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Bridges, Not Walls: The Role of Migration and International Human Rights Law in Harnessing the Impending Demographic Tsunami

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ABSTRACT

The significant contribution of migrants to the global economy through remittances exceeds in developing countries and underscores economic values. Despite this, a substantial number of migrants face perilous journeys, resulting in over 46,000 migrant deaths since 2000. Human rights abuses further compound their struggles. This article delves into the intricate issues faced by millions of migrants, examining their economic role and the lack of comprehensive legal protection. Highlighting the looming demographic challenge, it explores the potential of migration in mitigating its impact. Emphasizing the necessity for strong legal frameworks based on international human rights laws, the article advocates for upholding migrants' fundamental rights as a pivotal strategy to avert the impending crisis. It employs a Critical Research framework, analyzing international human rights laws and proposing policy recommendations to mitigate the demographic tsunami's adverse effects. The article concluded that the urgent need to embrace a human rights-centered approach to migration is evident, emphasizing its potential to mitigate the looming demographic challenges and drive inclusive economic development through the recognition of migrants as valuable human capital.

Keywords: Migration, Legal Protection, Human Rights, Demographic, United Nations Treaties.



“As long as you look on migration as a problem, as something to solve, you’re not going to get anywhere. You have to look at it as a human reality that’s as old as humankind.”

– William L. Swing

“Where, after all, do universal human rights begin? In small places, close to home – so close and so small that they cannot be seen on any maps of the world. ... Unless these rights have meaning there, they have little meaning anywhere.”

– Eleanor Roosevelt

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INTRODUCTION

The contribution of migrants to the global economy is indisputably colossal. In 2017 alone, migrant remittances to their home states amounted to an estimated \$596 billion, \$450 billion of which went to support developing countries, shifting global economic debt, equalizing socioeconomic opportunities, and helping alleviate abject poverty.¹ These remittances supported the families and loved ones of more than 800 million people,² and amounted to three times the global development aid given by foreign nations.³

And yet, an unimaginable number of migrants have perished through the years. Since 2000, more than 46,000 migrants have died along international migratory routes.⁴ In 2015 alone, more than 5,400 migrants have lost their lives in transit, nearly 70% of them in the Mediterranean on their way to Europe.⁵ This is not to mention the literally countless human rights abuses faced by these migrants once they reach their destination, which encompasses a myriad of sources, including foreign employer abuse, human trafficking by international syndicates, and systemic government neglect.

Such is the nature of this conundrum facing 258 million global citizens, approximately 3.4% of the world's total population.⁶ If they are such a valuable economic resource for both sending and receiving states, especially providing so many advantages for both citizens and governments of developing nations, then why are many of them not afforded primary protection under national and international law?

¹ World Bank. *Migration and Remittances*, in Recent Developments and Outlook, Migration and Development Brief 28 October 2017, Washington, DC

² William Lacy Swing. *How migrants who send money home have become a global economic force*, in World Economic Forum, 14 June 2018, available at <https://www.weforum.org/agenda/2018/06/migrants-remittance-global-economic-force/>

³ Report of the Secretary-General. *Making Migration Work for All*, 12 December 2017.

⁴ Missing Migrants Project, available at <https://missingmigrants.iom.int>

⁵ *Id.*

⁶ United Nations Department of Economic and Social Affairs. Population Facts, No. 2017/5, December 2017.

And beyond looking at them as mere economic assets, they are not properly granted the fundamental rights that should be enjoyed by every living person on the planet.

There is even worse to come: a demographic tsunami brewing on the sidelines, a catastrophe which could result in political upheavals and socioeconomic crises on the global scale. How can this affect migrants from all over the world, and how do we prevent this from happening in the first place?

This article will talk about the key role of migration in preventing the impending demographic tsunami, and instead harness its tremendous energy towards a global, inclusive economic growth. More than that, it will discuss the necessity of adopting domestic and transnational legal frameworks on migration and international labor forces based on international human rights laws. It argues that enforcing the fundamental human rights of migrants is a key element in ensuring that global migration can and will provide a buffer of protection against the most catastrophic effects of the imminent demographic tsunami.

Part I of the article will talk about this looming sociopolitical global crisis. It will explain the concept of the demographic tsunami and its etymology, identifying the various factors which contribute to its build-up as well as its myriad effects, providing an analysis on three levels: domestic, regional and global. Part II will detail how migration can play an important role in buffering the worst of the consequences of the demographic tsunami. Part III will then discuss the protection of the fundamental human rights of migrants, outlining the current international legal framework on migration, assessing its efficacy through comprehensive critical evaluation. Lastly, Part IV will illustrate how strengthening this system of domestic and regional labor and migrations frameworks by adopting a strong human rights position as its point of pivot can greatly contribute to global efforts on mitigating the negative backlash created by the demographic tsunami on the politico legal, economic and sociocultural aspects of its impact.

From the data summary and keyword analysis of applicable international human rights laws, treaties and resolutions, which include the Universal Declaration of Human Rights, resolutions of the United Nations, International Labor Organization treaties, and select domestic legislation of both labor-sending and labor-receiving states as well as binding and non-binding regional agreements alike, the article adopts a Critical Research framework in providing a comprehensive discussion of the issues at hand, and proposes policy recommendations rooted in international human rights law to prevent the demographic tsunami from the havoc it promises to wreck.

ON WALLS AND TSUNAMIS

The last two hundred thousand years have seen *Homo sapiens* on constant move, from the bosom of Africa to the farthest corners of the earth. From wandering on foot and travelling in family tribes, the discovery of weapons, tools and clothing allowed these early humans to move to harsher environments. Overpopulation in communities, lack of available resources and even the human need to explore have also fueled the waves of migration which allowed the creation and movement of human settlements, staking out territories which gradually expanded into communities, nations and empires.

And as old as human civilization, it is undeniable that geographic borders have been in existence for millennia. Indeed, the oldest surviving map, the *Imago Mundi*, illustrates a number of regions marked by distances in between them.⁷ Although meant to illustrate a Babylonian perspective of their mythology, it remains an

⁷ Jennifer Block. *Where to see some of the world's oldest and most interesting maps*. The Smithsonian, 18 July 2017, available at <https://www.smithsonianmag.com/travel/where-see-some-worlds-oldest-maps-180963855/>

ancient example of early geography, with defined geographical areas and margins.⁸

More telling than maps are the physical manifestations of these borders. Traditionally, walls have been built for “defense, privacy, and to protect the people of a certain region from the influence or perceived danger posed by outsiders.”⁹ Examples of these include the walled city of Uruk in ancient Sumer, reputed to have been built by King Gilgamesh himself.¹⁰ The Ishtar Gate to the walled city of Babylon, constructed by King Nebuchadnezzar II, has been itself considered one of the wonders of the ancient world.¹¹ Popular mythology, based on real historical events, talks about the famed walls of Troy, said to be brought down only by the cunning of the Greeks.¹²

It is undeniable then that there has always been a sense of propriety over national territories, with walls erected and wars fought on account of them.

Important it is to note then that these borders have always existed in one form or another, in order to understand the reason for their inception. They are as much rooted in culture and psychology as they are geophysical and political barriers, and taking this nature of national borders into account helps understand the recent attitudes towards migration, the lack of protection towards migrants and the steps which could be taken in order to uphold the rights of the latter.

This matter is all the more necessary to scrutinize because of the rapid developments in the last century or so. Due to improved

⁸ Jan van der Crabben. *Babylonian Map of the world*. Ancient History Encyclopedia, 26 April 2012, available at <https://www.ancient.eu/image/526/babylonian-map-of-the-world/>

⁹ Joshua J. Marck. *Wall*. Ancient History Encyclopedia, 2 September 2009, available at <https://www.ancient.eu/wall/>

¹⁰ Joshua J. Mark. *Uruk*. Ancient History Encyclopedia, 28 April 2011, available at <https://www.ancient.eu/uruk/>

¹¹ Brittany Garcia. *Ishtar Gate*. Ancient History Encyclopedia, 23 August 2013, available at https://www.ancient.eu/Ishtar_Gate/

¹² Mark Cartwright. *Troy*. Ancient History Encyclopedia, 11 May 2018, available at <https://www.ancient.eu/troy/>

transportation technologies, the creation of new countries and the rise of the global community, states have deemed it necessary to adopt more stringent measures to control the ebb and flow of travel and migration around the world.¹³ At the same time, in the past few decades, the fear of unmitigated migration has exponentially risen, especially concerning developed nations seeking to stem the tide of strangers coming into their lands. A considerable number of citizens of these nations worry about public safety, increased competition for state-granted benefits, and reduced employment for them, both in the public and private spheres, to name a few. Populist governments have done well by playing up these concerns, leading to the rise of unprincipled political leaders who seek to heighten this apprehension beyond the level of reason for their own political gain.¹⁴

Never mind that the aggregate economic research data shows that these fears regarding migrants are largely unfounded, or are otherwise mitigated by the benefits received by the state hosting them. The 2018 Citi Report, in partnership with the Oxford Martin School at the University of Oxford, outlines the following conclusion:

“Overall, the evidence that we have surveyed suggests that the fiscal impact of migration is either positive or, to the extent that immigrants produce fiscal costs, these costs tend to be small, short-lived and localized. To the extent that they arise, short term costs are usually compensated for by the dynamic contributions of migrants over time, particularly in those countries which are rapidly aging. Moreover, in most cases we find that migrants consume fewer benefits and receive less from the public purse in comparison to natives in similar circumstances.”¹⁵

¹³ Ian Goldin, Andre Pitt, Benjamin Nabarro & Kathleen Boyle. *MIGRATION AND THE ECONOMY: ECONOMIC REALITIES, SOCIAL IMPACTS AND POLITICAL CHOICES*. Oxford Martin School, September 2018.

¹⁴ Martin A. Schain. *SHIFTING TIDES: RADICAL-RIGHT POPULISM AND IMMIGRATION POLICY IN EUROPE AND THE UNITED STATES*. Migration Policy Institute, August 2018.

¹⁵ *Supra* Note 13, p. 7

The report highlights a number of examples from around the world which properly illustrates the points above. Canada is an excellent example of this. Despite having lower employment rates, Canadian migrants utilize less social welfare benefits, including housing support, social security and unemployment benefits compared to native citizens.¹⁶ Migrants in European countries with stable economies like Germany and the United Kingdom are no more dependent on welfare than domestic residents; the same is true even in struggling European economies like Greece, Spain and Portugal.¹⁷ Nordic countries like Sweden, Denmark and the Netherlands are an exception to this rule, where migrants tend to consume more benefits than their labor market outcomes. However, this is explained by the unique labor market characteristics of the immigrants therein, particularly because the migrants demographics are composed of ageing workers; having provided controls for this particular factor, studies show that their statistics should follow the general trend of migrants consuming equal or even less social welfare benefits than their native counterparts.¹⁸

Indeed, economic benefits from the presence of the additional workforce provided by migrants can outweigh the costs of their stay in the host country. With more skilled labor, the cost of public services may also decrease in proportion. The U.K. healthcare industry paints a good example of this, whereby a considerable fraction of its health and social care sector are comprised of workers of foreign origin.¹⁹

Public safety and security is another concern. Indeed, many people, particularly in the US, are afraid of migrants “because they think immigrants are a threat to their safety and engage in many violent and property crimes.”²⁰ However, this cannot be further from

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Supra* Note 13, p. 102

¹⁹ *Supra* Note 13, p. 7

²⁰ Frances Bernat. *Immigration and Crime*. Criminology and Criminal Justice, April 2017, available at

the truth. Indeed, studies of foreign-born immigrants in the United States show that they are more likely to desist from the commission of crimes overall, particularly those of a serious nature, because doing so would draw attention to themselves and jeopardize their sources of income. This is true especially for those who receive state-funded benefits.²¹ Indeed, they are more likely to be victims of crimes rather than being the perpetrators themselves.²²

Critics of this meta-study point to government-supported research in Germany. The German state of Lower Saxony, where there has been an increase of migrants in the past few years, have seen its crime rate steadily rising.²³ However, criminology experts are quick to point out that such results are not a matter of migration but rather that of demographics: with the increase of young men in the region, regardless of origin, crimes are sure to also peak.²⁴ “Young men commit more crimes in every society,” according to Dr Dominic Kudlacek, from the Criminological Research Unit of Lower Saxony.

The third primary concern of native citizens regarding migrants is limited employment; this matter holds slightly more weight than the two previous causes of agitation over migration. A simple view of the circumstances would seem to indicate that more migrants coming into a country would cause higher job competition

<http://oxfordre.com/criminology/view/10.1093/acrefore/9780190264079.001.0001/acrefore-9780190264079-e-93>

²¹ *Id.*

²² Stephanie Leutert. *Trump Has It Backward: Many Migrants Are Victims of Crime*. The New York Times, 18 September 2018, available at <https://www.nytimes.com/2018/09/18/opinion/trump-has-it-backward-many-migrants-are-victims-of-crime.html>

²³ Reuters. *Germany: Migrants 'may have fuelled violent crime rise'*. BBC News, 3 January 2018, available at <https://www.bbc.com/news/world-europe-42557828>; Reuters. *German study links increased crime rate to migrant arrivals*. DW, 3 January 2018, available at <https://www.dw.com/en/german-study-links-increased-crime-rate-to-migrant-arrivals/a-42006484>

²⁴ Reality Check Team. *Reality Check: Are migrants driving crime in Germany?*. BBC News, 13 September 2018, available at <https://www.bbc.com/news/world-europe-45419466>

as well as dilute the individual income of industry labourers. However, this perspective fails to take into account a variety of factors which affects employment competition and industry pay, including the level of skill of labourers, their substitutability and educational attainment, among others. Instead, migrant workers are seen as easy scapegoats for this multi-faceted socioeconomic dilemma.²⁵

Unfortunately, despite all these aggregate studies disputing the claims and falsities against migration, the fear of migrants still persist, particularly for states of destination. Building on the grossly misinformed communal anxiety of citizens regarding the issue, the mass movement of migrants towards specific developed countries has been characterized by some as a 'migration tsunami.'²⁶ Similar to its namesake of the natural disaster of rapid water movement inland, with up to the amount of energy released by an atomic bomb²⁷, the term suggests pure destruction and mayhem in its wake.

However, this inordinate focus on 'migration tsunamis', affecting certain developed nations particularly in the ideological West, removes the much-needed attention from another kind of potential disaster which is global in scope and even more catastrophic in impact: the demographic tsunami.

The demographic tsunami is a term used to denote the uneven shifts in the demographics of population in different areas of the world. While some countries have a greater number of older people, others have a primarily growing youth population. This is in large part due to fertility rates. What is interesting is that often, developing countries have higher fertility rates than developed ones. For

²⁵ *Supra* Note 13, p. 4

²⁶ Victor Gaetan. *European migration tsunami boosting conservative parties*. The Washington Examiner, 7 November 2015, available at <https://www.washingtonexaminer.com/european-migration-tsunami-boosting-conservative-parties>

²⁷ Kenneth Chang. *The destructive power of water*. The New York Times, 12 March 2011, available at <https://www.nytimes.com/2011/03/13/weekinreview/13water.html>

example, Singapore, Japan and Germany²⁸ all have low fertility rates, whilst countries like Timor-Leste, Niger and Burundi records a significant high on the number of births registered in a given year.²⁹

At the same time, the population aged 65 and above are higher in developed countries. Singapore, Japan and Germany, the same states which have low fertility rates, also have high percentages of senior citizens.³⁰

This turn of events has a number of implications, from the individual and domestic spheres to the national, regional and global arena, ranging from the political, economic and sociocultural dimensions.

Kathy Matsui's seminal work in 1997 brought wider academic attention to the concept of the demographic tsunami. Her research focuses on a socioeconomic aspect of the phenomenon: the allocation and payment of pension in Japan, where the ageing population continues to grow but the workforce remains substantially unreplenished by the younger generation.³¹ These groups also often have different economic interests, goals and work ethics, which can lead to intergenerational conflicts in the organizational and industrial setting.³² When taken from the macro perspective, these conflicting views are predictive indication of support for administration policies, which in turn often translates to political alignment and voting behaviour. Policy questions like increasing pensions at the cost of raising taxes and social security contributions are decided differently

²⁸ *The 20 countries with the lowest fertility rates in 2017*. Statista, available at <https://www.statista.com/statistics/268083/countries-with-the-lowest-fertility-rates/>

²⁹ *The 20 countries with the highest fertility rates in 2017*. Statista, available at <https://www.statista.com/statistics/262884/countries-with-the-highest-fertility-rates/>

³⁰ Faraz Haider. *Countries with the largest aging population in the world*. World Atlas, 25 April 2017, available at <http://www.worldatlas.com/articles/countries-with-the-largest-aging-population-in-the-world.html>

³¹ Matsui Kathy. *Demographic Tsunami*. Look Japan, December 1997, Vol 43, Issue 501 p. 36.

³² Tammy Erickson. *The four biggest reasons for generational conflict in teams*. Harvard Business Review, 16 February 2009, available at <https://hbr.org/2009/02/the-four-biggest-reasons-for-i>

in high-retiree populations compared to those composed of a young majority.³³ The dominant voting populace based on these demographics gets to decide the political leader and their policy action on these matters, though sometimes at the cost of disenfranchisement of the non-majority age group. Key examples include countries like the US and the UK, where the older generations showed tremendous support for ultraconservative nationalistic political decisions like Brexit³⁴, as well as populist leaders like Donald Trump,³⁵ despite vehement objections and protests from youth groups.³⁶

The demographic tsunami also affects transnational politics and economics. Developing nations with high fertility rates lack resources to properly provide for its citizens, meaning they lack the provision of basic rights like sustenance, education and employment. Lack of proper reproductive health education, for one, contributes to higher birth rates, thereby increasing the population yet again without any corresponding improvement in resource management for basic goods and services. And the cycle goes on, resulting to an improperly-educated populace and economic stagnation. The political situation in these countries then tends to affect the global

³³ Pauline Vamos. *A super consensus needed before the demographic tsunami*. Cuffelinks, 13 March 2015, available at <https://cuffelinks.com.au/super-consensus-needed-demographic-tsunami/>

³⁴ Simon Shuster. *The U.K.'s old decided for the young in the Brexit vote*. Time, 24 June 2016, available at <http://time.com/4381878/brexit-generation-gap-older-younger-voters/>

³⁵ Molly Ball. *Trump's graying army*. The Atlantic, 25 October 2016, available at <https://www.theatlantic.com/politics/archive/2016/10/trumps-graying-army/505274/>

³⁶ Vicky Spratt. *The truth about young people and Brexit*. BBC, 5 October 2018, available at <https://www.bbc.co.uk/bbcthree/article/b8d097b0-3ad4-4dd9-aa25-af6374292de0>; Lizzy Buchan. *Final say: army of 10,000 young people to lead major demonstration calling for fresh Brexit referendum*. The Independent, 13 October 2018, available at <https://www.independent.co.uk/news/uk/politics/brexit-protest-eu-referendum-final-say-peoples-vote-march-deal-a8581566.html>; Qadira Miller. *The upside of Trump's election: it inspired my generation to fight back*. The Guardian, 2 August 2018, available at <https://www.theguardian.com/us-news/2018/aug/02/trump-election-generation-z-teenagers-activism>

community, whether it be on issues of public health or international security threats like extremism and terrorism.

The case of the Philippines provides sufficient illustration on the matter. Despite the potential for massive economic development, due in part to its rich human and natural resources, the high fertility rates of the Filipino poor skews inclusive socioeconomic development, providing fodder for the old adage 'the rich get richer, while the poor get poorer'.³⁷ Certain communities in its southernmost islands, with its booming population yet unreached by adequate government services, are also more prone to being recruited by religious extremists and rebel groups for the simple fact of economic promise.³⁸ Its citizenry has elected a populist leader in the name of Rodrigo Duterte, who has issued kill orders outside the bounds of the rule of law, and has imprisoned his political critics on false charges.³⁹

Having national leaders such as Duterte and Trump increases the tension of international politics and transnational relations. Concerted efforts like preventing China from claiming the entirety of the South China Sea are undermined by political partnerships founded on corruption and greed.⁴⁰ The largest environmental polluters are primarily developed countries, or those with high

³⁷ Bea Orante. *Despite high economic growth, PH poverty on the rise*. Rappler, 24 September 2015, available at <http://www.rappler.com/move-ph/106966-economic-growth-ph-poverty>

³⁸ Tom Allard. *Looted cash, gold helps Islamic State recruit in Philippines*. ABS-CBN, 23 January 2018, available at <https://news.abs-cbn.com/news/01/23/18/looted-cash-gold-helps-islamic-state-recruit-in-philippines>

³⁹ Ted Regencia. *Senator: Rodrigo Duterte's drug war has killed 20,000*. Aljazeera, 22 February 2018, available at <https://www.aljazeera.com/news/2018/02/senator-rodriigo-duterte-drug-war-killed-20000-180221134139202.html>; Ted Regencia. *Philippines' Duterte: 'Kill those useless bishops'*. Aljazeera, 6 December 2018, available at <https://www.aljazeera.com/news/2018/12/philippines-duterte-kill-useless-catholic-bishops-181205132220894.html>; Agence France-Presse. *Duterte vs De Lima: A battle over death, drugs, reputation*. ABS-CBN, 24 February 2017, available at <https://news.abs-cbn.com/news/02/24/17/duterte-vs-de-lima-a-battle-over-death-drugs-reputation>

⁴⁰ Chad Patrick Osorio. *Do we let greed continue running the world?*. Rappler, 14 July 2016, available at <https://www.rappler.com/views/imho/139621-greed-china-philippines-arbitration-ruling>

population growth.⁴¹ Human rights take a backseat to fear and violence, and the rule of law is ignored.

These are just some of the ways by which this gross imbalance in the global distribution of population, education and wealth contribute to the snowballing effect of the demographic tsunami. While the cause is local in nature, its effects are global in scope.

But is there a way to offset this demographic tsunami? The answer may lie in the concept of human rights and migration.

MIGRATION AND THE DEMOGRAPHIC TSUNAMI

The problem, put simply, is this: some countries have a higher population density, composed primarily of a specific demographic. In many instances, developed nations have a rapidly-ageing workforce, while developing countries have high numbers of the youth population in need of education, skills and training.⁴² Unfortunately, the fertility rates of more than 50% of the countries in the world cannot meet their respective population replacement rates.⁴³ The solution to this global dilemma is a migration shift, correcting the imbalance by encouraging the movement of people of other demographics to where they are most needed for a more heterogeneous social composition.

Doing so solves a lot of the symptoms of the demographic tsunami. Especially for developed nations, it equalizes the constitution of their population; enables entire industries to continue

⁴¹ *Who are the world's biggest polluters?*. Reuters, 2 June 2017, available at <https://www.reuters.com/news/picture/who-are-the-worlds-biggest-polluters-idUSRTXRKSI>

⁴² Chad Patrick Osorio. *Transforming momentum into propulsion: harnessing the demographic tsunami*. Eisaku Sato, 2017, available at <http://satoeisaku.com/se/wp-content/uploads/2017/09/Chad-Patrick-Osorio.pdf>

⁴³ *Supra* Note 14, p. 12

their business processes by augmenting their workforce; and stabilizes pension, healthcare and other social security benefits, especially for retirees. At the same time, it allows for properly-compensated employment of those coming from developing nations, enabling them to support their families, boost the economies of their home countries through remittances and, in the long run, allows the transfer of technologies and knowledge in the management of industries from developed countries to developing ones.

Research data support these social projections. In 2017 alone, 75% of migrants are of working age, compared to the global average of only 57%.⁴⁴ This means that more migrants are moving to their countries of destination with the likelihood of augmenting the workforce therein. This increases productivity levels of the host countries and reduces costs of the services therein. In turn, this boosts industries and provides a taxable income base for government-provided healthcare and welfare support.

There is also a number of beneficial economic ‘side effects’ of migration aside from the rise in national gross domestic product (GDP). This includes the marked improvement of the levels of human capital of migrants. Studies show that immigrants receiving tertiary education have increased by as much as 130% in the span of ten years.⁴⁵ At the same time, global innovation in various industries has risen, as migrants file more than 40% of the patents worldwide.

It seems then that migration by design is a quick and easy panacea to averting the crisis of the global demographic tsunami. However, of course, this is easier said than done, and a number of challenges lies in its wake.

For one, the majority of the global population of migrant workers comes from developing countries, where more often than not, there is a sore lack of advanced education, skills training and technology management for many industries. This often makes a

⁴⁴ *Supra* Note 14, p. 25

⁴⁵ *Supra* Note 14, p. 12

huge fraction of them unfit to immediately join the highly-trained workforce of the labor-receiving state, and requires further training before employment, leading to personal costs and delay for compensated service.⁴⁶ It is therefore imperative that more intensive and extensive effort be given by labor-sending states to invest in human capital, in line with the United Nations' Sustainable Development Goal (SDG) 4 of education through systematic reforms, programs and projects in partnership with the destination country. Training these workers to be more competitive in the global marketplace allows more freedom of choice and a stronger economic bargaining position at the level of the individual; on the macrosocial scale, this translates to a highly-competent migrant workforce for the host state, and greater potential for remittances and expenditure income upon return for their countries of origin.

Worth serious consideration is another pressing challenge to the encouragement of global migration: 'brain drain,' also known as 'human capital flight.'⁴⁷ This interestingly-named phenomenon is an amalgamation of circumstances resulting when the migration of skilled labor leads to "the dearth of a competent labor force from the labor-sending country."⁴⁸

The implications of brain drain are many. As an example, the weakening of industries in the labor-sending state due to the lack of properly-skilled employees. This also translates to inadequate human resources to properly train new batches of industry workers, leading these businesses further into economic decline. The problem is compounded in the long run when skilled labor, honed in years abroad, refuses to return to its country of origin. This phenomenon is the primary reason why labor export and migration are viewed by

⁴⁶ *Supra* Note 42

⁴⁷ Hillel Rapoport. *Who is afraid of the brain drain?*. Stanford Institute for Economic Policy Research, April 2002, available at http://www-siepr.stanford.edu/Papers/briefs/policybrief_apr02.pdf

⁴⁸ Jennifer Francis. *What is brain drain in economics?*. Study Course Navigator, available at <http://study.com/academy/lesson/what-is-brain-drain-in-economics-definition-causes-effects-examples.html>

labor-sending countries merely as a stopgap measure, and not as a sustained economic strategy.⁴⁹

Many developing countries see their university graduates leaving for greener pastures. This includes Guyana and Jamaica, with more than 70% of their tertiary-educated workforce migrating, 65% for Morocco, 64% for Tunisia and 60% for Gambia.⁵⁰ This may prove especially ruinous to the economies of countries particularly in sub-Saharan Africa and the Caribbean, the former due to their low national average of university graduates at only 4%, and the latter because of their small population, which could wipe out entire industries.⁵¹

Even in Asian countries like the Philippines, where skilled migration is buffered by a generally large population possessing tertiary education, the problem still persists. In 2014, the Philippine government advertised that “it needed to hire more than a hundred foreign skilled workers in various industries because its own skilled labourers have either migrated or are not qualified for the vacant positions.”⁵²

Indeed, the encouragement of movement of the young skilled workforce to developed countries from developing ones should take into account this phenomenon, and the latter should not suffer at the expense of meeting the needs of the former.

To respond to this occurrence, it is necessary for both labor-exporting and labor-receiving governments to encourage return service and circular migration, a system beneficial to both. Human capital from the labor-sending state augments the workforce of the labor-receiving state for a limited period, and during that time it supports the industries of the latter as well as its social and pension

⁴⁹ *Supra* Note 42

⁵⁰ *Supra* Note 13, p. 63

⁵¹ *Id.*

⁵² Agence France-Presse. *Top labor exporter PH may use foreign workers to plug shortfall*. Philippine Daily Inquirer, 16 January 2014, available at <http://business.inquirer.net/160369/top-labor-exporter-ph-may-use-foreign-workers-to-plug-shortfall>, in *Supra* Note 42

services; concurrently, it supports the economy of the former through remittances and expenditures upon return. After the designated period of service, returning migrants bring back with them the education and skills honed through years of experience in the industries of their host state, and are in excellent position to train new batches of young workers from their countries of origin. They can also help improve industry and business practices as well as craft economic and operations policies in their respective fields of practice. In the long run, this allows for marked improvement and greater market competitiveness of the labor-sending state.

Currently, however, there is a stark need to strengthen financial and institutional support for migration, return and reintegration; at the same time, effective mechanisms must be put into place in order for migrants to voluntarily return home to their home countries. While there are such systems currently in place, supported by both home and host states, these plans, programs and projects have had only marginal effects, and it remains necessary to bulk up their foundational structures.⁵³

A strong, interconnected, complementary migration policy, rooted in sound domestic and transnational legal frameworks, coupled with more intensive focus on education and training of skilled workers, can transform 'brain drain' into 'brain gain'. At present, there are also efforts to create networks for diaspora, in order to lessen the negative impact of skilled migration and turn it instead into positive change.⁵⁴

The most pressing challenge to global migration, which deserves a discussion as provided in the two succeeding sections, remains this: that the rights of the migrants are unprotected. Why is it important to fight for these fundamental rights, and what does this

⁵³ John Willoughby. *Preparing contract workers for return and reintegration – relevant for development?*. Global Forum on Migration and Development, November 2009.

⁵⁴ *Supra* Note 14, p. 65

mean for the demographic tsunami and global governance as a whole?

THE INTERNATIONAL LEGAL FRAMEWORK ON MIGRATION AND HUMAN RIGHTS

There is no single instrument in international law that governs the fundamental human rights of migrants. Instead, they are interwoven into the tapestry of international human rights treaties under the general umbrella of the Universal Declaration of Human Rights (1948). This includes the International Covenant on Civil and Political Rights (1966), International Covenant on Economic, Social and Cultural Rights (1966) and the International Convention on the Elimination of All Forms of Racial Discrimination (1965), among others. For migrant workers in particular, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) is a primary international document seeking to uphold the sets of rights embodied therein, together with corresponding International Labour Organization (ILO) Conventions, like ILO Convention No. 29 (Forced Labour Convention, 1930), ILO Convention No. 87 (Freedom of Association and Protection of the Right to Organise Convention, 1948), ILO Convention No. 98 (Right to Organise and Collective Bargaining Convention, 1949), and ILO Convention No. 100 (Equal Remuneration Convention, 1951).

Special groups of migrants are also provided specific protection under respective treaties, agreements and resolutions of international nature concerning them. For example, the Convention on the Elimination of All Forms of Discrimination against Women (1979) seeks to prevent abuses of human rights done against women,

whether they be migrants or not. The treatment of children as migrants, on the other hand, is guided by the Convention on the Rights of the Child (1989), the Minimum Age Convention (ILO No. 138, 1973) and the Worst Forms of Child Labour Convention (ILO No. 182, 1999), taken together.

Migrants who have been forced to leave their home countries due to various political reasons have also been granted an increasingly robust system of legal protections under the international human rights law regime. For one, refugees and asylum-seekers are protected by specific legal standards, many of them established after the events of World War II. Foremost among these standards are the Convention relating to the Status of Refugees (1951) and its Protocol (1967). Victims of human trafficking, an international offense classified under the United Nations Convention against Transnational Organized Crime (2000), are supported by the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air.

This enumeration of international law instruments is by no means exhaustive. There are many more transnational and regional documents which profess to uphold the human rights of migrants, including the 1986 African Charter on Human and People's Rights, the 2009 Arab Charter on Human Rights, and the 2012 ASEAN Human Rights Declaration. Similarly, bilateral and multilateral treaties abound, between and among state-parties as home and host national entities respectively. These treaties and agreements may either be considered as automatically part of the law of the land of their signatory states, or national legislation may be required in order for them to be incorporated into the domestic legal framework. This completes the top-down overview of the international legal and institutional framework on migration.

There are several noteworthy matters which must be raised at this point. First, while it is important to categorize migrants in order to understand the rights to be granted to them, it is equally imperative to stress that regardless of the type of migrant they are, there are certain inalienable human rights granted to them which could never, under any circumstances, be derogated.⁵⁵ For example, while institutions are tasked to provide special care that the rights of women migrants are upheld under the aforementioned legal instruments, it isn't to say that male migrants should enjoy a lesser number of rights; both of them must still be protected as provided by the general human rights protection framework.

In the same way, irregular migrants, who have not abided by the proper legal processes and pathways in order to be allowed residence in their countries of choice, as well as 'forced' migrants, namely refugees and asylum-seekers, should still enjoy the same fundamental human rights that regular migrants have been granted with the imprimatur of legality. This includes due process, both procedural and substantial, and state protection from enforced disappearance, torture, forced labor and discrimination, among others.

After all, a strict categorization approach is counterinitiative to the universal applicability of human rights. The proper perspective is that these categories are instead cross-sectional, and that "migrant workers, refugees, trafficked persons and smuggled migrants can also be migrants with disability, children, pregnant women and women who have suffered sexual and other forms of gender-based violence, migrants, stateless persons, minorities and indigenous migrants, persons with HIV/AIDS, lesbian, gay, bisexual and transgender migrants, and victims of torture."⁵⁶

⁵⁵ These include the rights covered under the UDHR, ICCPR, and ICESCR, among other international conventions.

⁵⁶ United Nations. INTERNATIONAL MIGRATION REPORT 2015, p. 19

This interpretation gives true life to the spirit of Article 1 of the Universal Declaration of Human Rights: “All human beings are born free and equal in dignity and rights.” It would have been easier had the problem been only one of interpretation as regards the international human rights framework on migration. A bigger challenge is its adoption and implementation.

For instance, the International Convention on the Protection of All Migrant Worker and Members of their Families only has 38 signatories and 50 parties at the conclusion of December 2016, 28 years after it has opened for signature. Interestingly, most of the signatories are labor-exporting states seeking to protect their migrant worker citizens. Many developed countries with a huge intake of foreign labour forces, like the US, Canada, Japan and the UK, as well as those in the Middle East like Bahrain, Saudi Arabia and Qatar, are curiously absent in the list of countries which have signed and ratified the said Convention.

TABLE 1. Ratification of Relevant United Nations Treaties by Select Countries⁵⁷

Country	ICCPR	ICESCR	CERD	CEDAW	CAT	CRC	CMW	CRPD	CED
Australia	13-Aug-80	10-Dec-75	30-Sep-75	28-Jul-83	8-Aug-89	17-Dec-90	***	17-Jul-08	***
Bahrain	20-Sep-06	27-Sep-07	27-Mar-90	18-Jun-02	6-Mar-98	13-Feb-92	***	22-Sep-11	***
Canada	19-May-76	19-May-76	14-Oct-70	10-Dec-81	24-Jun-87	13-Dec-91	***	11-Mar-10	***
Italy	15-Sep-78	15-Sep-78	5-Jan-76	10-Jun-85	12-Jan-89	5-Sep-91	***	15-May-09	8-Oct-15
Japan	21-Jun-79	21-Jun-79	15-Dec-95	25-Jun-85	29-Jun-99	22-Apr-94	***	20-Jan-14	23-Jul-09
Kuwait	21-May-96	21-May-96	15-Oct-68	2-Sep-94	8-Mar-96	21-Oct-91	***	22-Aug-13	***
Malaysia	***	***	***	5-Jul-95	***	17-Feb-95	***	19-Jul-10	***
Philippines	23-Oct-86	7-Jun-74	15-Sep-67	5-Aug-81	18-Jun-86	21-Aug-90	5-Jul-95	15-Apr-08	***

⁵⁷ The international conventions are represented by the following acronyms: International Covenant on Civil and Political Rights (ICCPR); International Covenant on Economic, Social and Cultural Rights (ICESCR); International Convention on the Elimination of all Forms of Racial Discrimination (CERD); International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); International Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT); Conventions on the Rights of the Child (CRC); International Convention on the Protection of All Migrant Workers and Members of their Families (CMW); Convention on the Rights of Persons with Disabilities (CRPD), and; Convention for the Protection of All Persons from Enforced Disappearance (CED). Data taken from <https://treaties.un.org/> as of March 2016.

Qatar	***	***	22-Jul-76	29-Apr-09	11-Jan-00	3-Apr-95	***	13-May-08	***
Saudi Arabia	***	***	23-Sep-97	7-Sep-00	23-Sep-97	26-Jan-96	***	24-Jun-08	***
Singapore	***	***	**	5-Oct-95	***	5-Oct-95	***	18-Jul-13	***
United Arab Emirates	***	***	20-Jun-74	6-Oct-04	19-Jul-12	3-Jan-97	***	19-Mar-10	***
United Kingdom	20-May-76	20-May-76	7-Mar-69	7-Apr-86	8-Dec-88	16-Dec-91	***	8-Jun-09	***
United States of America	8-Jun-92	**	21-Oct-94	**	21-Oct-94	**	***	**	***

Legend: *date ratified; ** signed but not ratified; *** neither signed nor ratified

ILO treaties fare slightly better when it comes to signature and ratification. It is usually countries like the Philippines, with a huge fraction of its citizens as migrant workers, who earnestly sign and ratify these agreements. It is quite rare for labor-destination countries to complete all eight fundamental ILO conventions. Key exceptions include Italy and the UK. The US, even among its peers, is a stand-out: it has signed and ratified only two ILO conventions in its entire history.

TABLE 2. Ratification of Relevant United Nations Treaties by Select Countries⁵⁸

Country	C029	C087	C098	C100	C105	C111	C138	C182
Australia	2-Jan-32	28-Feb-73	28-Feb-73	10-Dec-74	7-Jun-60	15-Jun-73	***	19-Dec-06
Bahrain	11-Jun-81	***	***	***	14-Jul-98	26-Sep-00	7-Mar-12	23-Mar-01
Canada	13-Jun-11	23-Mar-72	***	16-Nov-72	14-Jul-59	26-Nov-64	***	6-Jun-00
Italy	18-Jun-34	13-May-58	13-May-58	8-Jun-56	15-Mar-68	12-Aug-63	28-Jul-81	7-Jun-00
Japan	21-Nov-32	14-Jun-65	20-Oct-53	24-Aug-67	***	***	5-Jun-00	18-Jun-01
Kuwait	23-Sep-68	21-Sep-61	9-Aug-07	***	21-Sep-61	1-Dec-66	15-Nov-99	15-Aug-00
Malaysia	11-Nov-57	***	5-Jun-61	9-Sep-97	****	***	9-Sep-97	10-Nov-00
Philippines	15-Jul-05	29-Dec-53	29-Dec-53	29-Dec-53	17-Nov-60	17-Nov-60	4-Jun-98	28-Nov-00
Qatar	12-Mar-98	***	***	***	2-Feb-07	18-Aug-76	3-Jan-06	13-May-00
Saudi Arabia	15-Jun-78	***	***	15-Jun-78	15-Jun-78	15-Jun-78	2-Apr-14	8-Oct-01
Singapore	25-Oct-65	***	25-Oct-65	30-May-02	****	***	7-Nov-05	14-Jun-01

⁵⁸ The ILO Conventions are represented by the following: Forced Labor (C029); Freedom of Association Protection of the Right to Organize (C087); Right to Organize and Collective Bargaining (C098); Equal Remuneration (C100); Abolition of Forced Labour (C105); Discrimination (Employment and Occupation) (C111); Minimum Age (C138), and; Worst Forms of Child Labour (C182). Data taken from <https://treaties.un.org/> as of March 2016.

United Arab Emirates	27-May-82	***	***	24-Feb-97	24-Feb-97	28-Jun-01	2-Oct-98	28-Jun-01
United Kingdom	3-Jun-31	27-Jun-49	30-Jun-50	15-Jun-71	30-Dec-57	8-Jun-99	7-Jun-00	22-Mar-00
United States of America	***	***	***	***	29-Sep-91	***	***	2-Dec-99

Legend: *date ratified; ** signed but not ratified; *** neither signed nor ratified; **** subsequently denounced

The data above is disconcerting, to say the least. For international human rights law to be properly upheld and promoted requires full cooperative compliance with these international treaties, agreements and conventions. It is difficult for a one-sided application of these proposed instruments, especially if these are protection policies are largely ignored by countries of intended destination. It is therefore important to incentivize the adoption of the CMW and all other international conventions related to migrant rights, regardless of the type of migration which has occurred. Similarly significant is continued support for all related ILO conventions. Integrating these international human rights law instruments into the domestic legal framework is a great leap forward to prevent acts of abuse and discrimination against all migrants.

BOOSTING HUMAN RIGHTS TO BOOST MIGRATION

The question remains: how does the protection of the human rights of migrants translate to preventing the demographic tsunami? It has always been a primary concern for economic pragmatists to protect migrants for the primary reason of the value of the foreign workforce. More migrants protected from abuse and accorded proper treatment equate to a greater number of available human capital in service and industries. For one, sufficient assistance in integrating these migrants into the community allows for positive interpersonal relations. Further enabling decent standards of life also necessarily

leads to happier individuals. These factors contribute to a higher likelihood of efficient and sustainable output of migrant workers.⁵⁹ Granting them adequate compensation as a necessary aspect of proper employment further increases their spending power, thus widening the market base of local businesses. On the macrolevel, these circumstances domino into marked development in the national economy.

However, regardless of whether these government actions translate to economic benefits or not, it remains the duty of both the host state and the state of origin to provide migrants a decent condition of living and create an enabling environment where their fundamental human rights are fully protected. Regardless of the regularity of these migrants' entry into the jurisdiction of the host state, minimum due process and equal protections of the law must be observed, in accordance with generally-upheld principles and customary international law, together with obligations under treaties and conventions to which the host state is a party. This sets a fair precedent for international conduct and smoothens intercountry relations as well, where every country's citizen, regardless of the status of entry in a given state, are treated with utmost decency and respect and afforded the full protection of law.

Adopting either or both reason for the protection of migrants, it is apparent that strengthening this system of domestic and regional labor and migrations frameworks by advocating for a strong human rights position as its point of pivot can greatly contribute to global efforts on mitigating the negative backlash created by the demographic tsunami on the politico legal, economic and sociocultural aspects of its impact. A human rights-centered approach on international migration governance allows for better intercountry relations, efficient integration into host communities, and protection

⁵⁹ Camille Preston. *Promoting employee happiness benefits everyone*. Forbes, 13 December 2017, available at <https://www.forbes.com/sites/forbescoachescouncil/2017/12/13/promoting-employee-happiness-benefits-everyone/>

from abuses, thereby increasing the human capital necessary to counteract the negative effects of the demographic tsunami. Treating all migrants as humans, regardless of the legality of their entry into the host state, recognizes not only their potential but their humanity as well, as envisioned by international human rights law.

There are a number of policy recommendations which could provide essential support in adopting human rights as a pivot for transnational migration policies, and in turn stemming the demographic tsunami. The first one relies on the persuasive power of the United Nations to encourage all states, especially developed, labor-receiving countries to sign, ratify and implement key international conventions protecting the rights of migrants, either as workers, refugees or asylum seekers. This is the first step in developing a proper system of compensation and the protection of labor and other human rights for immigrants. Fully respecting the terms of multilateral and bilateral agreements also serve the same purpose.

The second recommendation relies on improving the administrative policies of the host countries in need of a young workforce. It is crucial for destination countries to set the proper legal and regulatory pathways to meet the demand for movement, in order to facilitate circular migration. Doing so will set a sturdy foundation for sustainable relationships with labor-sending states, in order to maximize human capital and inclusive economic development.

The third recommendation involves more a change of mindset rather than mere policy alteration: an alternate perspective on how refugees are viewed. According to the UN High Commissioner for Refugees (UNHCR), there is a total of 65.3 million refugees in the world as of Q4 2015.⁶⁰ Considering these millions of people as human capital, with the potential for enormous improvement and social

⁶⁰ Euan McKirdy. *UNHCR report: More displaced now than after WWII*. CNN, 20 June 2016, available at <http://edition.cnn.com/2016/06/20/world/unhcr-displaced-peoples-report/>

contribution value, rather than as mere burdens on the state, changes the perspective on how refugee situations are addressed. While it is of course important that the UN address the root cause of such situations, including armed conflict and environmental disasters, in order to facilitate the return of these refugees back to their home state, it is equally necessary in the meantime to promote initiatory domestic legislation and policies seeking to remove xenophobia and discrimination against refugees, as well as continued community integration efforts, in order to make refugees productive members of their adoptive society.

The fourth and final recommendation in order to maximize human rights and migration against the demographic tsunami is for states to fully comply with the directives of international human rights law: that is, more than just respecting and protecting the fundamental and inalienable rights of migrants, it is also a central obligation of all states to take positive measures in order to “ensure the realization of human rights.”⁶¹ In this sense, migrants are not only passive subjects of domestic and transnational policy-making bodies and legislative processes; instead, they should be consulted at every step, as active participants in the formation and strengthening of the international legal migration framework.

CONCLUSION

Former UN Secretary General Ban Ki-moon defined migration as “an expression of the human aspiration for dignity, safety and a better future. It is part of the social fabric, part of our very make-up as a human family”. However, in recent era, toxic political debate and a terribly misinformed populace have painted the doomsday story of a migration tsunami, with immigrants and refugees alike cast in a

⁶¹ United Nations Office of the High Commissioner for Human Rights. *Improving Human Rights-Based Governance of International Migration*, 2015.

negative light. Forgotten instead is a global catastrophe waiting to happen: the impending demographic tsunami. From the comprehensive illustration above, it is clear then that migration should not be viewed as a problem, but rather as a solution. Instead of building walls, we must build bridges, with the way forward lit by the torchlight of a human rights-based perspective. This conclusion is based on both statistical data and historical examples, showing that global migration governance, with human rights as its central pivot, can stem the worst effects of the demographic tsunami.

This is apparent especially when it comes to the economic aspect of the debate, as it promises inclusive development for both host and home states by recognizing all types of migrants as a source of human capital, and advocating circular migration in order to promote sustainability of the entire process. While this idea is a critical argument towards a positive regard for migration, it is equally essential to remember that humans are more than just economic capital. The principles of international human rights embody equality, and guaranty the full protection of the law in all aspects of human existence.

In the end, what migrants can or cannot give should be unimportant: what is essential is that we recognize that in all cases, migrants are first and foremost human, deserving of the full gamut of rights and protection that every human being should enjoy.

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Elimination of all Forms of Racial Discrimination (CERD); International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); International Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT); Conventions on the Rights of the Child (CRC); International Convention on the Protection of All Migrant Workers and Members of their Families (CMW); Convention on the Rights of Persons with Disabilities (CRPD), and; Convention for the Protection of All Persons from Enforced Disappearance (CED). Data taken from <https://treaties.un.org/> as of March 2016.

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