values may perhaps better enable governments to maximize the benefits of migration, host societies to realize social cohesion and migrants to construct belonging.

22 Penninx, 2010:26.

23 See, for instance, Marini, 2014.

24 Werbner, 2006.

Appendix: Ideas to implement the model

The suggested policies below are not new and were compiled in view of a) realizing the potential of migration and minimize possible problems and b) create incentives for both migrants and the host society to invest in a deliberately diverse common future. They are organized under three main goals and leave room for flexibility in implementation.

1. Facilitated access to residency and citizenship

- **Enable legal residency:** Create a Universal Register and identification system granting access to some basic rights enabling settlement, with attention to protecting personal information.
- **Reduce requirements for integration:** Focus language and integration courses on practical and non-punitive assistance to incorporation.
- **Allow dual nationality:** Including for foreign-born and second generation youth who spend formative years and are socialized in the country.

2. Fewer barriers to participation in public life

- **Address structural needs of the whole society:** Focus on concrete support in the workplace and at school, which structure most migrants' everyday lives and obstacles, by targeting needs instead of migrant groups. This may promote a sense of equal standing among non-migrants and migrants alike while particularly benefitting the latter.
- **Promote symbolic inclusion:** Include the importance of migration and contributions of migrants in national curricula (including national history).
- **Ease access to participation in established political and civic structures:** Enable migrants' participation in organisms representing sectoral interests with permanent residency (political parties, trade unions, work councils, chambers of commerce, school boards and civic organizations) as well as public positions (e.g. teaching).

3. Promote ownership of the integration process

- **Integrate migrants, the host society and, particularly, the second and third generations, in the design of integration and implementation policies** (e.g. integration courses, tests and contracts).
- **Counter cultural distance and potential discrimination with education for and mediation of diversity:** Support and explore projects, programs and mechanisms focused on learning to live with diversity, exploring shared values and national narratives, and promoting intercultural dialogue for both migrants and host societies (e.g. cultural mediation centres, town hall meetings, online platforms, round-table discussions, consultations with associative networks).

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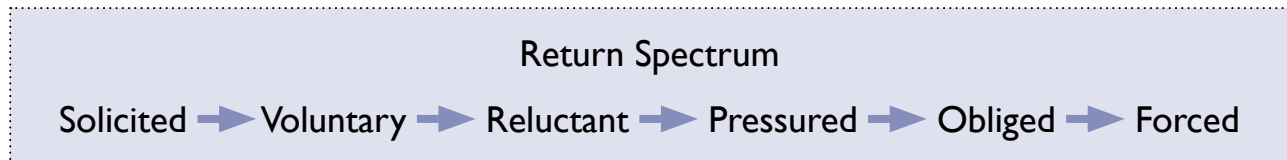
Migrant Return and Reintegration Policy: A Key Component of Migration Governance

Kathleen Newland

Introduction

The sharply increased movements of people across the Mediterranean starting in 2014 generated heightened interest in return migration. The arrivals included many people who would not be considered refugees, from countries such as Cote D'Ivoire, Senegal and Nigeria (few of the Nigerian migrants come from the conflict-affected region in the Northeast of the country, according to IOM) and even as far away as Bangladesh. While the epicenter of return and reintegration *policy debate* was in Europe and international policy forums, actual mass returns were taking place from Iran and Pakistan to Afghanistan and from the Dominican Republic to Haiti, and were threatened from Kenya to Somalia. These large-scale returns were not the primary focus of debate about return and reintegration policy in international institutions and forums, and for this reason they will not be the primary focus of this paper.

Return migration takes place along a spectrum from voluntary to involuntary movement, with at least six identifiable points.



- At one extreme is return that is not only wholly voluntary but solicited by the country of origin. Many countries, including China, Ireland and South Korea actively court emigrants and members of the diaspora—especially highly skilled and talented migrants or potential investors—and may offer incentives for them to repatriate.
- Other migrants are not necessarily asked to return but do so voluntarily, some to retire or reunite with family, others because they believe their prospects in the country of origin have improved or they have achieved their migration goal of, for example, acquiring a skill or a nest egg.
- A third group of migrants decide to return voluntarily but reluctantly, even though they have not lost their legal right to remain. They may feel that going home is the best of a suboptimal set of options; perhaps the political and social climate in the country of destination has become inhospitable, they have not succeeded in pursuing their goals, or they are simply homesick.
- A fourth point on the spectrum holds migrants who are strongly pressured by the countries of destination to return, with some governments offering voluntary returnees a cash payment which may be available only for a limited time; this often occurs in times of economic crisis with high unemployment.
- A fifth category is obligatory return, for migrants who have not secured the right to remain legally in the country of destination and are ordered to leave. Return and repatriation assistance is often made available to those who comply with the obligation to return while those who do not comply, and continue to stay as unauthorized migrants, face legal sanctions.

- Finally, the other extreme of the spectrum is forced return, in which migrants who are legally required to leave the country of destination and have avoided doing so are physically detained and forcibly deported.

The acute policy conundrums surrounding return migration on the second half of this spectrum are the focus of this brief policy paper.¹ On the one hand a) states have the right to return migrants who have no legal authorization to remain, b) removal of unauthorized immigrants is understood to be an essential element of effective management of orderly migration c) states are determined to remove unauthorized migrants and many governments believe that they must do so in order to retain credibility with their citizens and legally resident non-citizens. On the other hand, states find it extremely difficult to remove unwilling migrants in an orderly and humane way. This is one conundrum.

A second conundrum is that when return takes place, whether voluntary or compelled, sustainability is often difficult to achieve. Reintegration in the country of origin will obviously be easier for migrants who return voluntarily, but all returnees must go through some kind of reintegration process. Governments who wish to encourage return migration, either as countries of origin or destination, have reason to consider what policies can help to make return migration sustainable. The timing of return is critical: if the same conditions that motivated migration in the first place—violence (of a criminal or political nature), corruption, high unemployment, dysfunctional public services, poor infrastructure, widespread poverty and lack of opportunity—are still pervasive, reintegration is likely to be difficult and returned migrants may try to leave again. Voluntary returnees may find that social and psychological reintegration into the country of origin is more difficult than they had imagined, or that they are unable to make a living.

A third conundrum arises from the reality that countries of origin and destination may have different views and interests in the return of migrants. While some states may welcome migrants back to the home country, and in some cases have actively encouraged return, others have little motivation to cooperate in the return of their nationals. Emigration may be seen as a crucial safety valve for poverty and unemployment (and in some cases, for political discontent). Migrants' remittances are an important proportion of gross national income in many countries, and may overbalance any threat of sanctions² for failure to cooperate in the return of migrants. Countries of origin may simply be unable to reintegrate the migrants satisfactorily, and in case of large-scale returns, the human costs of repatriation may be very high. Long-settled emigrants may retain little practical connection with their countries of origin.

Background

The governments of many countries of destination today want to encourage return migration, particularly of unauthorized migrants, failed asylum seekers, people whose visas have expired, or those whose period of temporary protection has come to an end—in other words, migrants who do not have legal permission to remain. Some governments, such as that of the United Kingdom, have also articulated a desire to have lower “net migration,” which implies lower immigration, higher rates of return, or some combination of the two. Some governments want to encourage return migration of refugees when the conflicts that produced refugee flows have wound down (or even before, as with current returns to Afghanistan from a number of countries, and Turkey's interest in creating “safe zones” within Syria to which refugees could return even as fighting continues in parts of Syria). Some governments act unilaterally to return people, motivated by domestic political pressures or geopolitical strategic concerns.

1 Countries of origin face a very different set of policy conundrums in trying to attract back their emigrant nationals. For example, special incentives offered to returning migrants may generate resentment among citizens who never left. One of the most difficult challenges is generational. The return of children and youth to a “home” country they do not know well fosters alienation. These challenges faced by countries of origin in the front half of the return spectrum often overlap with those on the second half, but are appropriately the subject for another paper.

2 The United States has curtailed visa issuance to nationals of Cambodia, Eritrea, Guinea and Sierra Leone because of lack of cooperation in receiving migrants returned to those countries.

Among Western democracies, the United States has been relatively successful at removing unauthorized immigrants, with 3.7 million formal returns carried out in 2003-13. This rate of return has risen in 2017, as the Trump administration gives priority to deportation of unauthorized migrants and could rise even more sharply if the administration removes protection from deportation from several groups. These include the roughly 800,000 beneficiaries and potential beneficiaries from the Deferred Action for Childhood Arrivals (DACA) program, and some nationalities benefitting from Temporary Protected Status (TPS), which now covers nearly 300,000 people.

Among European liberal democracies, return has proven to be quite difficult. This is in part because so many unauthorized immigrants apply for asylum, and asylum determination systems work very slowly. In many countries their capacity has been overwhelmed by the high number of applications from 2014 onwards (although arrivals have slowed considerably in Europe and the United States in 2017). The 28 EU members plus Norway and Switzerland received about 2.5 million asylum applications in 2015 and 2016. At the end of 2016, more than half were still waiting for their cases to be resolved, 40 percent had been approved, and about 3 percent (approximately 75,000 people) had been returned. A residual 5 percent, mostly composed of rejected asylum seekers, could not be located.³ Even when decisions are concluded, they are difficult to execute. To illustrate, only 60 percent of the return decisions issued by EU countries in 2015 were actually carried out.⁴ Similarly, in the United States, despite high rates of removal, the backlog of asylum adjudications exceeded 617,000 cases in 2017, and the wait for most asylum seekers extended more than two years.

For countries of destination in Europe, the attraction of voluntary return has increased with the volume of asylum seekers and the growth of backlogs. (The United States does not offer reintegration assistance to many returned migrants.⁵) Offerings of payments and other kinds of assistance have grown more common. They serve two purposes, addressing both the first and second conundrums described above: to encourage migrants to return voluntarily to their countries of origin and to increase the sustainability of return.

Many governments work with the International Organization for Migration (IOM), which has managed Assisted Voluntary Return Programs (AVRR) since 1979. IOM provided AVRR assistance to 98,403 migrants in 2016, compared to 69,540 in 2015 and an average of 34,000 a year from 2005-2014. Some 83 percent of the returning migrants among these beneficiaries were returned from Europe; 54 percent from Germany alone (chiefly to Albania, Iraq and Serbia).⁶

IOM's AVRR programs provided US\$32.7 million in support to 39,000 returnees, in cash or in kind, in 2016—an average of \$838 per person. About 62 percent of the total was disbursed as small cash payments and about 31 percent consisted of in-kind support for micro-business start-up. Smaller proportions were made available for health care and housing, and less than one percent each for services such as education, vocational training, social protection, job placement and legal services.

Most research on the subject seems to suggest, however, that the success of return incentives offered directly or indirectly by countries of destination is generally modest. Few assisted voluntary return programs have large uptake among rejected asylum seekers, in part because they are not well known or understood. Many migrants who take up return assistance were planning to return in any case. Return incentives are not usually large enough to make a big difference in the success of the individual's post-return plans. The efficiency and effectiveness of return payments and programs have not been rigorously evaluated in very many cases.

3 Phillip Connor, "Still in Limbo: About a Million Asylum Seekers Await Word on Whether They Can Call Europe Home," Pew Research Center, September 2017, www.pewresearch.org.

4 Demetri Papademetriou, "Maintaining Public Trust in the Governance of Migration", Transatlantic Council on Migration, Migration Policy Institute, May, 2016.

5 There are some exceptions, such as \$50,000 grant to an Salvadoran non-profit intended to help facilitate reintegration and support business start-ups with technical advice and financial education.

6 IOM, *Assisted Voluntary Return and Reintegration: 2016 Key Highlights*, www.iom.int/sites/default/files/our_work/DMM/AVRR/AVRR-2016-Key-Highlights.pdf

Some countries of origin have very limited ability to absorb returning citizens or to offer them meaningful reintegration assistance. Afghanistan is one of the most extreme examples. About 10,000 Afghans returned from Europe in 2016, almost 70 percent of them through IOM (although only about 1100 received reintegration assistance). In the same year, well over one million Afghans were returned under duress from Pakistan and Iran, even as the country experienced an increase in attacks on civilians. With one of the lowest per capita incomes and human development indexes in the world, along with rising insecurity, reintegration in Afghanistan poses an enormous challenge.⁷ The same could be said of Haiti, where more than 202,000 people have been deported or returned under pressure from the Dominican Republic since mid-2015.⁸ Other countries of origin have greater capabilities to reintegrate returnees. Mexico's "Somos Mexicanos" program, for example, welcomes returnees at ports of entry and provides assistance and counselling.

Analysis

Data on the return experience and the viability of reintegration is remarkably thin. Few reintegration programs have been systematically evaluated or their participants followed-up for more than a short period; therefore, the opportunity to learn from experience has been limited.⁹ Four areas of weakness emerge from the academic and policy literature:

- Most reintegration programs are focused on the individual migrant rather than the household or community, which leads to a tendency to overlook gendered aspects of return and may exacerbate social integration problems.
- An over-reliance on entrepreneurship as the answer to economic self-sufficiency is the dominant approach, which recognizes the weakness of labor markets in countries of origin but does not appear to have a good record for sustainability.
- Most programs are confined to the economic aspects of sustainability while excluding social and psychological needs.
- Consultation and cooperation between countries of destination and countries of origin is more the exception than the rule. This is of particular concern when the host country prioritizes the return of criminals. Return is something that is done *to* countries of origin, although there seems to be some shift toward greater cooperation, for example in the joint EU-Afghan agreement on return of 2016.¹⁰

Some of the best examples of sustainability can be found in projects that are generated by migrants themselves, and are carried out by a self-formed group. The groups are often based on common place of origin. Moroccan returnees from France established rural electrification projects to sustain small businesses and producer coops in the intra-Atlas region. Turkish returnees from Germany, inspired by an expatriate engineer, established a workers' cooperative wallpaper factory, while a successful hydraulic equipment factory was started by Slovenian returnees.¹¹

7 Nassim Majidi, "Between a Rock and a Hard Place: Assessing the Impact of Forced Returns to Afghanistan," Transatlantic Council on Migration, Migration Policy Institute, forthcoming, 2017.

8 In June, 2017, IOM opened a Border Resource Center in cooperation with the Haitian government to assist migrants returning from the Dominican Republic. "UN Migration Agency Opens Haiti's First Border Resource Center to Help Returning Haitians," IOM June 20, 2017, www.iom.int/news/

9 Germany's development agency GIZ has commissioned an evaluation of the government's return programs, which is expected to be completed in 2018.

10 Nassim Majidi, op. cit.

11 Rosemarie Rogers, "Return Migration, Migrants' Savings and Sending Countries' Economic Development: Lesson from Europe," Working Paper No. 30, Commission for the Study of International Migration and Cooperative Economic Development, Washington, DC, May 1990.

Conclusion

There is little agreement on what sustainable return means. To IOM, reintegration is sustainable when returnees are economically self-sufficient, socially accepted and enjoy psychosocial well-being.¹² Richard Black and Russel King set a lower bar: “Return migration is sustainable for individuals if returnees’ socio-economic status and fear of violence or persecution is no worse, relative to the population in the place of origin, one year after their return.”¹³

Certain preconditions for successful and sustainable return can be identified based on experience. At the top of the list is a basic level of physical security. Without that, and a conducive socio-economic environment, return and reintegration assistance is not likely to produce durable settlement. A secure and stable environment includes access to resources, adequate infrastructure, available health care, accessible education, and institutions capable of enforcing respect for basic rights. Conflict affects all of these factors negatively.

Cooperation among states is a key to resolving these issues, both to fostering conditions conducive to sustainable return and to resolving their different priorities about the timing and conditions of return.

Recommendations

The UN Secretary-General’s first Special Representative for Migration, Peter Sutherland, in his 2017 Report,¹⁴ called on states ‘to start a dialogue among countries of origin, transit and destination on return practices and standards, with a view to establishing a common understanding and, ultimately, shared principles to govern cooperation on return and reintegration in all world regions.’ This recommendation is echoed in the list of possible topics for the Global Compact on Migration set out in the New York Declaration for Refugees and Migrants, Annex II, “Toward a global compact for safe, orderly and regular migration.”¹⁵ It is a crucial first step to bring consistency, transparency and order to the return and reintegration of migrants.

The standards called for in the Sutherland Report could address issues like the portability of earned social benefits, reintegration programs that benefit the community of return as a whole rather than migrants only, and the involvement of local authorities and other community-level actors in reintegration planning and practice. One principle that could be recognized is that flexible rules governing mobility can promote return and reintegration. People are more likely to take the risks involved with return migration if they know they have an option to go back to the country of origin under prescribed conditions—to visit family, conduct business, undergo additional education or training, and so forth. This kind of circular migration recognizes the ties that people build up over long periods of expatriation, and can activate these ties as assets for development.

12 International Organization for Migration, *Enhancing Migrant Well-Being upon Return through an Integrated Approach to Reintegration*, Global compact Thematic Paper: Reintegration, 2017.

13 Richard Black and Russel King, “Editorial Introduction: Migration, Return and Development in West Africa,” *Population, Space and Place*, 10 (2), pp. 75-82, 2004.

14 Recommendation 7, Report of the Special Representative of the Secretary-General on Migration, UN A/71/728, February 3, 2017.

15 Resolution adopted by the General Assembly on 19 September 2016 as the outcome document of the High-Level Plenary Meeting on Addressing Large Movements of Refugees and Migrants, “The New York Declaration for Refugees and Migrants,” A/Res/71/1, Annex II, paragraph 8(s).



Media Coverage on Migration: Promoting a Balanced Reporting

Anna Triandafyllidou

Executive summary

Migration and asylum policy is as much about reality as it is about perception – perception by policy makers/ politicians and by citizens/voters of what is happening and how it can be managed.

International migration and asylum seeking are complex phenomena depending on a number of factors and conditions – social, political and economic – which go beyond national borders and jurisdictions, and are highly dynamic and interactive. Media reporting more often than not privileges simple black and white accounts of such complex phenomena, subjugated to dominant discourses on who belongs and who are the ‘aliens’, the ‘outsiders’. What remains untold are the positive stories of migration and asylum (that do not make headlines) as well as the ways in which news are constructed through specific media routines that tend to ignore the perspective of migrants and refugees themselves, and which actually de facto exclude migrant journalists from the media industry.

While the recent refugee emergency has attracted widespread media coverage and public attention, it should not prevent us from looking at migration coverage in the media in the long term highlighting persisting problems not only in media coverage but also in migrant involvement in journalism as well as journalists equality and diversity training.

Media coverage on migration reflects to a large extent the different migration histories and experiences of European countries as well as their wider context of implementing equality legislation. Thus media outlets in old migration host countries such as the Netherlands or the UK provide diversity training and may have ethnic quotas in recruitment. This is not the case in recent host countries like Greece or Italy let alone EU countries with little migration such as Poland.

While political leadership in promoting a view of migration as a structural feature of human history and of modern societies and giving a positive tone to the national ‘migration narrative’ is of paramount importance, a number of measures can be taken to ensure balanced coverage of migration issues and increase migrant journalist participation in mainstream media.

Our suggestions are five

There is a need for monitoring coverage and preventing stereotypical, negative expressions referring to the ethnic origin of suspects, for instance, in crime reports or emphasizing the legal stay status of a person.

Monitoring of the type of issues reported in relation to migration and an effort to ensure a balanced reporting that covers different aspects of migration. For instance include in prime time reporting not just issues of border crossing and dinghies washed out in the Mediterranean shores but also issues of housing, religion, employment, examples of successful artists, professionals and entrepreneurs.

Ensure that a variety of sources (and most of all migrants themselves) is included in the coverage and seek to provide for explanations, evaluations and complex accounts or mention consequences and remedies of specific issues, rather than simplistic generalized reporting.

Recruitment of migrant journalists needs to be prioritized through appropriate traineeship and study to work schemes.

Equality and diversity training is important and should be mainstreamed: provided to all journalists and media professionals at Universities but also as part of their lifelong learning if they are freelancers.

Introduction

Migration and asylum policy is as much about reality as it is about perception – perception by policy makers/politicians and by citizens/voters of what is happening and how it can be managed. Buonfino¹ spoke about the politicisation of immigration looking at how immigration is framed within political discourse, almost always in relation to economic concerns or security issues.² Governments and other political actors tend to construct migration as a problem, or crisis. They then compete in showing that they are ‘in control’ of immigration. Eventually a strong negative framing of immigration prevails under the overall perspective that migration is a problem to be addressed, a liability to be mitigated, a challenge to be ‘tackled’ rather than a positive phenomenon that opens up real possibilities.³

The politicisation of migration is inextricably linked to its mediatisation. Mediatisation involves the ways in which events and issues are represented in the media. Such representation is not just about diffusion of information but rather includes specific professional and institutional practices of what constitutes ‘news’ and how it is reported. What is most important today is that as the media, both traditional and social, become ever pervasive in our everyday political and social lives, “mediated reality matters more than any kind of actual or objective reality.”⁴

International migration and asylum seeking are complex phenomena depending on a number of factors and conditions – social, political and economic – which go beyond national borders and jurisdictions, and are highly dynamic and interactive. The mediatisation and politicisation of migration and asylum serves to produce simple black and white accounts of such complex phenomena, subjugated to dominant discourses on who belongs, who is the national ingroup and who are the ‘aliens’, the ‘outsiders’. What remains untold however and unexplained are the positive stories of migration and asylum (that do not make headlines) as well as the ways in which news are constructed through specific media routines that tend to ignore the perspective of migrants and refugees themselves, and which actually de facto exclude migrant journalists from the media industry.

While the recent refugee emergency has attracted widespread media coverage and public attention⁵, it should not prevent us from looking at migration coverage in the media in the long term highlighting persisting problems not only in media coverage but also in migrant involvement in journalism as well as journalists equality and diversity training.

An additional challenge comes today from the social media which either become a source of information and commentary in and of themselves or act as mediators by diffusing specific news items at the expense of others. Without neglecting the very important role of the social media today, this Policy Paper focuses on traditional media as these can be responsive to both incentives and regulations. This is not the case for social media which largely depend on personal use and personalised ‘communication bubbles’ that ‘cookies’ create automatically on the basis of our past usage and preferences. Discussing the social media coverage of migration is also an important topic but goes beyond the scope of this work.

1 Buonfino, 2004.

2 Watson 2009, Bourbeau 2011, Krzyzanowski and Ledin 2017.

3 Martin-Rojo- Martin and Van Dijk 1997; van Leeuwen and Wodak 1999.

4 Strömbäck, 2008: 239.

5 Triandafyllidou, Krzyzanowski and Wodak, 2017.

This policy paper starts by outlining some main features of media reporting on migration documented in a recent research project⁶ on migrant representation in the media, on migrant recruitment by media outlets, and policies and practices adopted by media outlets to promote equality and fight stereotyping or discrimination. The findings presented here refer to give European countries, Greece, Ireland, Italy, Poland, the Netherlands, and the UK, covering thus countries that have a long experience of immigration (such as the Netherlands and the UK), a relatively recent experience as hosts (Greece, Ireland, Italy) and hardly any experience of immigration but rather being emigration countries (Poland). The policy paper is concluding with suggestions on how to improve migration reporting through monitoring of media content, encouraging recruitment of migrant journalists and promoting training in equality and diversity issues.

Migration in the news

The last decade has seen the emergence of a number of important initiatives promoting diversity awareness in the media. Among those we single out the Media4Diversity project, the Camden principles for freedom of expression and equality, the Ethical Journalism initiative and the Charter of Rome for reporting on migrants and refugees, and the Toolkit on Diversity for public television broadcasting, and last but not least the MEDIVA project. Despite these initiatives (which are largely transnational covering several countries and media) and the positive trends observed in favour of a comprehensive, diversity sensitive coverage, migrant-related news-making practices remain bound up with several challenges.

News on migration are gathered when something sensational and worth reporting happens. And this is usually something ‘bad’ related to migrants or migration. Coverage on migration is often dictated by the more general political agenda and by for instance upcoming election campaigns. Nonetheless there are several journalists who are concerned about the quality and even-handedness of their reporting who go beyond the political agenda to cover issues that they see as worth reporting because people want to know more about them.

The issues reported often cover personalised, emotion-laden stories that can interest a wider public (stories that show the ‘human’ and ‘everyday’ aspect of migration such as families reunited, children excelling in school, people fleeing conflict and losing their spouse, parent or sibling in the process, or of course also stories of trafficking and prostitution). Such stories include stereotypical accounts of migrants in general and women migrants in particular. They tend to conform to three stereotypical representations of the migrant (woman) as victim, hero or threat.⁷ While such representations can be positive they tend to highlight the personal (and highly gendered) dimension at the expense of the structural factors behind migrant integration and participation in the destination country and the real life issues they face. They thus tend to act against the normalisation of migration and its mainstreaming in terms of welfare, employment or general political participation issues.

The MEDIVA project documented that journalists seek to consult migrants, migrant communities, NGOs and other non state actors which they consider most reliable for migration related issues. The rule of thumb is: you want to talk to people who are directly involved. However, accessing such ‘alternative’ sources of information instead of for instance national news agencies, government authorities or academic experts, is expensive – you need a dedicated journalist. In addition journalists need to build trust with relevant networks to have access to such firsthand sources. Actually experts can play this role as people who can function as gatekeepers to migrant voices. The concern that migrant voices are not heard as much as they should even for issues that are of direct concern to them remains.

In addition, media outlets do not cover immigration as a topic continuously. Media tend to flood the media space with instant coverage when something dramatic happens but quickly drop the subject at ‘normal’ times, thus prompting the public to think of immigration in the “problem/conflict/difficulty” framework.

⁶ See the MEDIVA project, <http://mediva-project.eu/>.

⁷ Hennebry et al. 2017.

The coverage of migration related issues by the media is also bound up by wider trends transforming the journalistic profession. Editorial budgets are reduced and professional full time journalists tend to be replaced by freelance reporters working for several outlets and selling their work on a piece by piece basis. This leads to both more diversity in terms of coverage and more dynamism in terms of sources but at the same time prevents journalists from covering issues that are not at the top of the news agenda (as they will be unlikely to sell their stories). In addition it makes it less likely that migrants will be involved in the profession because they do not have the necessary social networks to get into the freelance market while they also need to prove employment to renew their stay permits. All in all the journalistic profession may not look very attractive or indeed a viable professional option to them.

Special features of the coverage

An important feature of media reporting on migration related issues the organization of the 'story' on the basis of an opposition between a positive 'us' and a negative 'them'. Migrants are frequently represented as group rather than as individuals. They are often attributed characteristics of threat, or associated with problems, in particular crime and conflicts and even individual responsibility about specific actions is culturalised, attributed to the cultural features of the specific migrant group. By contrast similar issues reporting on 'native' individuals focus on individual responsibility, behavior or ideas rather than cultural attributes. Indeed migrants are more negatively represented than non-migrants in similar news contexts.

Interestingly, local media, that are closer to their local audiences tend to include more positive reporting on migration including everyday stories that would not hit the headlines of national media. Such positive examples, are more often than not found in large cities and in quality newspapers (that had reporters specialised on the topic and allowed for background reporting and investigations) and in Public Service Broadcasters. Editorial policies of specific media outlets and their strategy for setting news agendas play an important part here in shaping the coverage.

In general, second and third generation migrants are more visible, more often quoted and their portrayal is more balanced compared to that of new immigrants or refugees. However, the quotation of minority or migrant sources is overall still quite limited, but is a little better in quality newspapers and the local press. Migrants as main actors in the news are usually represented in niche programming and entertainment than in prime-time news and talk shows.

Muslims are generally represented in stereotypical, negative ways, associating for instance Muslim men with religious fundamentalism and representing Muslim women as victims of an oppressive, backwards culture. Although in specific instances there was room for more balanced portrayal, investigative and background reporting, and debate, where the position of Muslims was concerned, in most media studies the predominant picture is that of Islam as a threat to security, the culture and fundamental values of the West. This has also led to a general shift in meaning away from civic or political participation towards conflict and geopolitics when migrant issues are discussed. Thus in several cases, particularly in recent times there is a blending of foreign reporting about international conflicts and national news agendas with migration related issues leading to the further securitization of migration coverage.

Recruitment practices in the Media industry

While many studies have documented the often biased and stereotypical coverage of migration in the media, few studies have tried to dig into the root causes of such coverage, beyond ideology, and into the journalistic practices and routines of media outlets.

There is clearly a significant relationship between the country where the media outlet is located and the implementation of formal anti-discrimination measures in recruitment although a quarter of the respondents did not know whether such measures existed in their media outlets. Within the context of the MEDIVA project, Over half of the journalists and media outlet managers interviewed in the UK and half of those in

the Netherlands reported the implementation of anti-discrimination measures in their recruitment practices. None of the respondents in Italy and Ireland was aware of such measures being adopted by their companies. Yet, this should not be interpreted as indicating that the surveyed media outlets in these countries were not open to a diverse range of job applicants.

None of the journalists and media professionals interviewed in Ireland, Italy and Greece was aware of a diversity monitoring practice applied by their companies. In the UK, respondents spoke of an application process that required all applicants to complete and submit an equality and diversity form. Country regulations would sometimes impede the monitoring of diversity. It was explained that in the Netherlands, the question of an applicant's ethnic background figured on employment forms but it was optional whether it would be answered or not. Diversity monitoring was further obstructed by workers' contracts. Freelancers would only be registered if they had worked with a company for over a month. Migrant workers would rarely be recorded because of the nature of their contracts.

With regard to recruitment practices and questions about ethnic or religious bias, some of the senior media professionals interviewed insisted that they were mostly focused on getting the best person for the job rather than ticking ethnic minority quotas. They seemed to suggest that they were thus neutral and equally open to migrant applicants. Indeed a senior Greek journalist suggested that migrants and ethnic minorities might be partly to blame for the lack of diversity among the media workforce. They were seen as lacking confidence and hesitant to apply for media jobs and this contributed to the lack of diversity in the industry.

Barriers to migrant employment in the Media

However digging further into the issue, we identified important barriers that obstruct the employment of migrants as journalists in mainstream media.

First of all, nepotism and lack of host country experience were seen as additional barriers specific to migrants and ethnic minorities. The media in the Netherlands and Ireland were still seen by our respondents as a 'white bastion' that was difficult to break into. New people who were hired tended to come mostly from the same schools and replicated the existing workforces.

There were country differences in how interviewees interpreted the level of migrant aspirations to work in the media. In the Netherlands, a country with long traditions of immigration, careers in the media were not articulated as popular among young non-Western origin migrants. Preference was given to careers in medicine, law, economics and business management as these were sectors seen as offering more security and status. This career preference might have been rooted in past experiences in the origin country.

Low demand for jobs and an excessive supply of highly qualified people, coupled with an 'enormous amount of competition' as other general barriers to media employment. On top of this changes in the journalistic profession including more freelancing were seen as part of the problem.

Cultural differences may pose additional barriers to migrant applicants in the media. A Dutch reporter of Surinamese Hindustani origin talked about wearing a headscarf as creating an additional difficulty to getting work in the media industry.

Diversity in the Media workforce: Can we talk about discrimination?

Equality policies in the media were implemented very unevenly in the five countries studied. None of the media professionals and journalists interviewed in Greece, Italy and Poland gave an affirmative answer to the question about the existence of equality policies in the media outlets they worked for, compared to all interviewees in the UK, half of those in the Netherlands and slightly over a quarter in Ireland, who reported the implementation of equality policies by their companies. Several respondents in Italy mentioned that equality principles were observed at an individual level, referring to written documents to guide journalists in their work.

There were larger disparities in migrant employment when the figures were put in a country context. All respondents in the UK and the Netherlands reported the employment of migrant workers in the media. Several interviewees in Ireland reiterated the lack of diversity in Irish media. Only four respondents in Italy spoke of migrant recruitment in the media but in very small numbers. Ethnic media in the sample were more likely to rely exclusively on migrant labour with the relevant linguistic skills (Albanian newspapers in Athens; ethnic radio stations in Poland).

Migrant journalists were more likely to work as freelancers or on short-term contracts in all the countries surveyed. It should be noted that this did not necessarily imply discrimination as project-based work was a common feature of employment in the radio and television.

Ideas for a more balanced reporting on migration

Media coverage on migration reflects to a large extent the different migration histories and experiences of European countries as well as their wider context of implementing equality legislation.

First of all there is a need for monitoring coverage and preventing stereotypical, negative expressions referring to the ethnic origin of suspects, for instance, in crime reports or emphasizing the legal stay status of a person.

Monitoring of the type of issues reported in relation to migration and an effort to ensure a balanced reporting that covers different aspects of migration. For instance include in prime time reporting not just issues of border crossing and dinghies washed out in the Mediterranean shores but also issues of housing, religion, employment, examples of successful artists, professionals and entrepreneurs.

Reporting also for instance on migrant integration issues needs to include a variety of sources (and most of all migrants themselves) and seek to provide for explanations, evaluations and complex accounts or mention consequences and remedies of specific issues, rather than simplistic generalized reporting.

Recruitment of migrant journalists needs to be prioritized for instance through appropriate traineeship and study to work schemes.

Equality and diversity training is important and should be mainstreamed: provided to all journalists and media professionals at Universities but also as part of their lifelong learning if they are freelancers. While in the NL and the UK journalists did receive such training, this was not the case in Italy, Ireland and Greece. There is a need also to monitor existing trainings, assess whether they meet their objectives and what best can be done.

Useful Links

Media4Diversity project

<http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=512>

Media Diversity Institute

<http://media-diversity.org/en/>

Camden principles for freedom of expression and equality

<http://ethicaljournalisminitiative.org/en/contents/camden-principles-on-freedom-of-expression-and-equality>

Ethical Journalism Initiative

<http://ethicaljournalisminitiative.org/en>

Charter of Rome for reporting on migrants and refugees

<https://www.cartadiroma.org/>

Toolkit on Diversity for Public Television Broadcasting

<http://fra.europa.eu/en/publication/2008/diversity-toolkit-factual-programmes-public-service-television>

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Why Values, not Economics, Hold the Key to the Populist Right - and to Crafting New Migration Narratives

Eric Kaufmann

Opposition to immigration was the primary driver of the Brexit vote in Britain and Donald Trump's support in the primaries in 2016, even if some who voted for Trump on election day were lukewarm towards their candidate. Norbert Hofer's 48 percent of the second round vote in the Austrian election of the same year, and populist right polls or votes of between 20 and 35 percent across Sweden, Denmark, France, Norway, Switzerland and the Netherlands during 2014-16 show how important right-wing populism currently is in the West. Immigration currently (9/17) ranks second in the Eurobarometer after terrorism as the most important issue for European publics and has been first or second-ranked since 2014. Why this rise - and what lessons does this hold for international policymakers?

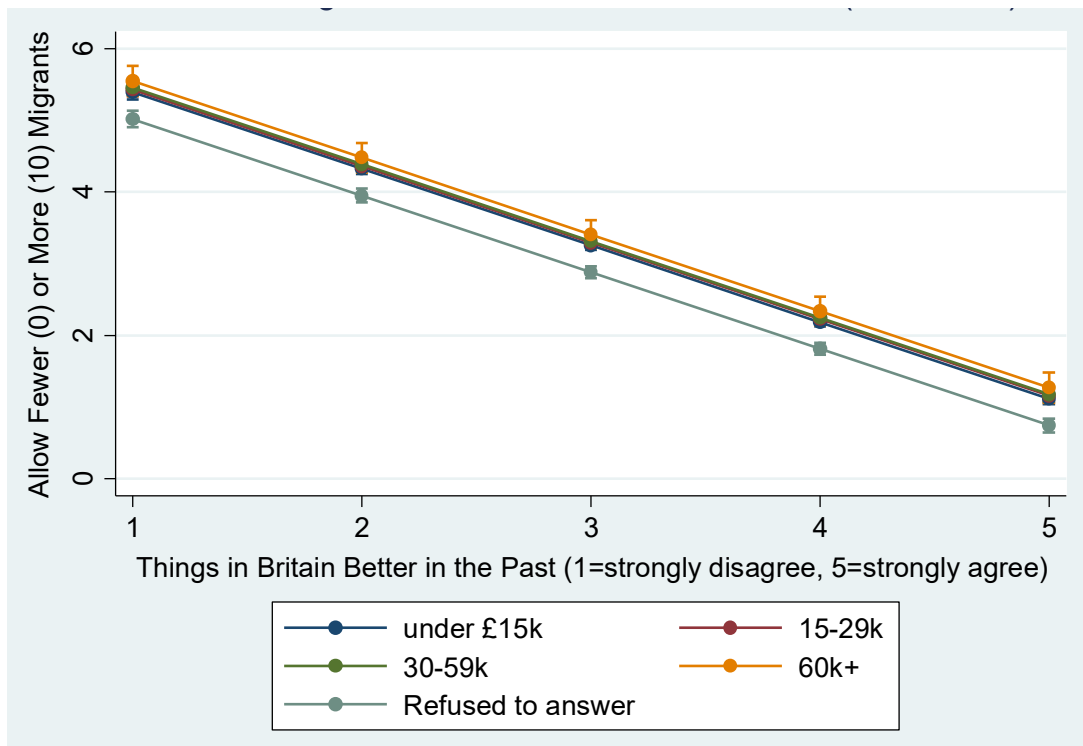
Culture and psychology matter most

A wealth of academic work supports the contention that concern over immigration is the factor most closely associated with support for the populist right in the West. Furthermore, these worries are predominantly cultural and security-oriented, not economic, in nature.¹ Panel studies, which are much more accurate than cross-country comparisons at one point in time, suggest economic differences between countries have no consistent effect on attitudes or populist right voting but the share and increase of immigrants in a country is associated with opposition to immigration and higher populist right support.² Immigration tends to polarize publics by values much more than income. So-called authoritarian values, such as support for strict childrearing or the death penalty, correlate much more closely with opposition to immigration than income or class. So do measures of conservatism such as 'things in my country were better in the past.' Just 16 percent of white Americans who think the past was not better than the present want immigration reduced a lot. This rises to 58 percent among those who say the past was better, and 72 percent among those who strongly agree the past was better.³

Consider figure 1, which shows that White British people who strongly agree that things in Britain were better in the past score towards the most restrictive on a 0-10 scale of admitting immigrants while those who most disagree rank above a 5, meaning they are happy with the current level. By contrast, the tight cluster of lines for income levels shows that being rich or poor makes no difference to immigration opinion when one controls for orientations to the past. Only among those who refused to answer the question do we find a significant effect.

- 1 Hainmueller, J. and D. J. Hopkins (2014). "Public Attitudes Toward Immigration." *Annual Review of Political Science* 17: 225-249.
- 2 Hatton, T. J. (2016). "Immigration, public opinion and the recession in Europe." *Economic Policy* 31(86): 205-246; Davis, L. and S. S. Deole (2015). "Immigration, Attitudes and the Rise of the Political Right: The Role of Cultural and Economic Concerns over Immigration."; Stockemer, D. (2017). "The success of radical right-wing parties in Western European regions—new challenging findings." *Journal of Contemporary European Studies* 25(1): 41-56.
- 3 Policy Exchange-YouGov-Birkbeck survey, 16-17 August 2016. Data at: https://d25d2506sfb94s.cloudfront.net/cumulus_uploads/document/aage6nsrqj/PolicyExchangeResults_160907_Authoritarianism_US.pdf

Figure 1. Allow more migrants, Income and Conservatism (BES 2017)



Source: British Election Study Internet Panel Survey wave 7-9.⁴

Social psychology, in the guise of deep cultural orientations, is key to whether an individual supports or opposes immigration. It is possible to map people’s values across a large battery of questions in two-dimensional space, as has been done by psychologist Shalom Schwartz and by Cultural Dynamics, a values research firm.⁵ These exercises show that opponents of immigration tend to cluster in one section of the map which Cultural Dynamics term ‘Settlers.’ Settlers prefer security and stability over novelty and change. By contrast, ‘Pioneers’ value novelty and experimentation, and tend to be pro-immigration and universalist in outlook. A third group, ‘Prospectors,’ tend to be materialistic and oriented toward success and display, and are more agnostic on the issue.⁶ While age and education are somewhat predictive of values, most value differences are intra-group, and are rooted in genes or early childhood experiences.

A rural-urban divide?

Maps of England, America, the Netherlands and Austria all showed islands of liberalism around large cities and college towns, with most of the countryside painted in the colours of populism. Pundits rapidly jumped to the conclusion that rural voters, who had the least contact with immigrants and diversity, were most hostile. Thus many turned to ‘left behind’ explanations based on economic stagnation or popular discontent with metropolitan elites. In fact there is precious little evidence that either is an important driver of anti-immigration or populist right sentiment. The BES asks a battery of five questions on anti-elitism such as ‘the people not politicians, should make our most important policy decisions’ or ‘politicians in the UK parliament need to follow the will of the people.’ None of these items sorts Leavers from Remainers: socialist Corbyn supporters and Greens also tend to agree. In America, a small survey I conducted in March 2017 showed that more Clinton than Trump supporters resented the American elite. Most Clinton supporters disliked American elites for being rich and powerful while most Trump voters disliked them for being ‘politically correct.’

⁴ Fieldhouse, E., et al. (2017). British Election Study, 2017: General Election Results Dataset [computer file], July.

⁵ For examples, see www.cultdyn.co.uk/

⁶ Rose, C. (2011). What Makes People Tick: The Three Hidden Worlds of Settlers, Prospectors and Pioneers, Matador.

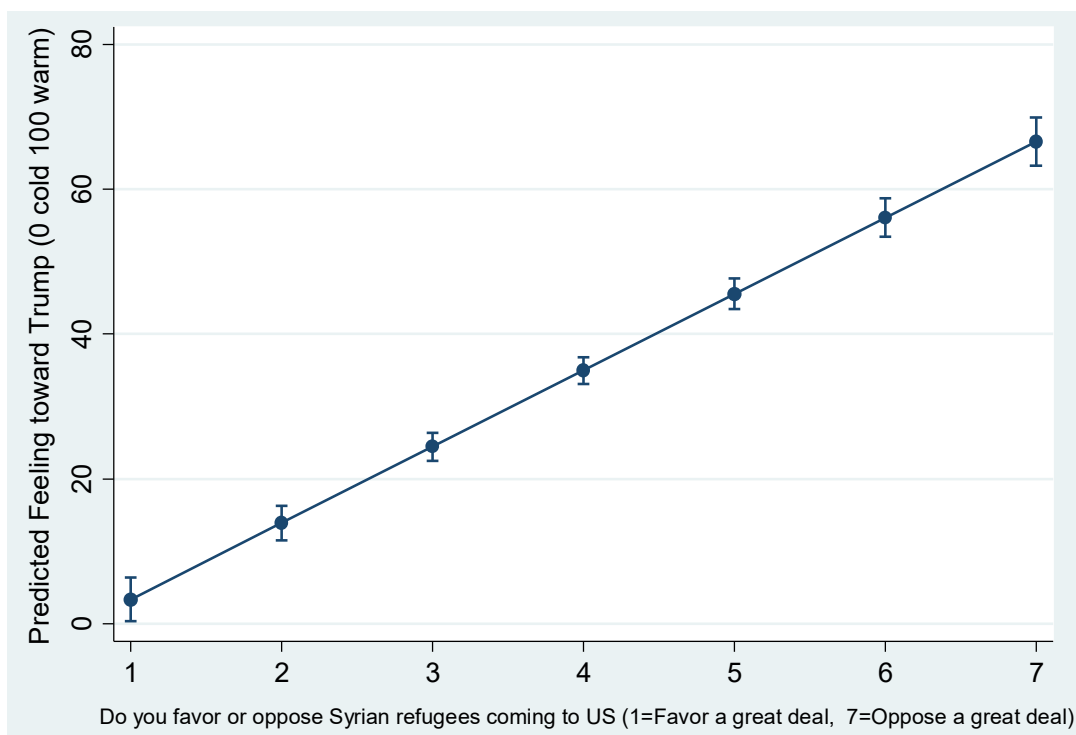
Inequality – tied to the ‘left behind’ theory – is a concern of Remain and Clinton supporters not Leave voters and Trump supporters.⁷ Free Trade exercises the populist right much less than immigration.

Thus ideology and values, not elitism, lie at the heart of today’s polarized politics. Hence it is no surprise that when it comes to immigration and populism, it is hard to fit a paper clip between a white working-class Londoner and a white working-class Briton from rural England. As in the past, rural-urban differences are largely illusory: cities like London and Paris have more young people, ethnic minorities and professionals with degrees than the countryside. These demographic components, not the cosmopolitan atmosphere of these cities, underlies the difference. In diverse neighbourhoods, contact with immigrants does produce somewhat higher toleration among local whites, but this is counterbalanced by heightened threat perceptions about immigration in the ‘halo’ of whiter exurban zones which tend to ring diverse cities and districts.⁸

Refugees and immigrants

Public opinion tends to be more favourable when surveys ask about ‘immigrants’ than the more abstract ‘immigration’, and especially when questions focus on a particular person, such as Syrian child Aylan Kurdi whose body was found on a beach. Most western publics do not, however, draw sharp distinctions between refugees and immigration. They support refugees in principle, but also include refugee inflows as part of immigration. Those who oppose immigration often oppose refugees and vice-versa. When refugees are Muslim, polarizing effects are especially severe because sensationalized security and liberty concerns blend with cultural worries. No question in the 2016 American National Election Study (ANES) pilot survey identified Trump support during the Republican primaries as well as that on Syrian refugees. Those who most opposed admitting the Syrians ranked Trump a 70 and those most supportive scored him nearly zero (figure 2).

Figure 2. Trump rating and Opinion on Syrians (US Whites), ANES Pilot - Jan 2016



Source: ANES Pilot Survey, January 2016.

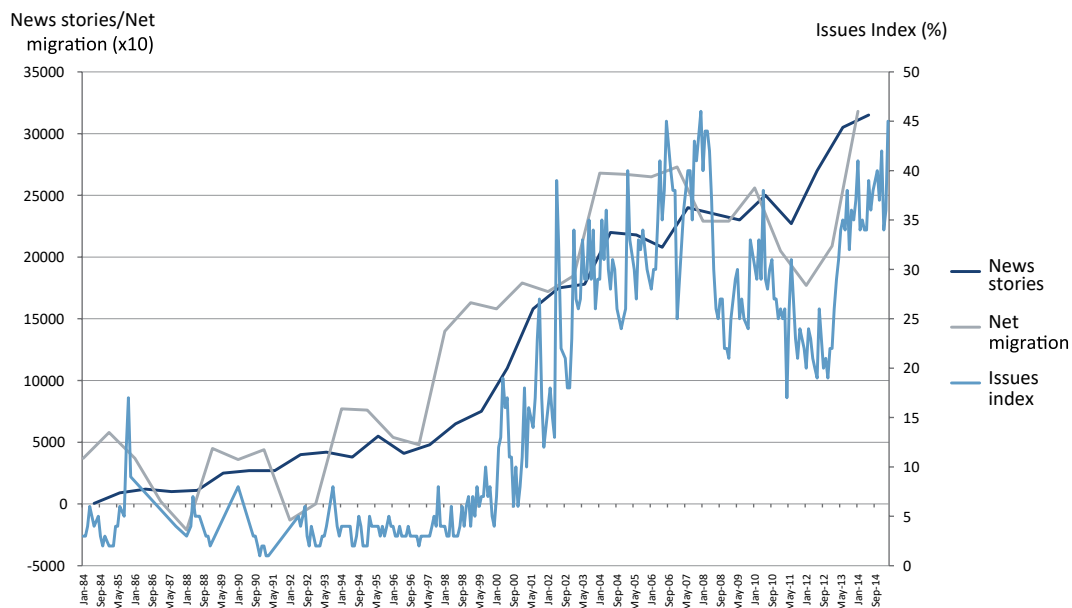
7 Kaufmann, E. (2016). 'Trump and Brexit: why it's again NOT the economy, stupid'. LSE British Politics and Policy blog.

8 Kaufmann, E. and G. Harris (2015). "'White Flight' or positive contact? Local diversity and attitudes to immigration in Britain." *Comparative Political Studies* 48(12): 1563-1590; Rydgren, J. and P. Ruth (2013). "Contextual explanations of radical right-wing support in Sweden: socioeconomic marginalization, group threat, and the halo effect." *Ethnic and Racial Studies* 36(4): 711-728.

When do conservatives become politicized?

The value divides which underlie immigration opinion do not automatically translate into political action. A change in the rate of immigration, heightened media coverage or cues from political leaders are typically required in order to activate conservative ‘Settler’ opinion. The *rate* of immigration is extremely important: rapid increases in immigration are often correlated with the heightened *salience* of immigration. That is, the issue moves up people’s list of priorities and receives more media coverage, though it is not possible to tell whether the media is reflecting or shaping public opinion. Figure 3 shows a high correlation between smoothed time series for net migration, salience of immigration and media stories on immigration in Britain between 1984 and 2015.⁹

Figure 3. News stories about immigration, those mentioning immigration as an issue and net migration over time



Source: Ipsos-Mori ‘Shifting Ground,’ 2015, p. 5.

Very similar patterns have been noticed in the Netherlands, Spain and Germany.¹⁰ Once immigration is salient, political actors move in to cater to the new political demand. When mainstream parties find immigration too toxic to handle for ideological or reputational reasons, populists may enter this terrain. This could be for ideological reasons or to exploit an electoral opportunity. In Germany, for instance, Frauke Petry’s transformation of the AfD from a libertarian party into an anti-immigration one in 2015 led to a dramatic jump in party fortunes, which correlates with Germany’s considerable refugee inflows during the crisis.¹¹ Once the populist right succeeds in this space, this prompts centrist parties to attempt to match populist rhetoric – as occurred to an extent in the Netherlands with the PVV and in Britain with the Conservatives in 2017 - in order to win back these votes, which shifts the policy consensus towards restriction.

9 Ipsos-Mori ‘Shifting Ground,’ 2015, p. 5. www.unboundphilanthropy.org/sites/default/files/shifting-ground-attitudes-to-immigration-2016.pdf

10 Dennison, J. et al. (2017). "The Dutch aren’t turning against immigration—the salience of the immigration issue is what drives Wilders’ support." LSE European Politics and Policy (EUROPP) Blog.; Boomgaarden, H. G. and R. Vliegenthart (2009). "How news content influences anti-immigration attitudes: Germany, 1993–2005." *European Journal of Political Research* 48(4): 516-542.; Morales, L., et al. (2015). "The gap between public preferences and policies on immigration: A comparative examination of the effect of politicisation on policy congruence." *Journal of Ethnic and Migration Studies* 41(9): 1495-1516.

11 Kappe, R. (2016). Media attention, party positioning and public support for right-wing populist parties: The emergence of the "Alternative für Deutschland" (AfD) party in Germany. Elections, Political Parties and Public Opinion (ePop) conference. University of Kent.

Policy solutions

Any attempt to address such anxieties must therefore focus more on cultural than traditional economic solutions such as directing resources to high-immigrant areas. Most who oppose immigration and refugees do not live in such places and even those who do are more motivated by a sense of cultural dislocation than by actual material deprivation. In order to reach cultural conservatives, those who wish to keep the doors at least somewhat open need to speak to their concerns.

First, this means attempting to address factual misperceptions about the size and growth of immigrant and Muslim populations. These may not matter to ‘Pioneers’ or what David Goodhart calls ‘Anywheres’, whose sense of identity is tied to self-exploration and mobility. However it does matter to the ‘Somewheres’ who comprise perhaps half the population of many western countries.¹² No West European country will be more than 10 percent Muslim in 2030. In 2050, France is projected to be 10.4 percent Muslim. Yet Ipsos-Mori’s 2016 ‘Perils of Perception’ report shows the average French person thinks France will be 40 percent Muslim in 2020, a few years from now, instead of the actual 8 percent. Across Europe, the average overestimate of 2020 Muslim share is 25 points.¹³ Previous work by Bobby Duffy and Tom Frere-Smith at Ipsos-Mori shows that people across the West routinely overestimate immigrant share by a factor of two or three.¹⁴

Attempts to spread demographic literacy can help counteract claims by viral videos whose warnings of Muslim takeover are believed by many.¹⁵ A recent survey experiment finds that when people are given accurate information about the share of foreign born in their country then asked a month later what the share is, they adjust their estimates 12 points closer to reality.¹⁶ Pew Forum projections, based on the best immigration, fertility and switching data we have, show that the rate of Muslim growth in Europe is tapering. In 2050, no West European country will be more than 12.4 percent Muslim, far lower than most think is the case today.¹⁷ This needs to be more clearly presented to conservative audiences, preferably by a trusted figure.

There is also an important role for telling a story about immigration in which inflows may leave the country relatively unchanged. After all, if history is our guide, it is far from clear that immigration leads to a wholesale change in the ethnic composition or culture of a society. Consider the following passage, which I had one third of a sample of 1500 White British adults read:

Immigration has risen and fallen over time, but, like the English language, Britain’s culture is only superficially affected by foreign influence. According to Professor X of the University of London, a large share of the children of European immigrants have become White British. Historians tell us that French, Irish, Jews and pre-war black immigrants largely melted into the white majority. Those of mixed race, who share common ancestors with White British people, are growing faster than all minority groups and 8 in 10 of them marry whites. In the long run, today’s minorities will be absorbed into the majority and foreign identities will fade, as they have for public figures with immigrant ancestors like Boris Johnson or Peter Mandelson. Britain shapes its migrants, migration doesn’t shape Britain.

This contrasts with a more conventional storyline, read by a second group of 500 in the survey:

Britain is changing, becoming increasingly diverse. The 2011 census shows that White British people are already a minority in four British cities, including London. Over a quarter of births in England and Wales are to foreign-born mothers. Young Britons are also much more diverse than older Britons. Just 4.5% of those older than 65 are nonwhite but more than 20% of those under 25 are. Minorities’ younger

12 Goodhart, D. (2017). *The Road to Somewhere: The Populist Revolt and the Future of Politics*, Oxford University Press.

13 www.ipsos.com/sites/default/files/2016-12/Perils-of-perception-2016.pdf

14 www.ipsos.com/ipsos-mori/en-uk/en-uk/DownloadPublication/1634_sri-perceptions-and-reality-immigration-report-2013.pdf

15 I.e. ‘Muslim Demographics’. www.youtube.com/watch?v=6-3X5hIFXYU

16 Grigorieff, A., et al. (2016). "Does Information Change Attitudes Towards Immigrants? Representative Evidence from Survey Experiments." London School of Economics. www.lse.ac.uk/IGA/Events/PDF/Siracusa/Ubfal.pdf

17 Pew Forum on Religion in Public Life (2011). 'The Future of the European Muslim Population'. V. Skirbekk, Bilal Barakat, Anne Goujon, Samir KC, Eric Kaufmann, Erling Lundevaller, and Marcin Stonawski.

average age, higher birth rate and continued immigration mean that late this century, according to Professor Y, White British people will be in the minority. We should embrace our diversity, which gives Britain an advantage in the global economy.

The first passage seeks to reassure those who are concerned about White British ethnicity, but are open to absorbing newcomers through assimilation. The second seeks to reassure those who are concerned only about British state nationalism and not the ethnic or cultural makeup of the country. Among conservative (Leave/UK Independence Party) voters, those who read the first passage were 20-35 points less willing to sacrifice 5 percent of their income to halt EU migration than UKIP/Leave voters reading the second or no passage.¹⁸

Policy implications: toward a new migration narrative

The lesson is not for policymakers to talk about assimilating new immigrants: this is threatening to immigrants and signals to white conservatives that assimilation is not taking place. Instead, what is recommended is to devise different political communications about immigration for conservatives and liberals/minorities. This 'constructive ambiguity' has long been a currency of politics, and recognizes that there is no single 'hymn sheet' of national identity. Just as people identify with an entity like the Social Democrats in different ways (gender, class, minority ethnicity), they do so with the nation in different ways (civic, ethnic, ideological).

Political communications need to embody this. The attention of conservative audiences can be drawn to successful indices of assimilation – not just language, but intermarriage rates and minority identity shifts toward the majority – which are often considerable but presently go under the radar. Half of French Algerian men marry outside their group, for instance, while many children of East Europeans in Britain identify as White British. The contemporary diversity-with-civic nationalism approach should persist only for liberal or diverse audiences. My research suggests that a sustained campaign of majority reassurance and demographic literacy helps allay fears about the culturally disruptive effects of immigration. Ideally, liberals and conservatives should be free to read what they want to into a government message on immigration. By contrast, as leading social psychologist of authoritarianism Karen Stenner persuasively argues, attempting to sell the merits of diversity - i.e. 'we are all becoming diverse and multicultural' - to conservative audiences is likely to exacerbate authoritarian fears and stiffen resistance.¹⁹ At the international level, an effective strategy to counter growing resistance to migration would be to show greater awareness of the ethno-cultural dimensions of migration and recognise the need to address the cultural anxieties of majority-group conservatives through new, targeted, migration narratives. These should highlight assimilation and continuity rather than change, and correct demographic misperceptions.

18 Kaufmann, E. (2016). 'Can narratives of national identity reduce support for Hard Brexit and Trump?: a survey experiment'. Nuffield College, Oxford.

19 Stenner, K. (2005). *The authoritarian dynamic*, Cambridge University Press.



Private Sector Engagement in the Global Compact on Safe, Orderly, and Regular Migration

Andre Alves Dos Reis,¹ Khalid Koser² and Mariah Levin³

Introduction

A role for the private sector in migration policy should not be taken for granted – it is not always desirable, it may not always add value, and there may be no interest on the part of the private sector.

Nevertheless, the New York Declaration for Refugees and Migrants⁴ proposes that the private sector, along with other non-governmental stakeholders, should be part of a more comprehensive response to migration (para 15). It identifies a role for the private sector at the local (city) level (para 54), the level of national policies (para 39), and in bilateral, regional and global agreements (para 54). It also identifies the private sector as one constituent to be consulted in the process for the preparation of the Global Compact (Annex 2, para 15), reinforced in the subsequent modalities for the intergovernmental negotiations of the Global Compact. (A role of the private sector is also acknowledged in Annex 1 to the New York Declaration concerning the development of a Global Compact on Refugees).

Beyond these generalities, however, the Declaration is not specific on key questions such as who to engage from the private sector, how, or when. By providing answers to these questions, this short technical paper is intended to help inform the process of developing the Global Compact on Safe, Orderly, and Regular Migration; the content of the Global Compact itself; and most importantly its implementation. It is also part of a wider discussion on private sector engagement in migration policy, including at the Global Forum on Migration and Development (GFMD), and in regional and national fora.

Before turning to these questions, this paper first briefly considers three ‘myths’ or misconceptions that have tended to undermine efforts, including through the Global Compact process, effectively to engage the private sector in migration policy. The first is that there is not yet an established business case for the private sector to engage in migration policy; the second that there is little incentive for governments to engage with the private sector on migration policy; and the third that the primary contribution that the private sector can make is financial.

Three Myths about Private Sector Engagement in Migration Policy

Myth 1: There is not yet a convincing business case for the private sector to be involved in migration

A comprehensive analysis by the World Economic Forum (WEF) Global Agenda Council for Migration has helped establish the business case for migration.⁵ First, despite lingering high levels of unemployment in many

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4 New York Declaration for Refugees and Migrants, UNGA Res. 71/1 (19 September 2016), UN Doc A/RES/71/1.

5 World Economic Forum Global Council on Migration, ‘The Business Case for Migration’, WEF [web blog] 30 September 2013, www.weforum.org/reports/business-case-migration, (accessed at 15 September 2017).

markets, organizations around the world report that they cannot find the talent they need, when they need it. One of the main impediments to talent markets is policy constraints on mobility and in particular recruitment. This is particularly the case in sub-Saharan Africa, where there are significant obstacles to the mobility of talented Africans across borders.⁶ Second, migrant markets are proving important opportunities for industries as diverse as financial services, telecommunications, media and entertainment, travel and tourism, consumer goods, and the hotel/restaurant/catering (HORECA) sector. Third, the interplay between ageing and migration results in diverse implications for business, from the need to replace an ageing workforce, to the opportunity to employ migrants for home care and elder companionship services.

All of this means that the private sector – from small and medium sized enterprises (SMEs) to transnational corporations (TNCs); across a range of industrial sectors; and in most geographical locations, have an incentive to engage with governments to make migration policies more business-friendly.

But are governments equally incentivized to engage with the private sector?

Myth 2: There is little incentive for government to engage the private sector on migration policy

Ultimately states have rights and responsibilities to manage and control their borders, as also recognized in the New York Declaration (para 24). Yet there is growing evidence that private sector investment – for business ends – can serve migration policies and national interests. Another recent report by the World Economic Forum, for example, demonstrates the potential to reduce state fragility – and thus address one of the root causes of migration – by promoting investment, stimulating economic growth, expanding tax collection, and empowering local populations.

The private sector also creates jobs, one of the priorities for the Global Compact on Migration. At the 2015 WEF Middle East and North Africa Regional Summit, the private sector committed to creating 100,000 new jobs in the region.⁷ A recent study by the Global Future Council on Migration on ‘mobile minds’ demonstrates how migrants can be employed ‘virtually’, thus helping overcome physical barriers on their movement.⁸ As seen in Europe and North America recently, the private sector can also create internships and provide training, to help integrate migrants into the labour market.⁹ Connecting businesses to diaspora investors and markets, finally, is a new frontier for migration and development policy.

It is equally important that ethical guidelines and due diligence guide public engagement with the private sector, in order to ensure that the business engaged are legitimate, and have positive values on migration and diversity.

Myth 3: The contribution of the private sector to migration policy is limited to funding

If there is a common benefit to collaborate on migration policy, achieving it requires overcoming a third myth that the core contribution of the private sector is funding. This is a misconception that severely limits the scope and breadth of the potential of the contribution of the private sector.

Recent analysis by the Global Future Council on Migration shows that private sector engagement in development can occur via at least six different modalities: policy dialogue, knowledge-sharing, technical cooperation, capacity building, grants and donations, as well as financing. Even for the latter there is a range of options including public-private partnerships, advanced market commitments, and conventional funds.

6 K. Koser, ‘The Four Main Barriers to talent mobility in Africa’, WEF [web blog] 26 June 2014, www.weforum.org/reports/business-case-migration, (accessed at 13 September 2017).

7 F. Mathuros, ‘Companies at the World Economic Forum in Jordan commit to train 100,000 Young People’ WEF [web blog] 22 May 2015, www.weforum.org/press/2015/05/companies-at-the-world-economic-forum-in-jordan-commit-to-train-100000-young-people-2/, (accessed at 17 September 2017).

8 R. Dey and T. Olubunmi, ‘A solution to migration and employment issues in Africa? Remote working.’ WEF [web blog] 03 May 2017, (accessed at 10 September 2017).

9 K. Koser, ‘The business case for migration’, *Migration Policy and Practice*, vol III, no 5, 2013, p. 14-17.

It is worth learning lessons from how the private sector has engaged with development issues in other areas such as health, education, security, and disaster risk reduction. In general, private sector engagement has helped mobilize necessary resources, generate expertise, provide access, establish synergies between public and private interests, and generate political leadership. Such benefits only accrue, however, where there is a clear division of responsibilities. Commonly, weak and rigid governance structures, as well as a lack of willingness to bridge the cultural gap between the public and private sectors have tended to undermine such efforts.

Who, How and When to Engage?

Who?

The private sector is broad, including diverse industries, ranging from the multinational through small- and medium-sized enterprises (SMEs) to local entrepreneurs, and owned and managed at global, regional, national and local levels. The private sector also engages migrants in various ways, including as employees, customers, and increasingly shareholders, managers and corporate leaders. As a result of this diversity, the private sector has different interests in whether and how to engage with governments in informing migration policy and it is important that this diversity of interests is properly represented.

Recent efforts to convene private sector engagement in migration policy have not been fully representative. National efforts, in countries like Canada and Sweden, tend to focus on nationally-owned and mainly large enterprises. International efforts, for example by the World Economic Forum, the International Organization for Migration (IOM) or the Global Forum on Migration and Development (GFMD), have tended to focus on a relatively small group of companies that either have a direct business interest in migration (for example Western Union) or plan to develop one, or individual champions for migration at a senior level. Significant gaps in representation of private sector interests remain, including most prominently:

- Nationally-owned companies from developing countries and regions
- SMEs
- Companies without a direct business interest in migration that may still benefit for example through a diverse workforce

In addition, in many companies that do actively participate but on the basis of individual champions, an interest in migration policy has not necessarily been institutionalized beyond these individuals. As a result, representation by the private sector in migration policy has been limited and is not necessarily sustainable.

One way that several initiatives have tried to overcome the challenge of representativeness for the private sector is by engaging business councils, for example the International Organization of Employers (IoE), or various national business councils (for example the Federation of Indian Chambers of Commerce and Industry - FICCI). Although it is often mistaken for one, the World Economic Forum is not a proxy for private sector representation. While in several cases these councils have been active and effective, it has been found that migration is often just one of a number of competing priorities, and even the largest councils still have limited membership and representative credibility.

A final observation is that in recent years a number of initiatives have emerged to try to engage the private sector with government on migration policy, including the Global Future Council on Migration, the GFMD Business Mechanism, Concordia University, IOM, and the Hague Process on Refugees and Migration. Coordinating the efforts of these and other initiatives would help avoid overlap, and begin to generate a more genuinely representative set of interests and perspectives.

How?

In our experience, the private sector is best engaged by directing engagement on specific issues of direct relevance or business interest; inviting the private sector to a general consultation is unlikely to yield interest. The New York Declaration covers a very wide range of migration issues, some of which are better suited to private sector consultation and engagement than others. Our recommendation is to target private sector engagement on the following issues:

- Generating accurate information on migration (para 25)
- Addressing drivers and root causes of migration (para 37)
- Innovative financing responses and risk financing (para 38)
- Systemic innovation (reducing management costs, improving transparency, harmonizing reporting etc) (para 38)
- Creating conditions for balanced, sustainable and inclusive economic growth and employment (para 43)
- Strengthening the capacity of educational institutions (para 44)
- Enhancing employment opportunities (para 44)
- Reducing the costs of labour migration (para 44)
- Promoting faster, cheaper and safer transfers of migrant remittances (para 46)

Additionally in our experience, senior representatives of the private sector are unlikely to be attracted to multi-stakeholder consultations, particularly where they are categorized as 'other' non-governmental stakeholders. The most effective interactions that the Global Future Council on Migration has hosted have convened small numbers of senior government and corporate leaders, in an informal setting and under the Chatham House Rule.

When?

The private sector may be engaged at three distinct stages of the Global Compact process, during its development, in its outcomes, and in its implementation.

It should be possible to achieve greater consultation with the private sector during the final year of preparation of the Global Compact on Migration. Ideally the final text of the Global Compact would make specific and detailed reference to the role of the private sector in 21st Century migration policy. Specifically reference to the private sector should move beyond the general, to specify concrete modalities for engagement. A senior corporate leader could be invited to be one of the panelists at the presentation of the Global Compact.

The private sector is likely to serve its most significant purpose at the stage of implementation, as a funder, an innovator, an employer, and a partner. We recommend that the implementation phase for the Global Compacts specifies modalities for engaging the private sector, for example in the form of dedicated business advisory councils to advise, monitor and evaluate specific work streams.

Conclusions and Recommendations

The potential for an impactful and effective participation of business in migration policy generally and the Global Compact on Safe, Orderly and Regular Migration specifically, is real and should be harnessed. In order to achieve this goal, it is important not only to address misconceptions about business and migration, but also to work on practical steps to address the current gaps, helping to bridge the two sectors by learning lessons from current knowledge and initiatives.

Specific recommendations include:

1. Engage a wider range of private sector actors than those typically consulted over the past few years
2. Target private sector actors on the following issues:
 - Generating accurate information on migration
 - Addressing drivers and causes of migration
 - Innovative financing responses and risk financing
 - Systemic innovation
 - Creating conditions for balanced, sustainable and inclusive economic growth and employment
 - Strengthening the capacity of educational institutions
 - Enhancing employment opportunities
 - Reducing the costs of labor migration
 - Promoting faster, cheaper and safer transfers of migrant remittances
3. Devise a clear statement of purpose for engaging the private sector, beyond exclusively its potential to finance programs and policies
4. Host an ongoing and targeted events under the Chatham House Rule in order to foster understanding between private sector representatives and leaders and migration policy practitioners
5. Institutionalize the role and the representation of the private sector in migration policy, including the Global Compact
6. Produce a more detailed plan on the role of private sector and how it can help to implement the Global Compact

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Documents

New York Declaration for Refugees and Migrants, UNGA Res. 71/1 (19 September 2016), UN Doc A/RES/71/1



Local and Municipal Responses to Cross-border Migration: Providing Services to Migrants Independent of Status

Harald Bauder

Executive summary

Migration policies are typically designed at the national scale. Local communities and municipalities, however, often possess the responsibility to provide essential services to migrants and address matters of settlement, integration, and transit. This situation creates the conundrum that national migration policies contradict municipal mandates of inclusion and local practices of service delivery. This conundrum is particularly evident in the context of migrants who are not granted full status by national authorities but who depend on local communities and municipalities for the delivery of education, healthcare, shelter, policing, and other essential services.

Cities in different parts of the world are addressing the conundrum by implementing sanctuary policies and practices that enable local municipalities to mitigate the contradictions between exclusionary national migration policies and the needs of their migrant and non-migrant residents. The nature of these policies and practices vary, however, depending on regional, historical, and geopolitical circumstances. In addition, national policies vary in the way they constrain the scope of local municipalities and civic institutions to enact policies directed towards non-status inhabitants.

An investigation of sanctuary-city policies and practices in Canada, the United Kingdom, and the United States, and related local approaches in Chile, Germany, and Spain reveals important similarities along four dimensions: official commitment and support by municipal legislative bodies; mobilizing local resources; challenging anti-migrant discourses; and collective urban-identity formation. Based on this international comparison, this paper makes the following recommendations:

1. Recognize the multi-scalar perceptions of migration at international, national, and local scales.
2. Facilitate exchange of policies, experiences, and best practices related to sanctuary among migrant-receiving cities in different national and regional contexts.
3. Support local municipal governments and local civic society to meet migrants' needs, independent of migrants' status.
4. Consult municipal governments in national migration, regularization, and citizenship policy making.

Introduction

Migrants, whether they are transient or settling permanently, are disproportionately attracted to cities. The circumstances in which urban migrants live, however, are framed by migration and residency policies designed at the national scale, beyond the control of local municipalities. In fact, many cities are inhabited by large numbers of non-status migrants (see definition below). Many municipalities are confronted with the conundrum of needing to provide education, healthcare, policing, and other services to these migrants. In this case, exclusionary national migration policies conflict with municipal mandates to include and provide services to all inhabitants. This conundrum relates to the following themes identified by the 2017 [UN Modalities Resolution](#): human rights of all migrants, social inclusion, cohesion, and all forms of discrimination; irregular migration and regular pathways; and international cooperation and governance of migration.

Cities have searched for practical solutions to address this conundrum. One particularly innovative and effective idea, in this respect, are sanctuary policies and practices. In the USA, sanctuary-city policies have accommodated non-status migrants for more than two decades. In this paper, I explore in which way cities in other national contexts (Chile, Germany, and Spain), where the term “sanctuary” may not be commonly used, have also been able to implement similar policies and practices towards non-status migrants.

Throughout the paper, I am using the term non-status migrant. Other common terms to refer to this population include irregular, undocumented, or illegalized migrants as well as *sans-papiers/sin papeles*. In the context of the below analysis, “non-status” describes the situation in which migrants may be known to local authorities but national policies deny them formal residency status.

Background

According to the IOM’s [World Migration Report 2015](#) (p. 39) foreign-born residents account for 35-40 percent of the total population in the major cities of Auckland, Sydney, Los Angeles, Singapore, London, New York, Melbourne; in Toronto the share of the foreign-born population is 46 percent, in Brussels 62 percent, and in Dubai an astonishing 83 percent. Newcomers gravitate to cities for numerous reasons, including opportunities for work, an existing settlement and migrant-help infrastructure, a high quality of life, and the presence of co-ethnic communities. For non-status migrants, cities additionally offer relative anonymity and prospects to find work in the informal economy.

Correspondingly, urban municipalities and urban civic society have considerable experience in dealing with migrants. They are major policy innovators not only in respect to integrating migrants who possess status documents, but also in regard to accommodating migrants with no or precarious status. Sanctuary cities are such an innovation in response to restrictive national migration policies.

Sanctuary cities in the USA, Canada, and the UK

The notion of “sanctuary” city has been used in the United States, Canada, and the United Kingdom. It includes a range of different policies and practices that seek to ease the lives of non-status migrants. At the root of these policies and practices lies that sanctuary cities consider all inhabitants, independent of national status, as residents entitled to municipal services and protection.

In the United States, an early sanctuary city was San Francisco, which in the 1980s protected refugees from Central America by refusing to cooperate with national immigration authorities. Thereafter, the focus of sanctuary-city policies shifted towards non-status migrants settling more-or-less permanently in a municipality. An important aspect of sanctuary-city policies in the USA are so-called Don’t-Ask, Don’t-Tell (DADT) policies that prohibit the local police, school administrations, municipal-health services, libraries, and other municipal offices to ask inhabitants about their status (don’t ask) and, if they happen to find out, report this information to national authorities (don’t tell). Some cities are issuing their own identification cards to enable residents to access municipal services and identify themselves to local authorities.

Toronto became Canada's first sanctuary cities by adopting DADT policies in 2004 and by a formal city-council vote in 2013. Although a recent *RCIS Working Paper* shows that Toronto's police officers and municipal employees are still not always fully implementing DADT policies, many other Canadian cities followed Toronto's example and also declared themselves sanctuary cities. In the United Kingdom, "cities of sanctuary" follow slightly different aims and correspondingly pursue a different strategy: rather than focusing on non-cooperation with national migration authorities, they emphasize the symbolic inclusion of refugees and imagine the city as a place for all inhabitants.

Based on an examination of sanctuary policies and practices in the United States, Canada, and the United Kingdom, four sanctuary-city dimensions can be identified:¹

1. *Official commitment and support* of sanctuary policies and practices by the municipal legislative body.
2. *Mobilization of local resources* to mitigate the adverse effects of exclusionary national migration and refugee laws and policies.
3. *Challenging anti-migrant and refugee discourses* that portray migrants and refugees as undeserving, harmful, and predatory.
4. *Formation of collective urban identities* that frame the city as belonging to all inhabitants.

In the following section, I show that similar policies and practices – represented by the presence of the four sanctuary-city dimensions – also exist in other countries where the term "sanctuary city" may not be used.

Urban Initiatives in Spain, Germany, and Chile

A 2013 *PICUM Submission to the UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families* suggest that 600,000 non-status people lived in Spain in 2012. The preferred term used to describe municipal initiatives providing assistance to refugees and non-status migrants is "refuge city." The city of Barcelona illustrates how local initiatives involve all four dimensions of sanctuary-city policies and practices. In 2015, city council declared Barcelona a "refuge city" and developed a corresponding official plan, *Barcelona, Ciutat Refugi*, to bolster city services and resources, and cooperate with local NGOs, charities, and service-provider organizations to accommodate non-status inhabitants. City council and local NGOs have actively and vocally challenged public discourses that construe migrants as the "other" and dispelled inaccurate myths and stereotypes related to migrants. In addition, expressions of solidarity among the city residents and their political representatives imagine the city as a space of belonging for all inhabitants.

According to the *Update report Germany: Estimated number of irregular foreign residents in Germany* authored by Dita Vogel, the number of non-status people in Germany was estimated to be 180,000-520,000 in 2014. The number has likely increased since the mass-arrival of migrants and refugees in 2015. Municipal legal obligations to register and report all foreign residents to national authorities constrains the scope among municipalities to develop and implement sanctuary-city policies. Correspondingly, city councils have shied away from official declarations that protect non-status inhabitants. Nevertheless, "solidarity-city" initiatives, such as in the city of Freiburg i.Br., address the remaining three sanctuary-city dimensions. A local network of NGOs, charities, and activist alliances provide health, housing, legal and financial aid, and other services to non-status migrants. This network also forcefully confront exclusionary migrant and refugee discourses, and support the local cohabitation by all inhabitants, irrespective of their national status.

Chile has an **estimated 150,000** non-status people. Since the reestablishment of a democratic government in 1990, *responsibilities have slowly been transferred from the national government to regions and municipalities, allowing* communities to implement innovative initiatives for non-status inhabitants to gain access to education, health services, and other social services. The municipality of Quilicura developed programs

¹ Modified from Bauder, Harald (2017) Sanctuary Cities: Policies and Practices in International Perspective. *International Migration*. 55(2): 174-182.

that meet all four sanctuary-city dimensions, although the preferred term identifying these initiatives is “commune of reception.” In 2010, Quilicura created the Municipal Office for Migrants and Refugees and in 2014 it launched an Action Plan for the inclusion of all inhabitants regardless of administrative status. The “reception” policies aim to promote equal rights and duties, as well as civil, cultural, and social participation of all inhabitants. Initiatives like the annual Migrant Fest seek to cultivate a sense of diversity, shared culture, and common belonging.

Analysis

The geographical, historical, and geopolitical situations differ between world regions and countries. While Canada, for example, is protected by its relative isolated geographical location and the United States to the south, Spain is at the Mediterranean border of Europe’s Schengen Area and possess two enclaves – Ceuta and Melilla – on the African continent. In addition, there are large variations regarding national migration and residency laws. Thus, the criteria to obtain status and the circumstances in which life without status is possible differ between national contexts. Furthermore, the relationship between municipal and national governments vary between countries. Unlike in the United States, cities in Germany do not possess independent police forces. Due to these differences, the four dimensions of sanctuary combine in particular ways in the United States, Canada, the United Kingdom, Spain, Germany, and Chile. Despite these national differences, a common municipal “sanctuary” approach towards non-status migrants is discernible.

Besides the normative argument that all inhabitants should be excluded in the urban community, there are important practical advantages: the expansion of municipal health, policing, and other services to non-status migrants can prevent the spread of infection and disease and help solve crimes. Thus, sanctuary-city policies and practices are in the interest of national and international communities.

However, as the [American Immigration Council](#) points out, sanctuary-city policies and practices do not nullify national migration and residency laws and therefore cannot offer full protection from detection, and possible detention and deportation by national migration enforcement and border-protection authorities. While sanctuary cities cannot offer amnesty, they seek to make life without full national status possible within the urban community.

Many municipalities are using the scope of their political maneuvering space granted by national (and regional) government structures to establish sanctuary-city policies and practices helping non-status migrants. On the down side, municipal governments can also use this maneuvering space to disenfranchise and exclude non-status migrants. There is a tendency, however, that cities with large migrant and non-status populations also seek to protect these population through sanctuary policies and practices, while cities with fewer non-status migrants enact exclusionary policies as a form of mostly symbolic anti-migrant politics.

Conclusions

Cities in different parts of the world are confronting similar problems of how to serve non-status inhabitants. The preceding discussion illustrates that municipal governments and civic-society actors are finding practical solutions to this problem. Many of the corresponding local policies and practices in different countries align along four core sanctuary-city dimensions.

The preceding discussion focussed on only a small sample of cities and national contexts. Cities in Brazil, Italy, Switzerland, and other countries are also implementing similar initiatives. Urban sanctuary policies and practices are thus of global relevance.

Recommendations

The following recommendations align with various “elements” listed in the Global Compact for Save, Orderly and Regular Migration (as listed in Annex II, Section III of the New York Declaration for Refugees and Migrants).

Recommendation 1: Recognize the multi-scalar perceptions of migration at international, national, and local scales.

The perception of migration and migrants differ between international, national, and local perspectives. For example, migrants who are seen as threats through a national lens, can be seen as economic or social-development opportunities through a local lens, and vice-versa. Similarly, ideas of belonging differ between national and local frames of reference. The recognition that international migration – although defined as crossing an international border – disproportionately affects local communities is an important step towards empowering municipalities to enact policies accommodating non-status migrants.

Recommendation 2: Facilitate exchange of policies, experiences, and best practices related to sanctuary among migrant-receiving cities in different national and regional contexts.

Sanctuary cities in the USA, Canada, and the UK have benefitted from networks through which they exchange information on sanctuary policies and best practices as well as policy failures and mistakes. These experiences are also relevant for cities in other countries. Similarly, the experiences of cities in Chile, Germany, or Spain can also inspire municipal action in North America, the UK, and other countries around the world. The Mayoral Forum on Mobility, Migration and Development, which was held in Barcelona in 2014 and the *Barcelona, City of Refuge*'s call to establish a European network of cities, are steps in the right direction. This recommendation aligns with element (f) of the GCM calling for “greater international cooperation, with a view to improving migration governance.”

Recommendation 3: Support local municipal governments and local civic society to meet migrants' needs, independent of migrants' status.

The local scale, more than regional, national or global scales, defines the life-circumstances of migrants and non-migrants alike. Families send their children to local school, people tend to work locally, migrants engage with the local community and civic society, and receive health, policing, and other essential services locally. National governments and the international community should therefore support local municipal governments and local civic society to ensure that migrants' needs are met, independent of their national status. Corresponding measures protect “the human rights and fundamental needs of migrants, including women and children, regardless of their migratory status, and the specific needs of migrants in vulnerable situations” (element (i) of the GCM).

Recommendation 4: Consult municipal governments in national migration, regularization, and citizenship policy making.

International, national, and local governments often pursue different aims regarding migration and migrants. National governments are typically in charge of border control, visa policy, and immigrant selection, while municipalities often have mandates to serve and protect their inhabitants. To mitigate these structural differences between national and municipal scales and include local perceptions of migration (Recommendation 1), municipal government should be consulted as important stake holders in respect to migration and residency policy, including regularization policies. In the absence of a process mediating conflicting national and local perspectives, national or other levels of government should permit municipalities to pass and implement sanctuary-city policies without punishment. This recommendation aligns with element (x) of the GCM, calling for “cooperation at the national, regional and international levels,” element (o), seeking the “promotion of migrants in host societies, access to basic services for migrants”, and element (p), advocating “policies to regularize the status of migrants.”



Resolving Migration Conundrums:

Mobilising partners to provide better migration solutions - The Asia Dialogue on Forced Migration (Track II Dialogue)

Peter Hughes and Travers McLeod

Executive summary

The migration policy problem the Asia Dialogue on Forced Migration (the Dialogue) addresses is the need for more effective cooperative action by States in Southeast Asia and the Pacific to deal with the realities of forced migration instead of recourse to unilateral responses. The Dialogue's success at prompting government action within a relatively short period is an example of how regional Track II or Track 1.5 processes can be productive in addressing migration conundrums and facilitating more effective policy responses.

The Dialogue, which commenced in 2015, is convened by core partners from Australia (Centre for Policy Development), Indonesia (Indonesian Institute of Sciences), Thailand (Institute of Human Rights and Peace Studies, Mahidol University) and Malaysia (Institute of Strategic and International Studies). Its design reflects the unique characteristics of the migration governance environment in Southeast Asia and the Pacific. It brings together government officials, academic and non-academic (including senior ex-Government) experts from key countries and representatives of international organisations with the aim of putting forward practical and achievable new policy ideas for use by governments.

The Dialogue's agenda includes regional architecture on preparedness for displacement, improving multilateral governance of migration in the region, strengthening implementation of the Association of Southeast Asian Nations (ASEAN) Convention on Trafficking in Persons (ACTIP), exploring opportunities for business to work with governments on countering trafficking and slavery, developing a positive regional agenda for the Global Compacts on Migration and Refugees, climate change displacement, refugee employment pathways, children in detention and repatriation and integration of forced migrants.

The Dialogue has achieved considerable initial success. For example, it has:

- contributed to two major initiatives adopted by the 2016 Bali Process¹ Ministerial Meeting, and assisted the Bali Process in drawing lessons from the 2015 Andaman sea crisis;
- stimulated the development of a Bali Process rapid response mechanism for displacement;
- gained acceptance as an ongoing Track II Dialogue for the Bali Process; and
- advised ASEAN on the implementation of ACTIP.

The Dialogue has been carefully constructed to work effectively within the regional environment, to be “outcomes-focussed”, and to ensure that “the right people are in the room” working in an atmosphere of trust and mutual cooperation. Its characteristics are a helpful precedent for organisations elsewhere seeking

¹ The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, co-chaired by Australia and Indonesia comprises 45 member states, the United Nations High Commissioner for Refugees (UNHCR), the International Organization for Migration (IOM) and the United Nations Office of Drugs and Crime (UNODC), as well as a number of observer countries and international agencies.

to engage better across boundaries and with governments to achieve better migration solutions. Creative use of similar Track II or Track 1.5 processes will be necessary if the Global Compact on Migration embraces the importance of regionalism and mini-multilateralism to achieving its aims.

Introduction – the migration conundrum being addressed

The migration policy problem that the Asia Dialogue on Forced Migration (the Dialogue) has sought to address is the need for more effective cooperative action by States in Southeast Asia and the Pacific to deal with the realities of forced migration instead of recourse to unilateral responses.

The Dialogue has aimed to add value to this problem by bringing together government officials, academic and non-academic (including senior ex-Government) experts from key countries in the region to inject new policy ideas.

The Dialogue is convened by core partners from Australia (Centre for Policy Development), Indonesia (Indonesian Institute of Sciences), Thailand (Institute Of Human Rights and Peace Studies, Mahidol University) and Malaysia (Institute of Strategic and International Studies). It commenced in 2015.

Its specific objectives are to:

- establish a credible and influential forum for dialogue among policy leaders in the Asia-Pacific region;
- foster collaboration and overcome the trust and information deficits between policy shapers in the region;
- develop lasting regional policy responses to forced migration, particularly the movement of asylum seekers and stateless persons; and
- maintain focus on improving outcomes for vulnerable groups, including enhancing protection for displaced people, building capacity for managing asylum flows, stabilising population movements and tackling issues of smuggling and trafficking.

Background

The environment for dealing with forced migration issues in Southeast Asia and the Pacific exhibits many characteristics different from other parts of the world.

Governance of migration in Southeast Asia is primarily based on national policies and bilateral arrangements. Legal frameworks remain relatively limited and policies often lack clear articulation and predictability.

Most countries in Southeast Asia have chosen to remain outside formal global frameworks affecting migration such as the 1951 Refugee Convention and the Conventions on Statelessness. For example, only two of ten ASEAN member states (Cambodia and the Philippines) are parties to the Refugee Convention and the UN Conventions on Statelessness.

Similarly only five ASEAN member states (Cambodia, Myanmar, Philippines, Thailand and Vietnam) are members of the International Organization for Migration (IOM), although Indonesia is an observer.

And yet Southeast Asia is an important crossroads for all forms of migration - labour emigration and immigration and forced migration (including internal displacement, refugees, stateless, and trafficked persons). This migration has involved both movements within and between countries in the region as well as movements into and out of the region from other areas.

Thailand, Malaysia and Indonesia host very significant populations of refugees and stateless persons and experience ongoing problems with trafficking.

The May 2015 Andaman Sea crisis was symptomatic of a lack of structures for responding to forced migration in the region. More than 25,000 people fled Myanmar and Bangladesh by boat. Around 8,000 were stranded at sea. Around 370 are believed to have died. After initially acting unilaterally, it took several weeks for regional governments to start putting together a collective response.

[At the time of writing, the issue of displacement of Rohingyas out of Myanmar reasserted itself in dramatic form, with the movement of over 500,000 people across the border into Bangladesh following a new outbreak of violence in Rakhine State on 25 August 2017].

The need for co-operative multilateral efforts to manage the issues arising from these movements has been filled in part by the Bali Process and in part by ASEAN. Within these two institutions structures is the potential for more effective collective action in the region.

Australia and New Zealand are parties to the Refugee Convention and other relevant human rights conventions and are also members of IOM. Australia has experienced a significant flow of maritime asylum seekers over the past 15 years, but has sought to resolve this issue by controversial measures. New Zealand, because of its geographic location, has been largely unaffected by irregular migration of asylum seekers.

The challenge in this environment has been to get better cooperative arrangements amongst states which approach the issues from fundamentally different legal, policy and cultural standpoints.

Analysis

Constructing the Dialogue

Given the above context, a careful and deliberate approach was needed to construct a dialogue that could attract participants of substance and be expected to achieve results by changing the behaviour of governments.

As the initiating organisation, the Centre for Policy Development sought funding from private donors and developed a broad plan to engage potential partners outside Australia. Initial establishment of the dialogue based on private, rather than government, funding was seen as essential to signalling its independence. A discussion paper, roundtable and report by the Centre for Policy Development and other domestic partners dealing with unresolved refugee issues in Australia crystallised the interest of donors in supporting a regional dialogue.

The concept envisaged that the Dialogue would be in the nature of Track II diplomacy, although given the intention of involving government officials from around the region, it might more accurately be regarded as Track 1.5.

Although the idea for the Dialogue originated in Australia, it was a conscious intention from the outset that it would be truly regionally based, would focus on forced migration in all its forms (not just refugees and asylum seekers) and aim to tackle cooperatively the priority forced migration needs in the region, rather than the interests of any participating country.

The working method of the Dialogue was to start small with about 20 participants and work up to about 35 participants. As far as possible, the Dialogue aimed to have the same core participants from each country at every meeting in order to build confidence, trust and continuity of working methods. The core group of countries was Indonesia, Thailand, Malaysia, Australia and New Zealand given some common interests in forced migration and some experience of those states working together on similar problems. The convening parties sought to get senior level participants either with expert knowledge of the subject matter or capable of bringing to bear relevant foreign relations or security expertise. Extensive discussion took place amongst convening partners to ensure careful selection of participants who could make a strong contribution to the Dialogue.

The intention of the Dialogue was to make practical contributions to the development of government policies in the region and, therefore, the participation of government officials was seen as essential. The Dialogue was able to secure the participation of the two official-level co-chairs of the Bali Process (Indonesia and Australia) as participants as well as officials from other participating countries. It was seen as essential to be working closely with the pre-eminent multilateral forum on forced migration in the region. Government officials participate in a personal capacity.

In working with government officials, a central feature of the Dialogue was that its members should seek to provide governments with new ideas that were practical and reasonably capable of implementation, rather than generalised advocacy.

The UNHCR and IOM were also invited to participate.

Issues tackled by the Dialogue and its achievements

The Dialogue has held five major meetings – Melbourne (2015), Bangkok (2016), Kuala Lumpur (2016), Jakarta (2017) and Manila (September 2017).

The agenda for the Dialogue was carefully developed by the convening organisations. Initially, it has focused on regional preparedness for a major forced migration event and better responses to trafficking.

In only two years of operation, the Dialogue has made a major contribution to the thinking and approach of governments in the region. This reflects the need for new ideas and the Dialogue's capacity to contribute them, as well as events that have made forced migration one of the most critical challenges in the region.

Notably, the Dialogue has:

- contributed the **two major initiatives adopted by the 2016 Bali Process Ministerial Meeting**: the co-chairs statement announced a review of regional performance in the Andaman sea crisis and the establishment of a Consultative Mechanism to enable rapid responses to displacement crises; these ideas were largely generated by the Dialogue.
- assisted the Bali Process in **learnings from the 2015 Andaman sea crisis**: secretariat members of the Dialogue acted as expert reviewers of regional performance in the Andaman sea crisis for the Bali process co-chairs.
- **stimulated the development of the Bali Process rapid response mechanism to displacement** in the region: the Bali Process Consultative Mechanism and the accompanying Task Force on Planning and Preparedness (on which the ADFM is an observer) was largely based on ideas generated within the Dialogue; these initiatives represent a complete departure from the previous practices of the Bali Process.
- gained acceptance as **an ongoing Track II Dialogue for the Bali Process**: the Dialogue has been asked to provide continuing assistance to the Bali process in developing its policies and planning for dealing with displacement.
- **informed the establishment of the Bali Process Government and Business Forum** on trafficking, including by linking up officials with interested senior business people.
- **advised ASEAN on the establishment of a focal point system for more effective implementation of ACTIP**, including by liaising directly with senior officials and the chair of the ASEAN Senior Officials Meeting on Transnational Crime.
- **urged** the Bali Process to **activate its Consultation Mechanism** in response to the humanitarian and security crisis in Myanmar and Bangladesh in September 2017.

The Dialogue has struck a chord of interest in the region and has attracted former Ministers from several countries in the region to attend or speak as well as a former Secretary-General of ASEAN.

While continuing to keep ongoing membership compact for the sake of continuity, the Dialogue has been able to progressively accommodate participants from a broader range of countries such as Bangladesh, Myanmar and the Philippines.

Importantly, the Dialogue retains the confidence of its founding convening organisations and continuity of key participants since its establishment.

In addition to its work on preparedness for displacement, the Dialogue has undertaken or plans to undertake work on a broader suite of issues impacting migration in the region. These include improving regional governance (especially the role of ASEAN), strengthening implementation of the ASEAN Convention on Trafficking in Persons (ACTIP), exploring opportunities for business to work with governments on countering trafficking and slavery, climate change displacement, refugee employment pathways, children in detention and repatriation and integration of forced migrants.

At our most recent meeting in Manila, the Dialogue discussed how it can help to develop a positive regional agenda for the Global Compacts on Migration and Refugees. In addition to IOM's Research Leaders Syndicate, the Dialogue has been invited to the Asia-Pacific Regional Preparatory Meeting for the Global Compact on Migration (GCM). Our organising principle in these discussions is that more effective regional governance on forced migration is essential to achieving the GCM's aims, and that it is essential. Creative use of Track II or Track 1.5 institutions at regional level can be instrumental in overcoming trust and information deficits between critical influencers. Over time, this can reduce unilateralism and facilitate more effective, durable and dignified regional governance on forced migration.

Conclusions

Overall, the Dialogue is achieving the objectives originally envisaged for it. It has developed and executed a strategic focus on policy outcomes and avoided the danger of simply becoming another "talkfest". Several factors have contributed to success so far.

- Careful preparations from the outset – establishment of a small, highly capable Secretariat, close curation of participants (including their agreement to participate for an extended period), recruitment of government and non-government "champions" and detailed preparation of meetings and agendas have helped to ensure commitment and focus. This approach has put "the right people in the room";
- independent funding which has allowed the dialogue to proceed on its merits (and to be perceived to do so) without external direction;
- a guaranteed minimum three-year life of the dialogue has encouraged participants to engage more deeply than possible with any short term, "one-off" process;
- broadening of the Secretariat beyond its Australian origins so that it has become more "regional" than Australian;
- track II/1.5 institutions work well as a basis for injecting new ideas in Southeast Asia and the Pacific, where there is a preference for informality, a policy vacuum regionally and a trust deficit between governments on key issues;
- a strong emphasis on cultivating relationships and trust amongst convenors and participants has been essential. This was a particular priority in the early phase of the Dialogue and had to outweigh physical outputs such as communiqués and recommendations. This investment has paid dividends in the long term in three respects: understanding where there are common interests between states in the region, having a level of trust to press for substantive outcomes and fostering collective ownership; and

- The Dialogue’s focus on practical and achievable outcomes has met with corresponding receptiveness to new ideas from participating senior officials.

The Dialogue has faced difficult choices and challenges. For example, the need to make judgements on the trade-off between a manageable (and affordable) scale of meetings on the one hand and, on the other, the benefits of broader impacts by involving more participants and more countries. A related difficulty has been choosing priority items to pursue from a potentially unlimited migration agenda.

A further challenge is gaining necessary funding to extend the dialogue beyond its initial three-year remit. Although three years is a good “start-up” period in which to test the concept and make reasonable gains, a 5-10 year institution is more desirable for locking in enduring change.

Recommendations

1. Noting that Track II (or 1.5) forums can foster trust, identify mutual interests and generate innovative, problem-solving diplomacy on migration conundrums, organisations with an interest in providing better migration solutions should consider whether establishing a Track II (or 1.5) dialogue can add value to their work with governments in dealing with migration, including breaking impasses.
2. Recognising that any Track II dialogue must be constructed to work within the unique constraints of its geographical and political environment, the following characteristics should form part of a model dialogue:
 - careful preparation of objectives and selection of participants to get “the right people in the room”;
 - independence through independent sources of funding;
 - minimum two or three-year life;
 - high-quality Secretariat;
 - participation of government officials if practicable; and
 - a realistic agenda and pursuit of practical and achievable objectives.

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