

# INTERNATIONAL MIGRATION AND HUMAN RIGHTS

Challenges and Opportunities  
on the Threshold of the  
60<sup>th</sup> Anniversary of the  
Universal Declaration  
of Human Rights



Global Migration Group



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Anniversary of the Universal Declaration of Human Rights

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**THE SECRETARY-GENERAL****FOREWORD TO THE GLOBAL MIGRATION GROUP REPORT,  
“INTERNATIONAL MIGRATION AND HUMAN RIGHTS:  
CHALLENGES AND OPPORTUNITIES ON THE THRESHOLD  
OF THE 60TH ANNIVERSARY OF THE UNIVERSAL DECLARATION  
OF HUMAN RIGHTS”****October 2008**

The Universal Declaration of Human Rights, whose sixtieth anniversary we celebrate this year, remains the primary international articulation of the fundamental rights of all members of the human family. To mark the anniversary, the member agencies of the Global Migration Group have embarked on a timely, collaborative effort to analyze the challenges of protecting the human rights of international migrants.

This report is the product of that process. Among its main findings is the assessment that despite the many positive contributions migration makes to the development of countries of origin and destination, it is essential that migrants are seen not solely as agents of development. They are human beings with rights that States have an obligation to protect even when they exercise their sovereign right to determine who enters and remains in their territory.

Cooperation between governments in countries of origin, transit and destination, and among non-governmental organizations, civil society and migrants themselves, is vital for ensuring that international human rights instruments are implemented and that migrants are aware of their rights and obligations. Groups with special needs, including migrant children, female labour migrants in the informal sector, trafficking victims and irregular migrants, as well as refugees and asylum seekers, are particularly deserving of and entitled to effective protection.

I thank the United Nations Population Fund for initiating this joint project during its tenure as Chair of the Global Migration Group. The members of the Global Migration Group are to be commended for making this timely report a reality. I hope it will serve as a useful tool in our common quest to protect the human rights of migrants, and I recommend it to a wide global audience.

A handwritten signature in black ink that reads "Ki-moon Ban". The signature is fluid and cursive, with the first name "Ki" and last name "Ban" being more prominent.

BAN Ki-moon



# I. Introduction

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Current migration flows have placed the issue of migration high on the international agenda. The magnitude and complexity of the phenomenon is such that international migration can no longer be considered peripheral to the mainstream of development policies. Today, every country is affected in some way by migration – either as country of origin, transit or destination, or sometimes a combination of these.

In 2005, 191 million people, representing three per cent of the world population, resided outside the country of their birth. Almost one in every ten persons living in the more developed regions of the world is a migrant compared to one out of every seventy persons in the less developed regions. Sixty per cent of all the world's migrants live in the more developed regions. The largest number of migrants live in Europe (64 million), followed by Asia (53 million) and Northern America (45 million). Female migrants make up half of all international migrants. Female migrants outnumber male migrants in developed countries. Three-quarters of all international migrants are concentrated in only 28 countries and one in five international migrants lives in the United States of America.<sup>1</sup>

The almost 200 million persons living outside their country of birth are international

migrants of one type or another – whether living abroad voluntarily or forced by circumstances beyond their control; whether seeking a better life or simply a different one; whether legally admitted to residence or living a clandestine existence on the margins of society. And all – irrespective of their national origin, their race, creed or color, or their legal status – share with the nationals of their host community both a common humanity and rights and responsibilities including the right to expect decent and humane treatment. While for many the migration process is an empowering experience, the reality for some is one of exploitation and abuse, either limited to the migration journey or experienced while in the country of destination. Migrant women and children are particularly vulnerable to exploitation, and therefore require special attention to ensure that their human rights are respected.

International migrants are a heterogeneous group. From highly skilled professionals to the young men and women who are smuggled across borders to work in sweat shops, they include people who have been in the country for decades and those who arrived only yesterday. In many situations, migrants are integrated into the economy and society of the country in which they live, their rights are respected, and there are few

obstacles to their ability to contribute economically, socially and culturally. In other situations, however, migrants' rights are less respected, and in order to lead secure

and productive lives, they need human rights protection and are indeed entitled to it. It is often migrants with irregular status that are most in need of this protection.

### *International Migration Data by Region*

**Africa:** In 2005, there were 17 million international migrants in Africa, accounting for 1.88 per cent of the African population. The majority of them, 7.5 million and 4.5 million, migrated to Western and Eastern Africa, respectively. In the past decades, there is no clear trend in the growth rate of the migrant stock in Africa, with varying rates between 1.86 to -1.68 to 0.68. On average, African migrant stock increased by 1.39 per cent between 1960 and 2005.

**Asia and Pacific:** In 2005, there were 58 million international migrants in the Asia and Pacific region, 53 million of them in Asia and 5 million in the Pacific. Among the Asian destinations, the majority of international migrants, 23 million and 18 million, move to Western and South-central Asia. In the Pacific, Australia and New Zealand account for the vast majority of migrants (4.7 million). International migrants in the Pacific represent 15 per cent of the total population.<sup>2</sup>

**Europe:** In 2005, Europe was home to 64 million international migrants, representing 9 per cent of the total population in Europe. Among the preferred European destinations are the Eastern and Western European countries with a migrant stock of 22 million each. Migration flows to Europe have been continuous despite a decrease in migration after recruitment stopped in 1973/4. Growing economic prosperity in Southern European countries

as well as the introduction of more restrictive immigration policies in Northern Europe changed the dominance of Northern and Western European countries as countries of destination, resulting in an increase in migration flows to former labour sending countries, such as Southern European countries, Ireland and Finland.<sup>3</sup>

**Latin America and Caribbean:** The total number of migrants living in Latin America and the Caribbean is 6.5 million representing 1 per cent of the region's total population, while the Latin American and Caribbean emigrant population represents 4 per cent of the regional population. With some national exceptions, for every migrant in the region, another 4 people are found outside of the region. In some countries of Latin America, the proportion of migrants as a percentage of the national population borders 10 per cent and is even higher in some Caribbean countries.<sup>4</sup> Many Caribbean nations have more than 20 per cent of their populations abroad.<sup>5</sup>

**Northern America:** Migration to Northern America has continuously increased over the last few decades with an average growth rate of 2.8 per cent. In 2005, there were 44.5 million international migrants living in the United States of America, Canada, Bermuda, Greenland and Saint Pierre et Miquelon, representing 13.5 per cent of the total population in the region.

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Today, migration is at the forefront of political and legislative agendas in many countries and is also a topic of continued public debate at the international level. While this debate has centered either on the perceived challenges posed by migration, or on its contribution to development and poverty alleviation, the inextricable connection between migration, development and human rights has been insufficiently explored.

The core principle of the international human rights regime is that human rights are universal, indivisible, inalienable, and interdependent. As set forth in the Universal Declaration of Human Rights, migrants are first and foremost human beings, included in the “everyone” of Article 2: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”<sup>6</sup> The principle of universality implies that States of origin, transit, and destination are all responsible for the protection of migrants’ human rights.

This year, the United Nations is commemorating the 60<sup>th</sup> Anniversary of the Universal Declaration of Human Rights. The Declaration embodies the fundamental universalist idea that all human beings have rights.

The Convention Relating to the Status of Refugees was one of the first treaties

concluded after the Universal Declaration of Human Rights was adopted. It is the key legal document defining the status of refugees, their rights and the legal obligations of States. The 1967 Protocol<sup>7</sup> removed geographical and temporal restrictions from the Convention.<sup>8</sup>

In 1990, the General Assembly adopted the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. “The Convention opened a new chapter in the history of efforts to establish the rights of migrant workers and to ensure that those rights are protected and respected.”<sup>9</sup>

In 2000, the United Nations General Assembly adopted the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children<sup>10</sup> and the Protocol against the Smuggling of Migrants by Land, Sea and Air,<sup>11</sup> which entered into force in 2003 and 2004, respectively. The Protocols supplemented the Convention against Transnational Organized Crime<sup>12</sup> to prevent and combat trafficking in persons and smuggling of migrants, protect and assist the victims of human trafficking, and strengthen the cooperation among States.

The importance of migration was furthermore raised at various United Nations conferences. In 1994, the International Conference on Population and Development (ICPD) in Cairo<sup>13</sup> pointed to the need to address all root causes of migration, especially those related to poverty. It

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set as its objective the encouragement of more cooperation and dialogue between countries of origin and destination in order to maximize the benefits of migration to those concerned and increase the likelihood that migration has positive consequences for the development of both sending and receiving countries.

In 2001, the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance<sup>14</sup> held in Durban, was a landmark in the struggle to eradicate all forms of racism. The Conference recognized that migration increased as a result of globalization, particularly from the South to the North, and stressed that policies towards migration should not be based on racism, racial discrimination, xenophobia and related intolerance. Furthermore, the Durban Conference called for a review, and where necessary, revision of any immigration policy inconsistent with international human rights instruments, with a focus on the elimination of all discriminatory policies and practices against migrants.

The deprivation of the human right to development is one of the causes of migration itself. The Universal Declaration of Human Rights states that “everyone as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.”<sup>15</sup>

The necessity to integrate the analysis of migration and development policies is supported by the indivisible, universal and interdependent character of human rights – all human beings have human rights everywhere – for migrants, in their countries of origin, countries of transit and countries of destination. A human rights approach which emphasizes State responsibility for the promotion of economic, social, cultural, civil and political rights *ab initio* may recast development policies in a way that would reduce emigration caused by the inability of States to ensure the exercise of nationals of their right to development.

More work is needed to implement the goals of the 1986 United Nations Declaration on the Right to Development, “States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals.”<sup>16</sup>

The need to treat migration and development policies together has now been given global prominence by the Global Forum on Migration and Development (GFMD). The Global Forum is an initiative of the international community to address the relation between migration and development in a practical and action-oriented way. The GFMD was proposed by the UN Secretary-General and his Special Representative on International Migration and Development at the High Level Dialogue on International Migration and Development<sup>17</sup> on

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14-15 September 2006 within the framework of the General Assembly of the United Nations. Its inaugural meeting was held in Brussels in July 2007 under the chairmanship of the Government of Belgium. This year the Global Forum is being hosted in Manila by Government of the Philippines.<sup>18</sup>

International migration has tended to be seen primarily in development terms, as a response to disparities in income levels and as a means to create employment opportunities. Unemployment and poverty are often the 'push factors' which impel individuals to leave their home countries, while cross border differences in wage levels and labour demand are the 'pull factors' which direct them to more developed economies.<sup>19</sup> Migrants contribute to development in their home countries through remittances, and to their host countries through their work and cultural diversity, and - in some countries - to population growth and change in age structure.

However, not enough attention has been paid to the role of human rights during the migration process or to the ways in which a lack of respect for the human rights of migrants in the countries of destination reduces their ability to contribute to development. When migration is not also approached from this perspective, two difficulties arise: first - and self evidently - the protection of migrants is not given priority and secondly, where migration is seen only in economic terms, migrants may come to be regarded more as commodities, rather

than as individuals entitled to the full enjoyment of their human rights.<sup>20</sup>

Traditionally, both in countries of origin and in recipient States, such an approach has been largely underpinned by cost-benefit analyses. For instance, remittances have become an important source of income for many countries of origin, while many industries and service providers in host societies benefit from a migrant-based labour force. There is general agreement that the beneficial effects of migration in terms of poverty reduction, development and wealth creation is higher than the human resources and financial costs spent by States to invest in new technologies to protect their borders and for the provision of social services.

While this type of analysis is necessary, it is incomplete because it fails to take into account the right to human dignity of all migrants. It is often violence, social and economic exclusion, poverty, lack of access to basic services, inequality of opportunities, and multiple aspects of discrimination that force people to leave their communities and livelihoods. Human dignity is also at stake in countries of destination when migrants are subject to violence, abuse and discrimination.. If countries of origin and destination are to reap the full development benefits of migration - not just counted in terms of volume of remittances and cheap labour, respectively, but also in terms of the linguistic and cultural value that migrants may bring - it is essential to address the social and human rights

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aspect of migration as well as the more obvious economic gains.

*International Migration and Human Rights. Challenges and Opportunities on the Threshold of the 60<sup>th</sup> Anniversary of the Universal Declaration of Human Rights* considers the human rights framework governing migration, arguing that migrants are not simply agents of development, but human beings with rights which States, exercising their sovereign right to determine who enters and remains in their territory, have an obligation to protect. Indeed, respecting and protecting the human rights of migrants enables them to contribute to development and share in its benefits; this includes the development of migrants, their countries of origin and their host countries. The report seeks to provide States with guidance in order to promote lawful conditions of migration and manage it using a human rights-based approach.

It is first and foremost the responsibility of governments to protect the human rights of migrants. International human rights provisions can also be enforced in international and domestic courts in cases brought by individuals and public institutions (public defense, ombudspersons, etc.). However, no international human rights provision, or any other law is “self-enforcing.” It is principally through the vigilance of civil society that violations of human rights are brought to light. Civil society organizations, including non-governmental organizations, labour unions,

migrant associations, and religious bodies have an important role to play in the efforts to protect the human rights of all categories of migrants.

The work of 14 member agencies of the Global Migration Group, this publication is divided into seven chapters. The introduction highlights the magnitude and complexity of current migration flows and points out the important role of human rights in the migration and development discourse. Chapter II describes the various categories of migrants, and provides a regional overview of migration. Chapter III provides the legal framework underpinning the issue of human rights, especially as they relate to migrants. Chapter IV describes the major challenges in the protection of the human rights of migrants. Chapter V highlights migration and development linkages and focuses on making migration work for development. Chapter VI points out the importance of age and sex-disaggregated migration data to monitor and assess the effectiveness of measures to safeguard the human rights of migrants. The concluding chapter presents the key messages regarding the protection of the human rights of migrants. The report also includes three appendices: Appendix A – a brief summary of the activities of the 14 agencies comprising the Global Migration Group; Appendix B – relevant migration and human rights instruments and Appendix C – the number of countries that have adopted key United Nations legal instruments on international migration.

## II. Definitions

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There is a lack of universally accepted definitions in the area of international migration. Definitions in this area are often vague, controversial or contradictory. This stems to some extent from the fact that migration is a phenomenon which has traditionally been addressed at the national level. Therefore the usage of migration terms differs from country to country. Furthermore, within a country, terms can vary in meaning or implication. Definitions may also vary according to a given perspective or approach.<sup>21</sup>

### A. International Migrant

#### 1. Irregular Migrant

An irregular migrant is every person who, owing to undocumented entry or the expiry of his or her visa, lacks legal status in a transit or host country. The term applies to migrants who infringe a country's admission rules and any other person not authorized to remain in the host country (also called clandestine/ illegal/ undocumented migrant or migrant in an irregular situation).<sup>22</sup>

#### 2. Female Migrant

Women and girls who move from their country of origin in ever increasing numbers make up the ranks of female

migration. Indeed, over the last five decades there has been a steady increase of female migration. Women now move around more independently and no longer solely in relation to their family position or under a man's authority.

#### 3. Migrant Child

The category of migrant child refers to the person who is according to the law of the relevant country, below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.<sup>23</sup> Unaccompanied migrant children can be defined as migrant children "who migrate across national borders separately (though not necessarily divorced) from their families, and include within this definition four broad categories defined by the primary purpose of travel: (a) Children who travel in search of opportunities, whether educational or employment related (b) Children who travel to survive - to escape persecution or war, family abuse, dire poverty (c) Children who travel for family reunion - to join documented or undocumented family members who have already migrated<sup>24</sup> (d) Children who travel in the context of exploitation (including trafficking)."<sup>25</sup>

#### 4. Migrant Worker

A documented migrant worker is a person who enters a State, to stay and to engage

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in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which that State is a party.<sup>26</sup>

- “The term “migrant worker” refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.<sup>27</sup>
- The term “frontier worker” refers to a migrant worker who retains his or her habitual residence in a neighbouring State to which he or she normally returns every day or at least once a week;
- The term “seasonal worker” refers to a migrant worker whose work by its character is dependent on seasonal conditions and is performed only during part of the year;
- The term “seafarer”, which includes a fisherman, refers to a migrant worker employed on board a vessel registered in a State of which he or she is not a national;
- The term “worker on an offshore installation” refers to a migrant worker employed on an offshore installation that is under the jurisdiction of a State of which he or she is not a national;
- The term “itinerant worker” refers to a migrant worker who, having his or her habitual residence in one State, has to travel to another State or States for short periods, owing to the nature of his or her occupation;
- The term “project-tied worker” refers to a migrant worker admitted to a State of employment for a defined period to work solely on a specific project being carried out in that State by his or her employer;
- The term “specified-employment worker” refers to a migrant worker:
  - who has been sent by his or her employer for a restricted and defined period of time to a State of employment to undertake a specific assignment or duty; or
  - who engages for a restricted and defined period of time in work that requires professional, commercial, technical or other highly specialized skill; or
  - who, upon the request of his or her employer in the State of employment, engages for a restricted and defined period of time in work whose nature is transitory or brief;
  - who is required to depart from the State of employment either at the expiration of his or her authorized period of stay, or earlier if he or she no longer undertakes that specific assignment or duty or engages in that work.
- The term “self-employed worker” refers to a migrant worker who is engaged in a remunerated activity otherwise than

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under a contract of employment and who earns his or her living through this activity normally working alone or together with members of his or her family, and to any other migrant worker recognized as self-employed by applicable legislation of the State of employment or bilateral or multilateral agreements.”<sup>28</sup>

## 5. Environmental Migrant

An environmental migrant is characterized as a person who, for compelling reasons of sudden or progressive change in the environment that adversely affects his/her life or living conditions, is forced to leave his/her habitual home and cross a national border, or chooses to do so, either temporarily or permanently. Environmental migrants may be distinguished between two categories:

- Environmentally motivated migrants are defined as those persons who “pre-empt the worst by leaving before environmental degradation results in devastation of their livelihoods and communities. These individuals may leave a deteriorating environment that could be rehabilitated with proper policy and effort.”<sup>29</sup> Their movement may be temporary or permanent.
- Environmental forced migrants are defined as those persons who “are avoiding the worst. These individuals have to leave due to a loss of livelihood, and their displacement is mainly permanent. Examples include

displacement or migration due to sea level rise or loss of topsoil.”<sup>30</sup>

## B. Refugee and Asylum Seeker

### 1. Refugee

“The term refugee shall apply to any person who: 1) has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization; Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfill the conditions of paragraph 2 of this section; 2) as a result of events occurring before 1 January 1951<sup>31</sup> and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. In the case of a person who has more than one nationality, the term “the country of his nationality” shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid

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reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.<sup>32</sup> International refugee law and, more generally, the international refugee protection system provides for a specific regime of human rights protection for a specific category of persons: those who can no longer rely on their country of nationality or habitual residence for respect, protection and fulfilment of their human rights and fundamental freedoms.”<sup>33</sup> The working definitions of who has suffered persecution are left to adjudication by national legal systems and can vary from country to country.

## 2. Asylum Seeker

An asylum seeker is a person seeking to be admitted into a country as a refugee and awaiting decision on his/her application for refugee status under relevant international and national instruments. Persons seeking asylum flee persecution based on race, religion, nationality, membership of a particular social group or political opinion, or political reasons, including conflict and war. In case of a negative decision, they must leave the country and may be expelled, as may any alien in an irregular situation, unless permission to stay is provided on humanitarian or other related grounds.<sup>34</sup>

## C. Types of Migration

### 1. Forced Migration

Forced migration is a general term to describe a migratory movement in which

an element of coercion exists, including threats to life and livelihood, arising from natural or man-made causes, such as movements of refugees and internally displaced persons as well as people displaced by political instability, conflict, natural or environmental disasters, chemical or nuclear disasters, famine, or development projects.<sup>35</sup>

### 2. Transit Migration

Transit migration refers to the regular or irregular movement of a person through any State on any journey to the State of employment or from the State of employment to the State of origin or the State of habitual residence.<sup>36</sup>

### 3. Return Migration

Return migration refers to the “movement of a person returning to his/her country of origin or habitual residence usually after spending at least one year in another country. This return may or may not be voluntary. Return migration includes voluntary repatriation.”<sup>37</sup>

## D. Trafficking and Smuggling

While there are often overlaps of migration methods between human trafficking and migrant smuggling, the key difference between the smuggling of migrants and human trafficking is the element of exploitation. This difference is clarified by the international definitions of trafficking<sup>38</sup> and smuggling<sup>39</sup> provided under the respective United Nations Protocols. Those who

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are smuggled are left to their own devices at the point of destination whereas those who are trafficked remain under the control of their traffickers who continue to exploit them at the point of destination. Trafficking in persons and smuggling of migrants are distinct, but they represent overlapping issues. Their legal definitions contain common elements. Actual cases may involve elements of both crimes or they may shift from one to the other. Many victims of human trafficking begin their journey by consenting to be smuggled from one State to another. Smuggled migrants may later be tricked or coerced into exploitive situations and thus become victims of human trafficking.<sup>40</sup>

## 1. Trafficking in Persons

Trafficking in persons is a crime against a person that involves the abuse of his/her human rights through exploitation. Human trafficking can also involve legal migration methods between States. It can occur internally within countries and does not necessarily have to be transnational in nature. Alternatively, human trafficking can involve the kidnapping or abduction of a person who is then consequently subjected to forced migration. Human trafficking often involves a number of additional offences against the trafficked persons that are also in violation of human rights, for example, rape, physical abuse or unlawful confinement.

The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

defines human trafficking under Article 3 (a) as follows: “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”<sup>41</sup>

## 2. Smuggling of Migrants

Smuggling of migrants refers to assisting a person who is not a national or permanent resident to enter and remain in a State without complying with the necessary requirements for legally entering and remaining in the State. In addition to smuggling *per se*, the Smuggling of Migrants Protocol also covers the offence of enabling illegal residence. The intention in establishing this offence is to include cases where the entry of migrants is through legal means, such as visitors’ permits or visas, but the stay is through resorting to illegal means. In response to improved border control measures, the number of irregular migrants who turn to the services of smugglers to migrate has risen significantly. In order to maximize their profits, it is increasingly the case that smugglers knowingly offer migration services that are more risky in

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order to lower transport and facilitation of entry costs and increase the cost of smuggling. Smuggling of migrants is always transnational in nature.<sup>42</sup>

The United Nations Protocol on the Smuggling of Migrants by Land, Sea and Air defines migrant smuggling under Article 3 (a) as follows: “Smuggling of migrants shall mean 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.”<sup>43</sup>

## E. Key Migration-Related Terms

### 1. Immigrant

An immigrant is a person belonging to, or owing an allegiance to, one State and moving into another State for the purpose of settlement.

### 2. National

The term national equals the term citizen and refers to a person, who, “either by birth or naturalization, is a member of a political community, owing allegiance to the community and being entitled to enjoy all its civil and political rights and protection; a member of the State, entitled to all its privileges; a person enjoying a nationality of a given State.”<sup>44</sup> The term non-national (also referred to as “alien”) includes temporary foreign workers, refugees, successful and unsuccessful asylum-seekers, trafficked persons and undocumented individuals. The category also encompasses stateless

persons, those people who have never acquired citizenship of the country of their birth, have lost their citizenship and have no claim to citizenship of another State, children born in States that recognize only the *jus sanguinis* principle of citizenship; and children born in a State to non-nationals who inherit their parents’ statelessness.

### 3. Non-Refoulement

The 1951 Convention Relating to the Status of Refugees laid down the principle of non-refoulement according to which “no Contracting State shall expel or return (“*refouler*”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” This principle cannot be “claimed by a refugee, whom there are reasonable grounds for regarding as 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.”<sup>45</sup> “The concept of non-refoulement also includes the prohibition of any form of forcible removal, whether direct or indirect, to a threat to torture, cruel, inhuman or degrading treatment or punishment.”<sup>46</sup>

### 4. Detention of Migrants

In this report the term detention is used to indicate both administrative deprivation of liberty, or remand custody, and incarceration or imprisonment resulting from criminal charges or sentencing.<sup>47</sup>

# III. The Legal Framework

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Respect for the human rights of all migrants is a fundamental duty of all States and must underly all policies and practices with respect to their treatment by public authorities in all situations. Laws, policies and practices in the country of origin, transit and destination all impact on the protection of the human rights of migrants.

The protection of migrants is a key issue in the current era of globalization. Indeed, as it is becoming increasingly obvious that economic globalization also implies increased human mobility, the protection of people on the move needs to be revisited to address new challenges. Migrant labour is now vital to many developed as well as less developed economies, while migrants' remittances have become the lifeline for numerous households in countries of origin. The economic importance of migration calls for appropriate measures to address its human dimension, including notably migrants' rights and responsibilities.

A range of human rights instruments exists at the international level promoting the human rights of all migrants, including specific instruments on the protection of women and children that apply equally to migrant women and children. While governments have broad sovereign powers in

determining nationality, admission, conditions of stay and removal of non-nationals, once a non-national is in the territory of a State, the State must respect and ensure the human rights of "all individuals within its territory and subject to its jurisdiction... without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". *Prima facie*, therefore, the rights contained in these instruments are guaranteed to all persons present in a State: nationals and non-nationals alike, regardless of legal status, gender or age.

International human rights instruments constitute a legal framework for the protection of all migrants. The status of irregular migrants should not be used as justification for the violation of their rights.<sup>48</sup>

Over the last few decades, as more States have agreed to binding international human rights treaties, a major change has taken place in the way in which the rights of non-nationals are protected. This has involved a shift beyond the classic system of diplomatic and consular protection by the migrants' State of nationality, towards the direct protection of the individual under international human rights norms. While States may expel or remove migrants who

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are illegally on their territory, international human rights law is clear in its requirement that the State should generally protect their rights without discrimination for as long as they remain on its territory, irrespective of their immigration status. Expulsion must not breach international law and human rights may be relevant in the determination of the lawfulness of an expulsion.<sup>49</sup>

At the centre of all human rights treaties is the prohibition of discrimination, which prescribes equal protection to nationals and non-nationals alike. The fundamental rights protections contained in the two International Covenants; the International Covenant on Civil and Political Rights (ICCPR)<sup>50</sup> and the International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>51</sup> and in the conventions prohibiting racial discrimination (International Convention on the Elimination of All Forms of Racial Discrimination, ICERD),<sup>52</sup> protecting the rights of children (Convention on the Rights of the Child, CRC),<sup>53</sup> prohibiting discrimination against women (Convention on the Elimination of All Forms of Discrimination against Women, CEDAW),<sup>54</sup> prohibiting torture (Convention against Torture, CAT),<sup>55</sup> and prohibiting discrimination against disabled persons (Convention on the Rights of Persons with Disabilities, CRPD),<sup>56</sup> apply universally to nationals and to all migrants, regardless of their immigration status. Thus the International Covenant on Civil and Political Rights (ICCPR) protects the rights of 'all individuals within its territory

and subject to its jurisdiction' without distinction; it guarantees to all persons equality before the law and equal protection by the law without any discrimination.

The Human Rights Committee has set out the general rule – with narrow exceptions<sup>57</sup> – that each of the rights under the Covenant must be guaranteed without discrimination between nationals and non-nationals (referred to as “aliens”). It has noted that the Covenant does not recognize the right of non-nationals to enter or reside in a State’s territory; that consent for entry may be given subject to conditions relating, for example, to movement, residence and employment; and that a State may also impose general conditions upon a non-national who is in transit. However, once within the territory of a State, non-nationals are entitled to the rights set out in the Covenant.

The Committee has been explicit that enjoyment of these rights is not limited to nationals: “but must also be available to all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party.”<sup>58</sup>

Similarly, in its 2004 General Recommendation on Discrimination against Non-Citizens, the Committee on the Elimination of Racial Discrimination (CERD) urged States to ensure that legislative guarantees against racial discrimination “apply to

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non-citizens regardless of their immigration status.”<sup>59</sup>

The International Convention for the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW)<sup>60</sup> applies the human rights contained in the general human rights instruments to the specific situation of migrant workers and members of their families and in addition requires States to collaborate in combating irregular migration. Under the Convention, States are required to 1) take measures against the dissemination of misleading information, 2) detect and eradicate irregular movement of migrants, and 3) impose effective sanctions on those who organize and operate such movements.

The creation of the post of the Special Rapporteur on the Human Rights of Migrants by the United Nations was an effort to “examine ways and means to overcome the obstacles existing to the full and effective protection of the human rights of migrants, including obstacles and difficulties for the return of migrants who are undocumented or in an irregular situation.”<sup>61</sup> The mandate of the Special Rapporteur was created in 1999 by the

Commission on Human Rights, pursuant to Resolution 1999/44. Among the main functions of the Special Rapporteur are to take into account a gender perspective when requesting and analyzing information, as well as to give special attention to the occurrence of multiple discrimination and violence against migrant women. Ms. Gabriela Rodríguez Pizarro from Costa Rica served as Special Rapporteur from 1999 to 2005. Since 2005 Mr. Jorge A. Bustamante from Mexico holds this position.

The Special Rapporteur of the Subcommission on the Promotion and Protection of Human Rights, Mr. David Weissbrodt, prepared a final report on the rights of non-citizens,<sup>62</sup> which provides a synthesis of the general principles of and specific exceptions to the rights of non-citizens under international human rights law together with a brief identification of some of the areas in which these rights are not being respected. The report concludes that there is a large gap between the rights that international human rights law guarantee to non-nationals and the realities they must face. In many countries there are institutional and endemic problems confronting non-nationals.

## Overview of the Key Treaties Concerning Migrants and Human Rights

The *International Covenant on Civil and Political Rights* enumerates the civil and political rights which all persons within the State's territory or within its jurisdiction should enjoy. It forbids the discrimination between nationals and non-nationals, with narrow exceptions for political rights that are explicitly guaranteed to nationals, and freedom of movement.

The *International Covenant on Economic, Social, and Cultural Rights* establishes that States shall protect the rights of all individuals—regardless of citizenship—to work, just and favourable conditions, an adequate standard of living, good health, and other economic, social and cultural rights.

The *International Convention on the Elimination of All Forms of Racial Discrimination* prohibits all discrimination on the basis of race, colour, descent or national or ethnic origin. It allows distinctions to be made between nationals and non-nationals, provided that such distinctions do not result in discrimination against any particular group and that they do not affect the equal enjoyment of rights guaranteed to all persons under the relevant international human rights instruments.

The *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families* defines the rights of migrants in every country regardless of their legal status, inter alia, guaranteeing equal treatment and working conditions on par with nationals. It also provides additional rights for migrant workers and members of their family who reside in the country lawfully.

The *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*

requires States to prevent the trafficking in persons and to protect and assist persons who become victims of human trafficking. The Protocol calls for greater cooperation among States and different stakeholders in order to achieve these objectives.

The *Convention on the Rights of the Child* establishes that all children within the jurisdiction of a State Party shall have the right to a name and to acquire a nationality; the Convention also provides that States Parties shall ensure the implementation of these rights, in particular when the child would otherwise be stateless.

The *CRC Optional Protocol on the Sale of Children* provides a legal framework to prevent and punish sale of children, child prostitution and child pornography. This Protocol also deals with the issue of protection of child victims of these crimes both when they enter in contact with the criminal justice system as victims or witnesses and more generally with respect to their recovery and reintegration.

The *CRC Optional Protocol on the Involvement of Children in Armed Conflict* establishes the obligation to take all feasible measures to prevent the participation in hostilities by persons under the age of 18 years, notably by ensuring that there is no compulsory recruitment into the armed forces under this age and by criminalizing the recruitment by armed groups. The Protocol sets forth a duty to provide victims of such acts with recovery and reintegration measures.

The *Convention on the Elimination of All Forms of Discrimination against Women* defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination.

The *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment* prohibits all forms of torture and ill-treatment. It also prohibits the refoulement of any person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

The *Convention on the Reduction of Statelessness* and the *Convention on Status of Stateless People* refer to stateless persons who are not refugees and therefore establish the rights of persons who do not fall within the scope of the *Convention Relating to the Status of Refugees*.

The *Protocol Against Smuggling of Migrants by Land, Sea and Air* has as its objective the reduction of organized crime groups abusing migrants. It calls for greater cooperation and the exchange of information and other appropriate measures, including socio-economic measures, at the national, regional and international levels, to achieve this objective.

The *Convention on the Status of Refugees* establishes the rights of individuals of asylum and the responsibility of States granting asylum.

A review of international migration law reveals an impressive machinery of instruments defining and protecting the human rights of migrants. There is no need for further instruments, but there is a need to intensify efforts across the board to ensure that the human rights commitments States have entered into at the international level are effectively put into practice.

In the multi-faceted migration and development equation, it is vital to strengthen the role and action of human rights instruments and mechanisms in protecting the human rights of migrants and in addressing their vulnerability, especially in consideration of the most vulnerable groups of migrants including children, women and irregular migrants. This should proceed in parallel with educating duty bearers about their obligations and responsibilities to protect migrants.

## A. Promotion of Lawful Conditions of Migration

The shared responsibility of States to protect the human rights of migrants is reflected in Part VI of the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW)*, entitled “Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families”. It provides concrete guidance for the consultation and cooperation among States in order to develop migration policies that are consistent with human rights norms.

It is essential that States maintain appropriate services to deal with issues of international migration.<sup>63</sup> Such services should formulate and implement migration policies as well as exchange information,

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consult and cooperate with the competent authorities of other States. They should also be responsible for providing appropriate information on policies, laws and regulations relating to migration and employment and on agreements with other States in this field. Finally, these services should be in charge of providing assistance to migrants regarding authorizations and formalities in preparation for their orderly migration. The provision of information is especially important in the case of prospective female migrants who have less access to adequate information about legal channels of migration. Being equipped with insufficient information gives women less chance of migrating legally and therefore forces them to migrate clandestinely. When legal channels are not available, many women see trafficking or smuggling as the only option to cross the border. This places them at increased risk of exploitation and abuse. Women are among the most vulnerable throughout the migration process.

The provision of reliable information is crucial for the promotion of lawful conditions of migration. In fact, lack of information may often cause migrants to unwittingly break laws and regulations, or may lead them to leave their country of origin without proper preparation, rendering their life in the country of destination more difficult.

Provision of information about lawful conditions of migration should go hand in hand with appropriate measures against the

dissemination of misleading information,<sup>64</sup> such as that provided by smugglers and traffickers. Countries of origin, transit and destination should increase their efforts to eradicate smuggling and trafficking of migrants that cause the death of hundreds of people every year and trauma for thousands more. This phenomenon can only be combated through close cooperation of all countries concerned. Effective sanctions should be imposed on persons and groups which organize the smuggling and trafficking of migrants, while recognizing the needs for protection of the victims of these crimes. Victims of trafficking should be dealt with in full compliance with the Office of the High Commissioner for Human Rights (OHCHR) Recommended Principles and Guidelines on Human Rights and Human Trafficking.<sup>65</sup>

States must also take the requisite measures, legislative or otherwise, to reduce to the fullest extent possible the number of workers outside the formal economy, workers who as a result of that situation have no protection.<sup>66</sup> Migrants in an irregular situation are among the most vulnerable persons in any society and are not in a position to defend themselves against exploitation by their employers. Many female migrants are found in the informal sector of the economy, which points to a transnational labour market composed of networks of women who work as housekeepers, personal caretakers, street vendors, waitresses and bartenders, among other activities. Working without adequate protection makes women more vulnerable

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to exploitation and human rights abuses, including low wages, illegal withholding of wages, and illegal and premature termination of employment. Women are often found in gender-segregated and unregulated sectors of the economy which are typically unprotected by local labour legislation.<sup>67</sup> The plight of migrant domestic workers merits special attention, as their human rights are least protected. Countries of destination should therefore make it their priority to ensure that the basic rights of irregular migrants or those in the informal economy are protected, including their right to equal treatment with respect to remuneration and conditions of work. As reflected in the preamble of the Migrant Workers' Convention (ICRMW), the enforcement of equality of treatment of irregular migrant workers will remove the incentive for employers to have recourse to their services.

Migrants search for work in countries where the labour market is in need of their services. Efforts to end employment of workers in an irregular situation should thus go hand in hand with opening up channels for lawful migration in order to meet the local labour demand. Cooperation among countries of origin and countries of destination can prove very helpful in this respect, both for discouraging irregular migration and for encouraging applications for lawful migration.

Strict supervision of recruitment operations in countries of origin is also an important tool in preventing unlawful

practices, including trafficking. Guidance can be found in Article 66 of the Migrant Workers Convention (ICRMW), which restricts the right to undertake operations for the recruitment of migrant workers to the public services of the country of origin, or, if a bilateral agreement exists, the public services of the country of employment. A public recruitment body may also be established by virtue of a bilateral or multilateral agreement between countries. As far as private agencies or employers are concerned, they should only be allowed to recruit migrant workers if they have obtained the requisite authorization by the public authorities of the countries concerned and under their supervision.

## B. Female Migrants

Although differences exist regarding the sex distribution among the various regions in the world, women comprise nearly half of all migrants today, approximately 94.5 million or 49.6 per cent of the 190.6 million persons worldwide living outside their countries of origin in 2005. Female migrants account for 52.2 per cent of all migrants in the developed countries and constitute 45.7 per cent of all international migrants in developing countries.

A number of human rights instruments exist to protect the rights of women and girls who migrate. The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)<sup>68</sup> defines what constitutes discrimination against women

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and sets up an agenda for national action to end such discrimination.<sup>69</sup> The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW) addresses the rights of migrant workers and their family members in both regular and irregular situations during the entire migration process: departure, transit, destination and return, and provides useful guidance for States on how to ensure that migration is managed humanely. The complementary ILO Convention 97 on Migration for Employment<sup>70</sup> provides specific standards regarding female migrant worker employment and occupation. The Convention for Suppression of the Traffic in Women and Children<sup>71</sup> provides protection for women seeking employment in another country.<sup>72</sup> Regulations require the protection of migrant women not only at the points of departure and arrival, but also during the journey.<sup>73</sup>

Among other international mechanisms relevant to female migrants is the Protocol of Palermo including the Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime<sup>74</sup> requiring States to take measures to promote the rights of female migrants.<sup>75</sup> Standards for protecting female migrants' rights are also found in the Programme of Action of the International Conference on Population and Development (ICPD Programme of Action),<sup>76</sup> the Beijing Declaration and Platform for Action,<sup>77</sup> and General Assembly Resolution 58/143<sup>78</sup> on Violence

against Women Migrant Workers. A number of protection mechanisms deriving from the United Nations Charter<sup>79</sup> are relevant to promoting the rights of migrant women as well. The mandate of the Special Rapporteur, established by the Human Rights Council, is one such mechanism. Of particular relevance for female migrants are the Special Rapporteurs on a) Violence against Women; b) Trafficking in Persons, especially Women and Children; and c) the Human Rights of Migrants.<sup>80</sup> The Special Rapporteur on the Human Rights of Migrants, Jorge Bustamante, reiterated the need for a comprehensive approach to female migrants' human rights in order to ensure that women and girls who migrate had a framework for protection and enjoyed rights appropriate and adequate to their particular vulnerable situations.<sup>81</sup>

The ICPD Programme of Action specifically referred to the objective of eliminating discriminatory practices against documented migrants, especially women, children and the elderly.<sup>82</sup> It stated that women and children who migrate as family members should be protected from abuse and denial of their human rights by their sponsors, and urged governments to consider extending their stay, within limits of national legislation, should the family relationship dissolve.<sup>83</sup>

The Beijing Platform for Action called for, *inter alia*, the provision of gender-sensitive human rights education and training for public officials, including police and military personnel, corrections officers,

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health and medical personnel, and social workers, including people who deal with migration and refugee issues.<sup>84</sup> It urged governments to “promote an active and visible policy of mainstreaming a gender perspective in all policies and programmes related to violence against women and actively encourage, support and implement measures and programmes aimed at increasing the knowledge and understanding of the causes, consequences and mechanisms of violence against women among those responsible for implementing these policies, such as law enforcement officers, police personnel and judicial, medical and social workers, as well as those who deal with minority, migration and refugee issues, and develop strategies to ensure that the revictimization of women victims of violence does not occur because of gender-insensitive laws or judicial or enforcement practices.”<sup>85</sup>

## C. Migrant Children

The Convention on the Rights of the Child (CRC) defines a child as “every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier” (Article 1). Whether on their own or in company with adults (family or non-family), children as migrants move across borders in search of survival, security, education, improved standards of living and protection from abuse.

The CRC and its Optional Protocols are an effective point of reference for all children

affected by migration, regardless of their migration status.<sup>86</sup> International human rights instruments on migration, such as the International Convention on the Rights of All Migrant Workers and Members of their Families and the ILO Conventions, also provide comprehensive guidance on ensuring the rights of migrant children (see Appendix B). The ICRMW provides for the rights of migrant children, regardless of their immigration status, to have a name, to registration of birth and to a nationality. It also provides the basic right of access to education on the basis of equality of treatment with nationals of the State concerned and provides expressly that such access shall not be refused or limited by reason of the irregularity of the child’s stay in the country.

The Committee on the Rights of the Child,<sup>87</sup> a body of independent experts that monitors the implementation of the Convention on the Rights of the Child, advises that a State which ratifies the Convention on the Rights of the Child, takes on obligations under international law “to ensure the realization of all rights in the Convention for all children in their jurisdiction.”<sup>88</sup> In its general comment No. 6, the Committee stated: “the enjoyment of rights stipulated in the Convention is not limited to children who are nationals of a State Party and must therefore, if not explicitly stated otherwise in the Convention, also be available to all children – including asylum-seeking, refugee and migrant children – irrespective of their nationality, immigration status or statelessness.”<sup>89</sup>

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Four fundamental principles of the CRC provide a basis for all actions that States may take to respect, protect, promote and fulfill the rights of children:

- *Non-Discrimination:* CRC Article 2 states, among other things, that children should not be discriminated because of their nationality, ethnic origin or other status.<sup>90</sup>
- *Best Interests of the Child:* CRC Article 3 states that “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” This implies, regarding migrant children, that programmes and services (health, education, etc.) should be provided on the basis of children’s best interests with no relevance to the status of their documentation. The best interests of the child must also be the key concern whenever decisions are made on repatriation measures to countries of origin.
- *Life, Survival and Development:* The right to survival is related to the right to an adequate standard of living, the highest attainable standard of health, nutritious food and clean drinking water. The right to development includes systems of formal education as well as community and informal structures which provide opportunities for children to participate in a range of cultural

and social activities.<sup>91</sup> CRC Article 27 states that States Parties should take appropriate measures to assist parents and others responsible for the child to implement the right of adequate living and to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child. Furthermore, vital to survival and development of the child is CRC Article 19 protecting the child from violence and exploitation.

- *The Right of the Child to be Heard and Participate:* Children have the fundamental right to formulate and express opinions about all matters that affect them. The CRC establishes the principle that children’s views should be heard and given due attention, taking into account “the age and maturity of the child.”<sup>92</sup> Therefore experiences of migrant children should inform decisions about the ways in which their rights will be respected. This right to be heard must be fully respected and satisfied in both administrative and judicial procedures related to their migration status. States Parties have a clear and precise obligation to assure the children’s right to a say in situations that may affect them.

Legislative reform can support a comprehensive and rights based approach that fulfils the socio-economic and other fundamental rights of all migrant children, regardless of their nationality or migration status. All policy and legal initiatives dealing

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with the effects of migration on children need to focus on drawing up new sets of rules and regulations to address migration concerns and to protect the best interests of the child.<sup>93</sup> In many countries, human rights instruments, including the CRC and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) have been “successfully incorporated into diverse legal systems. This process of alignment of national legislation with human rights instruments, with the CRC in particular, is important as it underlies principles such as the indivisibility of rights and the importance of partnerships in realizing children’s rights.”<sup>94</sup> These rights include the basic requirements for family support, access to social services (including education and health care), protection of children in conflict with the law and specific matters, such as protection from harmful traditional practices, freedom to cross borders to reunite with parents and access to information they need to make decisions about their own lives. This principle should be a primary consideration in making choices between differences presented by migrant communities and the integration of migrants into the receiving culture, such as facilitating preservation of some cultural traditions that strengthen their sense of identity. The best interests of the child should also influence decisions on deportation of undocumented adult migrants or migrants who fail to comply with restrictions on work authorization.<sup>95</sup>

The Working Group on Arbitrary Detention<sup>96</sup> is of the opinion that unaccompanied

juvenile irregular migrants should not be detained under immigration powers (whether for reasons of establishing their identity, facilitating their removal to their country of origin, preventing them from absconding or other such grounds usually put forward by States) at all, as such detention would not be lawful under the limitations provided for by article 37 (b) CRC, notably being a measure of last resort.

As the Committee on the Rights of the Child has asserted, “In application of article 37 of the Convention and the principle of the best interests of the child, unaccompanied or separated children should not, as a general rule, be detained. Detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof.”<sup>97</sup>

Furthermore, Article 24 of Paragraph 1 of the International Covenant on Civil and Political Rights (ICCPR) states that every child shall have, without any discrimination as to race, color, sex, language, religion, national or social origin, property or birth, the right to measures of protection, required by his status of minor, on the part of his family, society and the State.<sup>98</sup>

The International Convention for the Suppression of the Traffic in Women and Children provides protection for migrant children of both sexes in another country.<sup>99</sup> The Convention requires States to provide protection for migrant children during the

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entire migration process in the country of origin, transit and destination.<sup>100</sup>

## D. Migrant Workers

### 1. The Fundamental Rights of Migrant Workers

Labour rights provided for in all international labour conventions apply to migrant workers. In particular, Member States have an obligation to respect, promote and realize, in good faith and in accordance with the International Labour Organization (ILO) Constitution, the principles concerning the rights stipulated in the fundamental conventions. This obligation derives from membership in the ILO and from the endorsement by Member States of the principles set out in the Constitution and in the Declaration of Philadelphia.<sup>101</sup> The 1998 ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up is clear in this respect.<sup>102</sup>

The Fundamental Principles and Rights at Work<sup>103</sup> are grouped into four sets: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation. Each set corresponds to two fundamental labour conventions. All migrant workers, regardless of their status, should enjoy these rights.

*Freedom of Association and the Effective Recognition of the Right to Collective Bargaining*<sup>104</sup>

Freedom of association and the right to collective bargaining both empower migrant workers and enable them to better access other human rights. By exercising these rights, workers can participate in the development of national and international economic policies as well as policies in the workplace. Recognizing the right of migrant workers to organize and participate in collective bargaining will increase the effectiveness of such policies.<sup>105</sup>

*The Elimination of all Forms of Forced or Compulsory Labour*<sup>106</sup>

The abolition of forced labour is essential to the protection of fundamental freedoms and is related to income and human capital formation, which are likely to be depressed by forced labour. Trafficking of human beings is one of the manifestations of forced labour in international migration. The exploitation it entails turns migration into a negative experience for migrant workers as well as for countries of origin and destination. Confiscation of travel documents also leads to forced labour situations.

*The Effective Abolition of Child Labour*<sup>107</sup>

An increasing number of unaccompanied<sup>108</sup> children are crossing international borders to work, which makes the elimination of child labour particularly important.

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Child labour adversely affects the present and future lives of working boys and girls by affecting their health and depriving them of education. Precluding human capital formation, child labour is also detrimental to development in the children's countries.

*The Elimination of Discrimination in Respect of Employment and Occupation*<sup>109</sup>

Equality and non-discrimination are basic principles underlying human and labour rights. In a world of Nation-States where rights derive from citizenship, these principles are of utmost importance for the protection of workers who are outside their countries of origin.

Treating migrant workers with equality and non-discrimination has a positive impact upon migrant workers' countries of origin and destination. It enables workers to reach their full working potential, enhance their earnings, improve their living conditions (and the living conditions of their families), contribute to development in their countries of origin and increase their participation in the economy of the countries of destination.

## 2. The Protection of the Specific Rights of Migrant Workers

Discharging its constitutional obligation to protect the rights of workers employed in countries other than their own, the ILO has adopted two international labour conventions specific to the subject. Even though focused on protection, the two conventions

also include provisions relevant to development in countries of origin. The main provisions of these conventions are reviewed below. In the review, reference will be made to the 1990 International Convention on the Rights of All Migrant Workers and Members of their Families, which has built upon the ILO conventions. The ILO has also recently adopted a non-binding text, the ILO Multilateral Framework on Labour Migration. Going further than the conventions, the Framework brings together aspects of protection of migrant workers with those relating to the contribution of labour migration to development. The main provisions of the Framework will also be reviewed.

## 3. The Labour Rights Framework

The Migration for Employment (Revised) Convention, 1949 (No. 97),<sup>110</sup> and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143),<sup>111</sup> as well as their accompanying Recommendations,<sup>112</sup> provide a framework for the basic components of a comprehensive labour migration policy, the protection of migrant workers, the development of their potentials and measures to facilitate as well as to control migratory movements. They also provide minimum standards of protection for all migrant workers.

More specifically, these instruments call for measures aimed at regulating the conditions in which migration for employment occurs, controlling irregular migration and labour trafficking and detecting the informal employment of migrants, with the

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aim of preventing and eliminating abuses. The concept of the rights of irregular migrant workers was inspired not only by the basic principle of respect for the dignity of all human beings, but also by the desire to discourage recourse by employers of irregular migrants, by making such recruitment less economically beneficial. In addition, the two conventions call for measures related to the maintenance of free services to assist migrants and to the provision of information, steps against misleading propaganda and the transfer of earnings. They define parameters for recruitment and contract conditions, and for appeals against unjustified termination of employment or expulsion. The two instruments further include provisions on the participation of migrants in job training, on their promotion as well as on family reunification.

Most importantly, the two instruments call for the adoption of a policy to promote equality of treatment and opportunity between migrants in regular situations and nationals in employment and occupation in the areas of access to employment, remuneration, social security, trade union rights, cultural rights and individual freedoms, employment taxes and access to legal proceedings.<sup>113</sup>

Article 6 of Convention No. 97 on Migration for Employment provides for equality of treatment in respect, *inter alia*, of:

1. Remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holiday with pay, restrictions on home work, minimum age for employment, apprenticeship and training;
2. Accommodation;
3. Social security (legal provision in respect of employment injury, maternity, sickness, invalidity, old age, death, unemployment and family responsibilities, and any other contingency, which is covered by a social security scheme), subject to specific limitations provided for by appropriate arrangements, national laws or regulations, and
4. Employment taxes, dues or contributions payable in respect of the person employed.

Part II of Convention No. 143 applies to regular migrant workers and provides for equality of opportunity and treatment with national workers. While Convention No. 97 also provides for equality of treatment, only Convention No. 143, concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, expands this to include equal opportunity. In relation to access to employment, Part II of this Convention permits States to restrict the principle of equality of treatment in certain circumstances. States can, for example, restrict access to limited categories of employment or functions where this is necessary in the interests of the State (Art. 14c), and can also make the free choice of employment subject to temporary restrictions during a prescribed

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period, which may not exceed two years (Art. 14a). Neither Convention No. 97 nor 143 extends equality of treatment to migrant workers in irregular status.

It is noteworthy that the two conventions, especially Convention No. 143, have incorporated the principles of the fundamental Discrimination (Employment and Occupation) Convention, 1958 (No. 111),<sup>114</sup> prohibiting discrimination against migrant workers on the basis of race, colour, sex, religion, national extraction, political opinion and social origin.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW)<sup>115</sup> is a fundamental element for the protection of the human rights of migrants since it applies to all aspects of the life of migrants including the migrant's family and the situation of women and children, and explicitly recognizes the rights of undocumented migrants. Another positive element of the Convention is its broad vision of rights; although it is intended to regulate the rights of workers, it is not limited to the employment context but regulates the entire spectrum of workers' rights. The Convention articulates even more broadly the principle of equality of treatment between migrant workers and nationals before courts and tribunals, with respect to remuneration and other working conditions, as well as with regard to migrant workers' access to urgent medical assistance and education for their children. In the Migrant Workers' Convention (ICRMW), equality and non-

discrimination extend to migrant workers in irregular situations, in accordance with national laws. Thus, the ICRMW does not depart substantively from the fundamental rights protected in the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR), and other universal human rights treaties, but it does articulate these rights in ways which take into account the particular situation of migrant workers and their families. It seeks to establish basic principles for their treatment and to establish norms which will contribute to the harmonization of States' attitudes towards migration through acceptance of these basic principles. It also requires action by States to 'prevent and eliminate clandestine movements and trafficking', and to 'eliminate' the employment of irregular migrants by employers.

The ICRMW first sets out the rights to be enjoyed by all migrant workers, regardless of their immigration status. It states explicitly that the enjoyment of these rights does not imply any right to regularization of the situation of undocumented migrants.

These protected rights include: the right to leave any country and to return to one's country of origin; the right to life; prohibition of torture; prohibition of inhuman or degrading treatment; prohibition of slavery and forced labour; freedom of opinion and expression; freedom of thought, conscience and religion; right to join a trade union; prohibition of arbitrary or unlawful interference with privacy, home,

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correspondence and other communications; prohibition of arbitrary deprivation of property; the right to liberty and security of persons; safeguards against arbitrary arrest and detention; recognition as a person before the law; right to procedural guarantees; prohibition of imprisonment, deprivation of authorization of residence and/or work permit and expulsion merely on the ground of failure to fulfill a contractual obligation; protection from confiscation and/or destruction of identification card and other documents; protection against collective expulsion; right to recourse to consular or diplomatic protection; principle of equality of treatment in respect of remuneration and other conditions of work, terms of employment and social security; right to receive urgent medical care; right of a child of a migrant worker to a name, registration of birth and nationality and to access to education on the basis of equality of treatment; respect for the cultural identity of migrant workers and members of their families; right to transfer to the State of origin earnings, savings and personal belongings; and right to be informed on the rights arising from the Convention and dissemination of information.

Often these rights are articulated in terms which reflect the specific circumstances of migrants. Thus, where a migrant worker is deprived of his liberty, the State must 'pay attention to the problems that may be posed to his family'. The Convention makes unauthorized confiscation of documents an offense, and gives migrant workers the

right to information about their conditions of admission.

The Convention then provides additional rights to regular migrant workers: for example, to be 'temporarily absent' from the State of employment without effect upon their authorization to stay or work, to freedom of movement, and to equality of access to education, housing, social and health services. It also provides for protection of the unity of the families of migrant workers and for the facilitation of family reunification and for a right to transfer earnings and savings - remittances - to their home countries.

In its last substantive part, the Convention sets out a framework for promoting 'sound, equitable, humane and lawful' conditions for the management of international migration. This includes consultation and cooperation between States; policy making and exchange of information; the 'orderly return' of migrants at the end of their contracts or where they are irregular; collaboration to prevent and eliminate illegal or clandestine movements, and the employment of irregular workers.

Finally, non-discrimination and equality of treatment are cornerstones of the widely ratified International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR). Together with international labour standards, human rights norms, in particular those contained in the ICESCR, also protect employment rights,

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including the right to ‘just and favorable conditions of work’, non discrimination, fair wages, safe and healthy working conditions, and reasonable working hours. Work must be ‘decent work’, which respects the rights of workers in terms of conditions of work safety and remuneration, and provides an income allowing workers to support themselves and their families.<sup>116</sup> Article 14 of the Migrant Worker (Supplementary Provisions) Convention No. 143 provides for the right of regular migrant workers to geographical mobility and for recognition of occupational qualifications acquired outside the territory of the State Party, including certificates and diplomas.

The ILO Multilateral Framework on Labour Migration<sup>117</sup> comprises non-binding principles and guidelines for a rights-based approach to labour migration. It is a guide for the formulation of labour migration policies that guarantee the rights of migrant workers, reinforcing their protection and enhancing their contribution to development. Principle 8 and 9 are dedicated to the protection of migrant workers. Principle 8 stipulates that the human rights of migrant workers, regardless of their status, should be promoted and protected. This principle refers to the ILO 1998 Declaration<sup>118</sup> and to the relevant human rights instruments adopted in the context of the United Nations. Principle 9 states that all international labour standards apply to migrant workers, that protection requires a sound legal foundation based on international law and that national migration laws and policies should be guided by

ILO standards in the areas of employment, labour inspection, social security, maternity protection, protection of wages, occupational safety and health, as well as in such sectors as agriculture, construction and hotels and restaurants. A separate principle is dedicated to prevention and protection against abusive migration practices such as smuggling and trafficking. The same principle calls on governments to work towards preventing irregular labour migration.

#### 4. Protection of Migrant Workers from Abuses by Private Employers

States’ duties under international law are not limited to respecting, protecting, and fulfilling human rights through the acts of State institutions and officials. States are also obliged to protect individuals against violations by private persons. This is of great importance to migrants, since many migrants work for private employers, in the informal economy and in domestic work. These who are employed in private households tend to be isolated with no supporting networks. Domestic work is often undervalued as informal work and not recognized under labour law or labour codes. As a result, most domestic workers have not been able to enjoy the fundamental rights that they are entitled to. States must take positive measures to ensure that private persons or entities do not, for example, inflict cruel, inhuman or degrading treatment or punishment on others within their power. They must also protect individuals from discrimination by the private sector

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in relation to work or housing. States must take measures to protect migrant women and children from 'slavery disguised... as domestic or other kinds of personal service.'<sup>119</sup> States must also take steps to regulate working conditions in the informal economy, including domestic and agricultural work, and must monitor compliance by private sector employers with legislation on working conditions through an effectively functioning labour inspectorate.

## E. Refugees

Refugee law is an integral part of human rights. The Convention on the Status of Refugees was one of the first treaties enacted after the Universal Declaration of Human Rights was adopted, due to the centrality of the refugee problem in the entire concept of international human rights in the post-war period. At first sight it should seem implicit enough that refugee protection is fundamentally part of human rights. Yet, this is a relationship that is not well understood. In some quarters, the very kinship between the refugee protection regime and that of human rights is even contended.

Refugee protection is human rights protection. The institution of asylum "derives directly from the right to seek and enjoy asylum set out in Article 14(1) of the 1948 Universal Declaration of Human Rights."<sup>120</sup> International refugee law and, more generally, the international refugee protection system provides for a specific regime of human

rights protection for a specific category of persons: those who can no longer rely on their country of nationality or habitual residence for respect, protection and fulfilment of their human rights and fundamental freedoms.<sup>121</sup> International refugee law is thus embedded within human rights law.

Central to the realization of the right to seek asylum is the principle of *non-refoulement*.<sup>122</sup> The principle of non-refoulement embodied in Article 33 of the Convention Relating to the Status of Refugees<sup>123</sup> encompasses any measure attributable to the State which could have the effect of returning an asylum seeker or refugee to the frontiers of territories where his/her life or freedom would be threatened, or where he or she is at risk of persecution, including interception, rejection at the frontier or indirect refoulement. This prohibits any form of forcible removal, whether direct or indirect, to a threat to life or freedom<sup>124</sup> or to torture, cruel, inhuman or degrading treatment or punishment.<sup>125</sup> It includes deportation, expulsion, extradition, "rendition" and non-admission at the border. Many asylum-seekers and even refugees continue to be deported as illegal migrants as part of migration control measures. Asylum-seekers are particularly vulnerable to deportation if detained.

The 1951 Convention Relating to the Status of Refugees is the key legal document in defining who is a refugee, his/her rights and the legal obligations of States. The Preamble to the 1951 Convention summarizes the objectives of international protection:

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“to assure refugees the widest possible exercise of...fundamental human rights and freedoms” which all “human beings [should] enjoy...without discrimination as to race, religion or country of origin.” The contracting States agreed to treat refugees within their territories at least as favourably as States treat their nationals with respect to freedom to practice their religion and freedom as regards the religious education of their children.<sup>126</sup>

The 1967 Protocol Relating to the Status of Refugees<sup>127</sup> removed geographical and temporal restrictions from the Convention. By accession to the Protocol, States undertake to apply the substantive provisions of the 1951 Convention to all refugees covered by the definition of the latter, but without limitation of date. “Although related to the Convention in this way, the Protocol is an independent instrument, accession to which is not limited to States Parties to the Convention. The Convention and the Protocol are the principal international instruments established for the protection of refugees and their basic character has been widely recognized internationally.”<sup>128</sup> International protection is thus premised on human rights principles. The different human rights instruments, mechanisms and procedures complement international refugee law tools.

## F. Smuggled Migrants and Victims of Trafficking

The United Nations Convention against Transnational Organized Crime<sup>129</sup> and its

Protocols on Trafficking in Persons and Smuggling of Migrants<sup>130</sup> are indispensable instruments for the waging of a coordinated fight against these activities.<sup>131</sup> It is essential that the differences between the smuggling of migrants and trafficking in persons are understood before an effective policy response to both crimes can be developed and implemented. While both human trafficking and migrant smuggling prey on the vulnerabilities of people and their desires to migrate, they are ultimately two distinct crimes.

The UN Trafficking Protocol is the first international instrument to identify trafficked persons as victims of crime. In doing so, it supports the implementation of national measures that recognise and respond to their status as victims of crime including providing victims with information on court proceedings, protecting their identity during the criminal justice process, and providing access to protection and support services. The Protocol on the Smuggling of Migrants by Land, Sea and Air<sup>132</sup> seeks to prevent and combat the smuggling of migrants.

Although there has been increased attention and action on the part of many countries regarding the issue and responses to trafficking in persons and the smuggling of migrants, there remains a considerable number of countries where specific legislation on human trafficking and migrant smuggling is lacking, or where only certain elements of the Trafficking and Smuggling Protocols are being addressed. Many

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States lack the capacity and expertise to implement legislation in line with the Protocols. The Trafficking Protocol has been ratified by many States, signaling their commitment to combat human trafficking under national legislation; however it is often the case that the comprehensive approach to human trafficking embodied by the Protocol is not fully implemented within national responses to human trafficking. The criminalization of human trafficking is often well developed, but such criminalization requires the support of measures for the protection of trafficked victims under national legislation in order for it to be most effective.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, in its part VI, also obliges States to collaborate with the view to preventing and eliminating illegal or clandestine movements of migrants, and to take measures to detect and eradicate such movements and to impose effective sanctions on persons, groups or entities who organize such movements.<sup>133</sup> In 2004, the United Nations Commission on Human Rights established the mandate of the Special Rapporteur on Trafficking in Persons which focuses on the human rights aspects of the victims of trafficking in persons, especially women and children. The OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking provide practical, rights-based approach policy guidance on the prevention of trafficking and the protection of trafficked persons and with

a view to facilitating the integration of a human rights perspective into national, regional, and international anti-trafficking laws, policies and interventions.

## G. Migrants in Detention

Fundamental human rights standards exist to safeguard the protection of migrants deprived of their liberty. Article 9 of the Universal Declaration of Human Rights<sup>134</sup> establishes that “no one shall be subjected to arbitrary arrest or detention”. This universally recognized principle is also enshrined in Article 9 of the International Covenant on Civil and Political Rights (ICCPR), which states that “anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.”<sup>135</sup> “Furthermore, as enshrined in article 10 of ICCPR, all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. This implies not only the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, but also that migrants deprived of their liberty should be subjected to conditions of detention that take into account their status and needs.”<sup>136</sup>

Article 16 (4) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, states “Migrant Workers

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and members of their families shall not be subjected individually or collectively to arbitrary arrest or detention; they shall not be deprived of their liberty except on such grounds and in accordance with such procedures as are established by law."<sup>137</sup> Paragraphs 8 and 9 of the same article state respectively "migrant workers and members of their families who are deprived of their liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of their detention and order their release if the detention is not lawful. When they attend such proceedings, they shall have the assistance, if necessary without cost to them, of an interpreter, if they cannot understand or speak the language used; and Migrant workers and members of their families who have been victims of unlawful arrest or detention shall have an enforceable right to compensation."<sup>138</sup>

Regarding arbitrary detention, the Body of Principals for the Protection of All Persons under Any Form of Detention or Imprisonment (A/RES 43/173) reiterates that any form of detention or imprisonment shall be ordered by, or be subject to the effective control of a judicial or other authority. In addition, a person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority and a detained person shall be entitled at any time to take proceedings before a judicial or other authority to challenge the lawfulness of his/her detention.

In the interception of migrants lacking documentation, many States employ administrative detention of irregular migrants in connection with violations of immigration laws and regulations, which are not considered to be a crime and may include, *inter alia*, overstaying a permit or non-possession of valid identification or visa documents. The objective of administrative detention is to guarantee that another administrative measure, such as deportation or expulsion, can be implemented. Sometimes administrative detention is also employed on the grounds of public security and public order, *inter alia*, or when an alien is awaiting a decision on refugee status or on admission to or removal from the State.<sup>139</sup> Administrative detention should last only for the necessary time for deportation or expulsion to become effective. The Human Rights Committee noted that "detention should not continue beyond the period for which the State can provide appropriate justification."<sup>140</sup> The Working Group on Arbitrary Detention states that a maximum period should be set by law, and the detention may in no case be indefinite or of excessive length.

When foreign nationals are arrested or detained, Article 36 of the Vienna Convention on Consular Relations of 1963 provides that, if requested, the authorities of the receiving State must then notify the Consulate of the sending State without delay that its national has been deprived of his/her liberty. Any communication shall be facilitated and consular access to the detainee shall be granted.

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## H. Advances in Protection Mechanisms of Human Rights by Region

International human rights instruments bind States to abide by international principles when drafting legislation and policies that affect the welfare of migrants, but it is the sovereign right of States to regulate the entry of aliens with the terms and conditions of their stay.

Regional differences exist regarding the acceptance of key instruments on the protection of international migrants.<sup>141</sup> (See: Appendix A for the Adoption of Key United Nations Legal Instruments on International Migration). While the Convention and Protocol Relating to the Status of Refugees enjoy general acceptance with ratification by 144 countries, many Member States are not yet inclined to ratify the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. Effective implementation of the Convention could face serious difficulties if not widely accepted.

The majority of African countries have ratified the key instruments regarding international migration. In the Americas,<sup>142</sup> many countries have ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children<sup>143</sup> and the Protocol against the Smuggling of Migrants by Land, Sea and Air.<sup>144</sup> There is also general acceptance for the International Convention on the Protection of the Rights of All Migrant

Workers and their Families,<sup>145</sup> and at present, 15 countries in the region have ratified it. Countries in the Asia and Pacific region have made a significant step towards the adoption of regulations and policies that affect the welfare of migrants by ratifying international conventions on the protection of migrants. The Protocol to Prevent, Suppress and Punish Trafficking in Persons and the Protocol against Smuggling of Migrants, both adopted in 2000, have been ratified by 20 countries in the region, indicating the strong commitment of governments to combating such crimes. As in other regions, ratification of the Migrant Workers Convention is fairly low compared to other core UN conventions. Currently, 8 countries have ratified it in the region.<sup>146</sup>

Despite disappointing levels of ratification, the Migrant Workers Convention still has a significant meaning within international law, as it is the broadest framework for the protection of migrants' rights and for guidance of States on how to develop migration policies while respecting the rights of migrants.<sup>147</sup> The entry into force of the 1990 Migrant Workers Convention in 2003 allows it to be cited as an authoritative standard. In practice, this has made it an instrument of reference for non-ratifying countries as well as States Parties, even those that have not agreed to be bound by its standards.

In addition, some world regions have independent human rights bodies, connected to regional inter-governmental bodies, while others are covered by regional offices

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of the United Nations High Commissioner for Human Rights (OHCHR). The OHCHR maintains regional offices for Central Africa, Eastern Africa, Southern Africa, Western Africa, Central Asia, Southeast Asia, the Pacific, Latin America and the Middle East regions, each of which has its own migration streams and issues.

**Africa:** In 1969, the Organization of African Unity<sup>148</sup> created a new treaty to broaden the United Nations definition of “refugee” to include, “every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.”<sup>149</sup> In 1981, Member States of the Organization of African Unity adopted the African Charter on Human and Peoples’ Rights,<sup>150</sup> which entered into force in 1986, to promote and protect human and people’s rights. The charter of the Organization of African Unity stipulates that freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspiration of the African peoples. In Article 2 of the charter, Member States pledge to promote international cooperation having due regard for the Charter of the United Nations and the Universal Declaration of Human Rights. The Charter also established the African Commission on Human and Peoples’ Rights, which is charged with ensuring the promotion and protection of human and peoples’

rights throughout the African continent, complemented and reinforced by the African Court on Human and Peoples’ Rights.

Since 2004, the African Commission on Human and Peoples’ Rights has had a Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa. The African Special Rapporteur has monitored and reported on violations of the human rights of migrants and asylum seekers, as well as engaged in promotional activities with States in the region.<sup>151</sup>

**The Americas:** Over the years, countries in the Americas have adopted numerous international instruments which became the building blocks of a regional system for the promotion and protection of human rights. The very beginning was the American Declaration of the Rights and the Duties of Man,<sup>152</sup> approved in 1948 creating the Organization of American States (OAS).<sup>153</sup> This declaration constituted the initial system of protection. The American Declaration highlights universality in its opening paragraphs “[T]he essential rights of man are not derived from the fact that he is a national of a certain state, but are based upon attributes of his human personality”<sup>154</sup> and in Article 17, “Every person has the right to be recognized everywhere as a person having rights and obligations, and to enjoy the basic civil rights.”<sup>155</sup>

In 1959, the Inter-American Commission on Human Rights (IACHR) was created to monitor observance of the rights stipulated

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in the American Convention. The Inter-American Council of Jurists was entrusted with the preparation of a draft convention on human rights and the creation of an inter-American court for the protection of human rights. In 1969, the OAS convened an Inter-American Specialized Conference on Human Rights which adopted the American Convention on Human Rights. The Convention entered into force in 1978, with the purpose of consolidating in this hemisphere a system of personal liberty and social justice based on respect for the essential rights of man. The Convention also established the means of protection, namely the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.

The Inter-American Commission on Human Rights and the Inter-American Court on Human Rights have paid close attention in the past decade to the human rights of migrants and asylum seekers. In 1984, the Inter-American Commission broadened the definition of refugee applicable in the region through its Cartagena Declaration<sup>156</sup> to include: “persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.”<sup>157</sup>

Since 1997, the Inter-American Commission on Human Rights has appointed one of its own Commissioners as Special Rapporteur on Migrant Workers and

their Families. The creation of the office of the Special Rapporteur illustrates the interest that OAS Member States have in a group characterized by special vulnerabilities and that thus is particularly prone to human rights violations. The Special Rapporteur has been active in the promotion and protection of the human rights of migrants in the region, issuing annual reports and making country visits, among other activities.<sup>158</sup>

The Inter-American Court for Human Rights<sup>159</sup> has worked extensively to protect the human rights of migrants and has developed an important Consultative Opinion on the legal status and rights of undocumented migrants.

Furthermore, the Regional Conference on Migration,<sup>160</sup> a regional body established in 1996 by countries in North and Central America, has frequently taken up the issue of the protection of the human rights of migrants in the region.

In general, there is a relatively high degree of cohesion and formal commitment to international instruments relating to the human rights of migrants in Latin America and the Caribbean, which is reflected in the high participation of countries in the formulation processes. Together with the existence of the Special Rapporteurs of the United Nations (both Latin Americans), the organs of the OAS developed several initiatives that serve; *inter alia*, to support the process of the Summit of the Americas. In addition, in inter-governmental fora

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on migration and sub-regional agreements on integration – such as in MERCOSUR, countries have shown an understanding regarding aspects that affect the integrity of all migrants, although without binding action. Lastly, there are significant commitments in the process of the Ibero-American Summit, especially after the agreements of Salamanca (2005),<sup>161</sup> which established international migration as a central issue of the Ibero-American Community and started on the path to design a coordinated agenda based on the principle that migration is a common good, part of its heritage and essential for its social development and cohesion,<sup>162</sup> Montevideo (2006)<sup>163</sup> and Santiago (2007)<sup>164</sup> and with the launch of the Ibero-American Forum on Migration and Development (Cuenca, Ecuador, 2008).<sup>165</sup>

Latin American civil society actively defends the human rights of migrants, with successful initiatives that have provided significant inputs into the work of the United Nations. The role of civil society organizations is relevant in this area, but much remains to be done in order to move forward.

**Asia and Pacific:** Despite the growth of international migration in Asia and the Pacific, protecting the rights of migrants remains on the fringes of discussion. A notable shortcoming in policy debates has been the rights of migrant workers. While there are bilateral agreements between some countries of origin and destination in the region, mostly through memoranda of understanding, these primarily regulate

the movement of workers and have little impact on the treatment that migrant workers receive in the country of employment.

**Europe:** The European Convention for the Protection of Human Rights and Fundamental Freedoms was drawn up within the Council of Europe. It entered into force in 1953. All 47 members of the Council of Europe are signatories of the Convention. Based on the Universal Declaration of Human Rights, the European Convention aims to represent the collective enforcement of certain rights set out in the Universal Declaration. Besides laying down a catalogue of civil and political rights and freedoms, the Convention set up a mechanism for the enforcement of obligations entered into by Contracting States. Three institutions were entrusted with the responsibility of enforcing the obligations: the European Commission on Human Rights (1954), the European Court of Human Rights (1959) and the Committee of Ministers of the Council of Europe composed of the Ministers of Foreign Affairs of the Member States or their respective representatives. The European Court has developed an extensive jurisprudence on the human rights of migrants, applying both European law and treaties as well as international human rights documents including the Convention on the Rights of the Child and the Convention and Protocol Relating to the Status of Refugees. Its decisions cover issues ranging from the relative weight to be accorded the right to family unity and the power to deport as well as decisions interpreting the meaning of “refugee.”<sup>166</sup>

# IV. Challenges of Protecting the Human Rights of Migration

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One of the main challenges in the protection of the human rights of migrants is the ratification, implementation and enforcement of existing human rights instruments. Inequality and discrimination persist and the objective of universal ratification has not been achieved. The challenge is to protect the rights of migrants by strengthening the normative human rights framework affecting international migrants and by ensuring that its provisions are applied in a non-discriminatory manner at the national level. In many cases, migrants' rights are undermined because the legal and normative framework affecting migrants is not well articulated or because officials are not familiar with the framework, do not comprehend its implications and do not know how to put it into practice or monitor its implementation. It is essential to create awareness of migrants' rights and build national capacity to formulate and implement migration policy that respects the human rights of migrants.

Protection of the human rights of migrants is ultimately the responsibility of the State. However, cooperation between governments in countries of origin, transit and destination, as well as non-governmental organizations, civil society and migrants themselves is essential to ensure that international human rights instruments

are implemented and that migrants are aware of their rights and obligations.

Implementation is a major obstacle to migrants' enjoyment of rights. In many countries, laws do protect migrants but are incompletely implemented: migrants may not know about their rights; the administrative procedures to claim them are highly complex; and some government administrations do not do everything that is possible to ensure that migrants are adequately protected. States fear that these treaties would impede on their sovereign right to decide upon admission; some governments lack the capacity to implement long-term migration policies that would include the provisions of an ambitious treaty like the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW). The human rights-based approach of international treaties regarding migration may at times clash with States' current priorities, which are often dominated by security concerns. The search for cheap labour underlies attitudes toward migration and may jeopardize the protection of migrants' labour rights. Moreover, international human rights treaties are inadequately known and understood. This particularly applies to irregular migrants, whose situation makes them more vulnerable and who

may be afraid of possible denunciations in case they claim the rights that are afforded

to them by both national laws and international instruments.<sup>167</sup>

### *Promoting and Protecting the Enjoyment and Full Realization of Human Rights*

The Office of the High Commissioner for Human Rights (OHCHR) is the United Nations office with primary responsibility for promoting and protecting the enjoyment and full realization of human rights for all. OHCHR supports the work of the United Nations human rights bodies and mechanisms, such as the Human Rights Council, the Universal Periodic Review, the Special Procedures, and the treaty bodies set up for monitoring States Parties' compliance with core international human rights treaties, and strengthens human rights across the United Nations system. Migration is a cross-cutting issue for OHCHR, as the essence of the mandate of the organization is promoting the *universality* of the rights of human beings, regardless of nationality. This concept is enshrined in the key message of the 60<sup>th</sup> Anniversary of the Universal Declaration of Human Rights: "Dignity and justice for all of us."

OHCHR works to ensure the enforcement of universally recognized human rights norms for migrants through: promoting the universal ratification and implementation of the major human rights treaties, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; promoting the acceptance of the competence of the treaty bodies to hear individual complaints; engaging with States, civil society actors and migrants to ensure that recommendations put forward by the treaty bodies are implemented; and ensuring that States cooperate with Special Procedures mandate holders, especially the Special Rapporteur on the human rights of migrants, through his country visits and communications with governments.

Vulnerable groups also include elderly migrants, those with disabilities and indigenous peoples. As migrants, the elderly, those with disabilities and the indigenous are often marginalized and excluded from mainstream society. Lacking supportive social networks and access to basic social services, many of them are dependent

on others for survival. While the elderly may also suffer from age discrimination and abuse, the disabled and indigenous peoples often suffer from discrimination merely because they are different. Safeguarding the human rights of these vulnerable groups should be part of the overall strategy of ensuring migrants' rights.

## *Identifying Impediments to International Human Rights Instruments*

Research sponsored by the United Nations Educational, Scientific and Cultural Organization (UNESCO) on the obstacles to the human rights treaties shows that their unpopularity stems from several crucial factors: States fear that these treaties would impede on their sovereign right to decide upon admission; some governments lack the capacity to implement long-term migration policies that would include the provisions of an ambitious treaty

like the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW); the rights-based approach of these treaties clashes with States' current priorities, which are often dominated by security concerns; the search for cheap labour underlies attitudes toward migration and are incompatible with the protection of migrants' labour rights; and the treaties are inadequately known and understood.

In many regions where States have neglected human rights obligations vis-à-vis migrants, or limited their entitlements to deter further immigration, demographic factors and market forces exercise pressure on governments to improve conditions for migrant workers, especially in times of increased international competition for both skilled and unskilled labour. Leaving respect for human rights to the forces of the market is not acceptable. A human rights-based approach calls for recognition of the fact that migrants have rights regardless of their skills-level and legal status.

Practical measures are indispensable to the implementation of migrants' rights and should therefore be based upon a normative framework and should be guided by the international human rights law regime that defines migrants' rights. Implementing rights first implies knowing exactly what rights are to be afforded to migrants. In many countries, this is still a contested issue, particularly as far as irregular

migrants are concerned. It is important to recall that all migrants, including those in irregular status, enjoy the human rights set out in the Universal Declaration of Human Rights and further elaborated in the core international human rights instruments.

In order to ensure an effective platform for the protection of the human rights of migrants, it is necessary to be cognizant of the international human rights instruments, eradicate the prejudices that impede their effective implementation, and demonstrate their validity. It is essential for all stakeholders including immigration officers, migration policy makers, law enforcement officials, the migrants themselves as well as the public at large to know the international legal framework governing migration and displacement, including international human rights instruments. Awareness of applicable laws, and knowledge of legal definitions (such as 'refugee' and 'migrant worker') and distinctions, e.g. between human trafficking and the

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smuggling of migrants, are often not as widespread as they should be.

As realizing a human rights-based approach to migration requires multi-stakeholder engagement, a better understanding of the rights and obligations of States, migrants and other stakeholders under international law must be promoted at all levels of governance and across sectors. Indeed, the link between training and the protection of the human rights of migrants was stressed by Gabriela Rodriguez Pizarro, the former United Nations Special Rapporteur on the Human Rights of Migrants: “Training of key stakeholders including ministry officials, consular officials, border guards, social and legal counselors is essential in offering adequate protections to migrants... it should assist in sending the message that a human rights approach to migration does not mean ‘opening the borders to all migrants’ rather ensuring that migration can take place in a human, orderly and dignified manner.”<sup>168</sup>

Fostering cooperation between States also implies a common understanding of the principles underlying migrants’ protection. Given the transnational nature of migration flows, cooperation is indeed necessary – as no State alone is able to govern the cross-border movements of people. Yet, evidence shows that States have different approaches to migration management and, consequently, sometimes divergent views on their policy priorities in terms of migration management. This fact points to the need for common

standards that make cooperation possible. Only if States attempt to speak the same language and share the same conceptions of what migrants’ rights are about can they truly engage in not only discussions, but also actual cooperation.

Moreover, standards are crucial in guaranteeing the universal distribution of rights. It has become clear that migrants constitute a heterogeneous category: there are documented and undocumented migrants, migrant workers and family members, skilled and low-skilled migrants, men and women, etc. In practice, such heterogeneity may generate differential treatment among migrants: skilled migrants would be better treated than their unskilled counterparts, migrant workers would be welcome but not their family members, migrant women suffer from specific discriminatory problems, etc. Not all migrants face the same vulnerability vis-à-vis the protection of their rights.

While arguments of principle in favor of a strong international human rights law regime abound, reality indicates that some States display reluctance toward migration-related conventions. This applies to International Labour Organization (ILO) Conventions 97 on Migration for Employment and 143 concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (ratified by 47 and 23 States respectively) as well as to the International Convention on the Protection of the Rights of All Migrant Workers and Members of

their Families (ICRMW), ratified by 39 States.<sup>169</sup> Still, 79 States have ratified or acceded to at least one of these three legal standards/conventions on migration and migrant workers; a number of States have ratified two of them and several have ratified all three complementary instruments. The low level of ratification of these three treaties is only partially remedied by the fact that migrants are protected by other – and more widely ratified – human rights instruments, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

A new impetus should be given to the ratification of human rights instruments. To a large extent, renewed and coordinated efforts involving both non-governmental organizations (NGOs) and international organizations have given a new visibility to these treaties, in particular to the ICRMW. In addition, the contemporary interest in international migration management, indicated, *inter alia*, by recent events such as the High-Level Dialogue on International Migration and Development<sup>170</sup> and the Global Forums on Migration and Development,<sup>171</sup> provide a key opportunity to bring fresh air to international human rights law.

### *Promoting and Implementing International Human Rights Law*

An effective contribution to the promotion and protection of the rights of beneficiaries is now an integral part of the programmes of the International Organization for Migration (IOM), conceptually and in practice. In 2005, IOM established a Department of International Migration Law and Legal Affairs in order to streamline the organization's work in the promotion and

implementation of international migration law (IML). The Department, *inter alia*, seeks to promote awareness and understanding of IML works with governments in the development of migration legislation in accordance with IML and seeks through its capacity building activities to promote respect for the human rights of all migrants.

For instance, the second Global Forum on Migration and Development<sup>172</sup> will address the protection of migrants and will focus on practical means to improve migrants' empowerment and protection. This issue of protection will be tackled from both the perspective of sending countries (aiming at protecting nationals living abroad) and of destination countries (responsible for

ensuring the human and labour rights of the people living on their territory), with particular emphasis on how States can cooperate to advance and ensure the protection of migrants.

The Global Commission on International Migration (GCIM)<sup>173</sup> emphasized that international cooperation in the field of migration

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is *conditional* on a minimum level of national capacity. This also applies to the respect for and fulfillment of international human rights obligations. A pragmatic approach may require acknowledging the fact that some States do not have the capacities to fulfill all human rights obligations immediately and thus need to work towards “progressive delivery based on current capacities.”<sup>174</sup> Nevertheless, this should not preempt the responsibility to apply core human rights principles, such as the principle of non-discrimination. It certainly calls for long-term commitments to capacity-building based on predictable funding. The sustainability of such efforts will depend on the successful transition from international engagement to local ownership, which should be well planned and managed.

## A. Irregular Migrants

Irregular migration is not only a phenomenon occurring between developed and developing countries, but in all parts of the world. The abusive conditions under which irregular migrants may move and live are well documented. While the causes of irregular migration are as numerous as the phenomenon is diverse, it has been strongly argued that control measures alone are insufficient to tackle irregular migration and that a comprehensive approach is required, including the need to adopt a package of more “constructive” measures. The protection of the rights of this vulnerable group forms an integral aspect of such a comprehensive approach

which also comprises the need to address informal labour markets where both national and migrant workers are found; provide more regular avenues for migrant workers to be able to meet the demand for labour in *all* sectors of a destination country’s economy; and give serious consideration to the regularization of those with irregular immigration status.

An important way of addressing the phenomenon of irregular labour migration is to effectively protect the rights of those with irregular status in order to undermine any incentives employers and intermediaries might have in encouraging such movements.

For decades many States have responded to persistent irregular migration by intensifying border controls, with the incorporation of a human rights perspective to varying degrees. State measures of border enforcement, anti-trafficking initiatives and immigration control measures have ranged from an increased use of the armed forces or military methods of policing the border, confiscation of the proceeds of trafficking, tougher sanctions against the employers of undocumented migrants and commercial carriers that bring to their borders foreigners without proper documentation, radar surveillance, and detention and expulsion of unwanted aliens. This has also involved, *inter alia*, fingerprinting, the erection of walls and the deployment of semi-military and military forces and hardware in the prevention of migration by land and sea.

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While many of these measures fall legitimately under the auspices of managing incoming migration flows, they can fail to take into account both the international human rights framework that exists to universally protect all people on foreign territory, regardless of nationality, and can result in abuses of the foreign-born population in all stages of the migration process (including transit and return). Despite the increasingly complex methods necessary to manage migration, States and other governmental and non-governmental interlocutors need to better incorporate the protection of migrants into these measures (e.g. through training and capacity building, and through development and implementation of migration management policies). This position is not intended to excuse irregular migration, nor encourage it, but rather to underscore the importance of States to adhere to international human rights standards during engagement with all migrants, whether documented or not. Accordingly, States should take measures to further promote legal migratory channels and revise policies and practices to incorporate enhanced protection of migrants during all phases of the migration process.

The United Nations Development Programme (UNDP) Human Development Report<sup>175</sup> notes that in both richer and poorer countries, one of the greatest challenges for migrants is their legal status. There is a 'sea of gray' between full citizenship and legal status. This uncertainty affects migrants' full participation and

entitlements in society, such as receiving health and education services and ability to enter the work force without being subjected to discrimination.<sup>176</sup> States should cooperate with a view to fostering regular migration and investing in providing legal protection to migrant workers, instead of just focusing on security aspects.

## B. Female Migrants

Over the last few decades there has been a steady increase of female participation in international migration movements. In 2005, female migrants accounted for 49.6 per cent of all international migrants. However, there are differences in the sex-distribution of migrants among the various regions in the world. Female migrants account for 53.4 per cent of all international migrants in Europe and 51.3 per cent in Oceania, exceeding therefore the number of male migrants, while they comprise only 44.7 per cent in Asia and 47.4 per cent in Africa. The percentage of female migrants in sub-Saharan Africa has increased from 40.6 per cent in 1960 to 47.2 per cent in 2000. In comparison, the share of female migrants in Eastern and South-Eastern Asia increased over the same period from 46.1 per cent to 50.1 per cent in 2000.<sup>177</sup>

The causes of the regional differences can be found in the regulations administrating the admission of migrants in the various countries of destination and those governing the departure from countries of origin,

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in conjunction with the correlation of factors determining the status of women in the countries of origin and destination.<sup>178</sup> The stock of female migrants has actually grown at a faster pace than the stock of male migrants in the most important countries of destination, in developed as well as developing countries.<sup>179</sup> But equal numbers do not necessarily translate into equal treatment.<sup>180</sup>

It is becoming increasingly evident that migration is not a “gender-neutral” phenomenon: men and women display differences in their migratory behaviours and face different opportunities, risks and challenges, including factors leading to irregular migration; vulnerability to human rights abuses, exploitation, and discrimination; and health issues. The experience of female migrants differs from that of men from the moment women decide to migrate.

While historically women tended to migrate for marriage or family reunification, recent decades have seen an increase in women migrating independently and as main income-earners. Today, female migrants make up approximately half of all migrants. The increased female migration has raised both prospects and challenges. Female migration has a tremendous potential. It can advance gender equality and women’s empowerment through opportunities that it opens for greater independence and self-confidence. It can be a vehicle for enhancing the status of women by breaking through oppressive gender

roles. It can give rise to structural and institutional changes as well as changes in mind set, understanding and lifestyle. It can redress social and economic imbalances. Migration provides women with income and the status, autonomy, freedom and self-esteem that comes with employment. Women become more assertive as they see more opportunities opening up before them.<sup>181</sup>

However, gender inequalities, including violence against women, can increase with migration, therefore generating risks and vulnerabilities. In some environments, female migration is accompanied by human rights violations, exploitation and abuse. Female migration can also involve a significant amount of tension, especially since it often breaks through established values and practices and produces higher psychological costs for women than men.

Female migrants often face multiple discrimination in the migration process on account of their nationality, immigration or social status as well as gender. The continued abuses suffered by many women migrants, who fulfill important but often undervalued tasks in host societies, and the frequent absence of formal protection in national labour legislation raise important questions in safeguarding the human and labour rights of female migrant workers. Addressing gaps in many countries’ legislation in recognizing domestic work as formal employment, with the same conditions of work and protections as other workers, would make significant inroads

into addressing challenges faced by many migrant women. Finally, the exploitation and abuse migrant women face in the context of

trafficking in human beings requires strong government responses in the areas of prevention, protection and prosecution.

### *Assisting Member States in Utilizing Data in Order to Understand the Phenomenon of Increasing Female Migration*

The Global Migration Group (GMG) member agencies collaborated to enhance understanding of the phenomenon of increasing female migration by supporting various research projects and data collection activities. In Ghana, a study on female migration conducted jointly by the International Organization for Migration (IOM), the United Nations Population Fund (UNFPA), the Ghana Immigration Service and the University of Ghana will be used

for strengthening policy dialogue and advocacy for gender equality in the migration process. In Haiti, a joint project of the United Nations Children's Fund (UNICEF), UNFPA and the World Bank contributed to the process of awareness raising among policy makers regarding demographic data related to youth, emphasizing the critical issue of migration through several workshops and presentations for mayors, journalists, academics, and national government cadres.

Women should be made aware of their options, regarding the migratory process itself, and conditions in the country of destination, so that they can make informed decisions. While the fact that women are migrating on their own rather than as part of family migration seems to indicate greater freedom and choice, very often this is not the case at all.

Discriminatory applications of migration law expose women to greater risks of human rights abuse. While most migration policies are not designed to favor one gender over the other, women can be denied entry due to restrictions imposed on admission of migrants for female types of occupations. Restrictive regulations which give women less chance of migrating legally than men

force them to migrate clandestinely. When legal channels are not available, many women see trafficking or smuggling as the only option to cross the border. This places them at increased risk of exploitation and abuse. The more opportunities there are for regular channels of migration, the less incentive will there be for trafficking of people, exploitation and serious abuse of migrants in the countries of origin, transit and destination.

Some women turn to, or are lured by, "brokers" to help them migrate clandestinely leaving them open to discrimination, exploitation, violence and abuse. Many become victims of human trafficking. Girls and women victims of trafficking, refugees, transit and irregular female

migrants are most vulnerable to human rights abuse. Their situation is exacerbated by the failure of countries to address this tragedy.<sup>182</sup> Female victims of trafficking have little recourse to the law. Many of them are in the country illegally and are afraid to report abuses and seek help from local authorities. They are literally slaves of their traffickers, trapped in a situation over which they have no control. Many of the women suffer extreme violence, illnesses and diseases, and irreparable physical and psychological harm. Women migrants who are forced into sex work are also at great risk of contracting HIV/AIDS.

Female migrants who flee conflict situations are also often subjected to gender-based violence, sexual abuse and exploitation. Refugee camps do not always provide protection from such abuse.

Also of concern is the growing number of transit migrants, although female migrants represent only a small proportion of all migrants in transit. The exact magnitude of transit migration is unknown since data on the inflows and outflows of foreigners, both legal and undocumented, as well as information on their duration of stay and their intentions are not available. Migrants stay for extended periods in transit countries voluntarily or because of a growing difficulty to move onwards. The vulnerability of female migrants increases with the prolongation of the migratory process. Female migrants who are victims of sexual assault in countries of transit demonstrate the need for special protection schemes to ensure the right to physical integrity and protection from criminal assault.<sup>184</sup>

### *Raising Awareness about HIV/AIDS*

In Ukraine, the United Nations Development Programme (UNDP) organized and sponsored the preparation of a Manual on HIV/AIDS and

Human Rights, an analysis of legislation on HIV and refugees, and a survey on adherence of migration services to this legislation.

Although legal channels to migration exist, there is no guarantee that female migrants will obtain the jobs that they were promised. Many women and girls typically apply for advertised jobs as babysitters, models, hairdressers, dancers or waitresses with friends or relatives acting in some cases as recruiters. Once in the country

of destination, they realize that these jobs do not exist. Instead they find themselves in the hands of traffickers who often violate victim's rights by seizing passports or other identity documents, not living up to promises or contracts, withholding pay, and forcing women into subjugation or even sex work. The rule of law and

effective criminal justice systems actively addressing the crimes of human trafficking and migrant smuggling are essential for the protection of migrants' rights and of those who are trafficked and smuggled. Adequate legal frameworks and institutions in the countries of destination are essential to ensure that justice is served

and that victims receive compensation for the suffering they endure. Strengthening the criminal justice response to migrant smuggling and human trafficking is a core element. When designing such policies, upholding human rights and protecting the safety and lives of migrants must be paramount.

### *Raising Awareness about the Risks of Trafficking in Women and Girls*

The United Nations Population Fund (UNFPA) is engaged in a project that deals with trafficking of Nepalese women and girls into India. Traffickers typically attract poor girls with the promise to work in the urban areas or abroad. Well aware of the risk, families send their daughters to brothels in order to dispose of the economic burden on the family. The Government of Nepal identified 26 districts from which women and girls have disappeared. In response, the Reproductive Health Initiative for Youth in Asia (RHIYA), a joint initiative of the European Union and UNFPA, and in collaboration with non-governmental organizations, focuses on 19 impoverished districts. One of the goals of the project is to raise the awareness among the community about the risks of trafficking. It also provides

girls and women with educational training and empowerment opportunities in their country of residence. Another goal is the reintegration of trafficking survivors into their communities, through efforts designed to reduce stigmatization and provide social and legal services. The initiative has proved to be very effective. One RHIYA staff member helped to save three adolescent girls the day they were about to be trafficked after learning that the young men who promised the girls work were, in fact, traffickers. In another case, a young woman, remembering the RHIYA educational sessions on trafficking, narrowly escaped being trafficked by seeking help from a border NGO. In Timor-Leste, UNFPA supports training in human trafficking for national police and immigration officials.

Many female migrants lack access to much-needed health services. National and local health authorities typically pay little attention to the health conditions of international migrants. Policymakers rarely address issues of family planning or reproductive health of migrants but focus more on infectious diseases that migrants might bring into the country. Even when health

services are available, other obstacles, including language and communication problems, cultural differences regarding the perception of health and health care, and lack of information about what is available often prevent women migrants from seeking medical care and health services. Female migrants are less likely to seek prenatal services than nationals, especially

when their official status is uncertain. Female migrants who have been sexually abused or forced into sex work and live with HIV/AIDS often do not seek medical attention out of shame or fear. Female genital mutilation (FGM) is another issue that has caused concern in countries receiving migrants from countries where this practice is prevalent, because of the presence of gynecological problems and psychological

trauma associated with FGM.<sup>185</sup> In dealing with irregular migration of women, States must take into account that during the migration process women's health conditions could have been negatively affected through FGM and reproductive health-related illnesses and should therefore provide necessary services to avoid further complications or even the death of female migrants.

### *Assisting Female Migrants in Receiving Health Care and Reproductive Health Services*

In Bosnia-Herzegovina, the United Nations Population Fund (UNFPA) supports a shelter run by the International Organization for Migration (IOM), which serves as a safe house where female migrants receive counseling and health care. It also provides reproductive health services to trafficked women and girls. UNFPA also supports reproductive health programmes for refugees and persons in post-conflict situations. Pregnant women and children receive supplementary food and immunization services, maternity health kits, condoms, treatment for sexually transmitted infections and mosquito

protection. Working in refugee camps, UNFPA supports the International Rescue Committee in mobilizing elders, women's groups and community leaders to raise awareness of family planning, maternal and child health, and formulate strategies to change harmful practices. IOM engages in activities to strengthen the response capacities of Ministries of Health in the provision of preventative and curative reproductive health services to migrant women to promote the right to reproductive health and, indeed, the right to life, of migrant women.

The lack of sex-disaggregated migration data and gender-sensitive research is a major challenge. Good data on flows of international migrants and cyclical migration, as well as research on the root causes of migration and the extent of human rights abuses are essential to sensitize policymakers to the needs of female migrants and for evidence-based gender-sensitive

policy formulation and programme implementation addressing the needs of female migrants. Data and research are needed to identify the gaps in gender equality throughout the entire migration process, develop strategies to close those gaps, and monitor implementation. This knowledge may help in the process of managing migration. The international women's

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rights regime acknowledges the different rights of women at distinct stages of their lives. To protect the human rights of female migrants throughout the entire migration process, it is essential to consider female migration from a life cycle approach, examining the situation of women and girls before they migrate, as they migrate, their situation abroad, and upon return to the country of origin.<sup>186</sup>

Insufficient attention to female migration holds back development and reduces the possibility of achieving the Millennium Development Goals (MDGs).<sup>187</sup> The international community should be made aware of the contributions of female migrants to countries of origin and destination. Effective measures must be taken to combat misconceptions and misleading information on the female migratory profile. Existing laws and international instruments and agreements should be strictly enforced, and legal protection systems should be put in place to ensure the protection of the human rights of female migrants.<sup>188</sup> Such protection mechanisms should include, inter alia, laws and policies in compliance with international human rights standards, including laws and policies that recognize the right of female migrants to available, accessible, acceptable and high quality basic services; freedom from discrimination based on sex, origin, religion, etc.; the right to access to justice, including legal assistance in cases where female migrants need it; effective institutions that promote and protect the rights of female migrants, including the judiciary and national human

rights institutions such as ombudspersons and national human rights commissions; and mechanisms ensuring respect and protection of the rights of female migrants, such as redress and reparation procedures in case of violations of human rights. All policies and legislation concerning international migration should be human rights-based. Strategies in the country of origin, transit and destination should encompass protection mechanisms relevant to female migrants.

## C. Migrant Children

Children are crossing international borders in greater numbers and face many risks in the process. Children and women are particularly vulnerable to trafficking, abuse and exploitation, especially during prolonged migratory processes.<sup>189</sup> Risks for children are even greater when they travel unaccompanied,<sup>190</sup> separated<sup>191</sup> or without documentation. Even when migrating with their families, however, the migration process is not risk free. Migrant children are often confronted with serious institutional, social and psychological barriers, especially when parents occupy marginal positions in the country of destination.

In labour sending countries, a growing number of children are left behind by one or both parents. In host countries, migrants and their families are often vulnerable to discrimination, poverty, insecurity and social marginalization. For undocumented

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migrants, there are additional concerns such as under-paid wages, lack of access to educational, health and basic social services as well as the possibility of arrest, detention and repatriation. The rights of all children affected by migration processes have, therefore, become a matter of growing concern to the global community. However, there is also a growing awareness of the value of promoting, protecting and fulfilling children's rights in view of the accompanying empowering effect that can enable them to claim their rights.

Applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification should be dealt with in a positive, humane and expeditious manner. States Parties should further ensure that the submission of such a request should entail no adverse consequences for the applicants and for the members of their family. A child whose parents reside in different States should have the right to maintain on a regular basis, save in exceptional circumstances, personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties the right of the child and his or her parents to leave any country, including their own, and to enter their own country should be respected. The right to leave any country should be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order, public health or morals or the rights and freedoms of others and are consistent with the

other rights recognized in the Convention on the Rights of the Child.<sup>192</sup>

Children of migrant workers, whether they have migrated with their parents or were born in the host country, may be denied access to basic services, including health and education, with language difficulties often being a serious impediment to the latter. Children who are not in school, whether due to denial of access or the pressure to contribute to family earnings, become vulnerable to the worst forms of child labour, including commercial sexual exploitation. When children migrate with parents or are born to migrants in destination countries, the benefits of a better standard of social services may be reduced by disadvantages such as discrimination, xenophobia and racism, relative poverty, language barriers, unequal rights and the lack of integration policies. Migrant children may also be the subject of adult decision-making by members of the family or others, which in some cases also exposes them to significant harm. The vast majority of children who migrate do so for the purpose of family reunification. Several countries apply extreme measures, allowing only their own nationals the opportunity to emigrate, including for the purpose of family reunification. Migrants then have no option but to seek irregular ways to migrate and this places children at high risk, particularly when they travel unaccompanied.

Legal identity, a problem faced by all migrants, is particularly difficult for

children. In some countries, children born to foreign parents do not generally qualify for citizenship. Irregular migrants may also face difficulties in obtaining birth registration for their children. Children

without identification documents are usually excluded from formal schooling, and it may be difficult for them to socialize and to create social networks because of language and cultural barriers.

### *Measuring the Impact of Migration and Remittances on Children Affected by Migration*

The United Nations Children's Fund (UNICEF) has recently developed a survey instrument to measure the social impact of migration and remittances on children left behind and is working jointly with the United Nations Department

of Economic and Social Affairs (UNDESA) to estimate the gender disaggregated numbers of international migrant children, children left behind and adolescents.

In addition, migration puts unique stresses on children – leaving a familiar social context and extended family network; entering a new place, culture, and language; and harsh conditions endured before or during the transition. The stress can be even more intense for adolescents. Migrant children who do not connect in some meaningful way with their peers, family or school are at an increased risk of depression, self-harm, including suicide, substance abuse, failing or dropping out of school, mental health problems and entering into conflict with the law.

The impact of migration on children, especially girls, must be seen in the broader context of poverty and conflict, and within the perspectives of vulnerability and resilience, gender relations and children's rights. From a gender and rights-based approach, it is important to foster

constructive solutions to better meet the challenges faced by children and adolescents moving from one country to another in search of security, and protection, and improved standard of living.<sup>193</sup>

Migration should be positioned within the context of a human rights framework that provides protection for all children, adolescents and women affected by migratory processes. States that are parties to international human rights treaties are obligated to offer protection to the rights of non-nationals as well as direct protection to children as long as they remain in their territory. Migrant children become non-nationals or aliens once they leave home and cross national borders and face a new social environment,<sup>194</sup> but these circumstances should not imply a restriction of their human rights, whatever their migration status.

## *Assisting Member States in Developing Protection Mechanisms for Children, Adolescents and Women Affected by Migration in Compliance with the Provisions of the Convention on the Rights of the Child*

The United Nations Children's Fund (UNICEF), guided by the Convention on the Rights of the Child (CRC), is dedicated to the realization of the rights of children and women, including those affected by migration. Its efforts are directed towards finding practical solutions to the challenges that migration can bring. UNICEF is strongly committed to working directly with governments and civil society to develop protective policies for children, adolescents and women affected by migration, including combating child trafficking and supporting child protection initiatives. UNICEF recognizes that the impact of migration on children left behind, migrant children and adolescents must

be seen in the broader context of poverty and conflict, and within the perspectives of vulnerability and resilience, gender relations and children's rights. Constructive solutions need to be fostered, from a gender and rights-based perspective, to better meet the challenges faced by these children and adolescents. With this purpose, UNICEF carries out research and evidence-based analyses, as there is a pressing need for developing effective policy and advocacy campaigns based on reliable estimates. UNICEF is working with ILO and other members of the Global Migration Group (GMG) in promoting the rights of children in the key areas of migration, youth, and employment.

Whether on their own or with family, children are increasingly becoming migrants in search of survival, security, improved standards of living, education or protection from abuse. Also affected are children left behind by one or both parents and children living in areas with high migration rates. Policies should take cognizance of how migration affects these children and protect their rights by enhancing access to benefits of migration while simultaneously protecting against vulnerabilities.

The CRC and the CEDAW provide the rights and gender framework within which the special needs of migrant women and girls can be addressed. These treaties oblige States to maintain a gender perspective

in migration laws and policies, particularly in receiving countries. These areas require greater attention from researchers as well as policy and law makers dealing with migration issues. The challenge for policy and law makers is to establish rules and regulations that meet the requirements of international conventions, including the CRC and CEDAW.

"Protection gaps" and grey areas exist in irregular and mixed migration flows. The increasing numbers of unaccompanied children crossing borders, including through irregular maritime migration, puts them at risk and exposes them to exploitation, abuse and violation of their rights. Unaccompanied migrant children may

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suffer deportation or repatriation measures, or be detained, without respect for their best interests. Migrant children may be separated from their parents, e.g. when they are deported from the country of residence, which may be in breach of provisions contained in universal human rights treaties, protecting the family as the fundamental unit of society. Moreover, the principle of best interests of the child is not always properly considered in family reunification policies and measures. Irregular migration occurs in the absence of documents and often involves human smugglers and traffickers. There is a need for specific rights and gender-based responses and approaches to address concerns, especially as it relates “to migrants deemed ‘irregular’ by the authorities who fall outside the international refugee protection framework but who nevertheless need humanitarian assistance and/or different kinds of protection.”<sup>195</sup> Poverty, lack of access to education, unemployment, gender inequality and risk of HIV/AIDS increase vulnerability to irregular migration and trafficking. Protection gaps for mixed migration flows are substantial and need to be addressed urgently. It is important to identify migrant children within mixed movements, so as to ensure access to protection and meet their needs.

In countries of origin, the migration of parents has created new challenges for children left behind, including family instability, increased household responsibilities, social stigmatization and limited access to essential services, such as health,

education, etc. The educational achievement of children left behind is often compromised by their obligations to fulfill household duties and care for younger siblings. An assessment of the Millennium Development Goals indicates that the goals can be fully achieved only if the promotion and protection of children’s rights is made an integral part of programming strategies and plans. Children left behind may be at greater risk of drug abuse, teenage pregnancy, psychosocial problems and violent behaviour. Children left behind must be covered by gender-sensitive social protection policies to ensure that all forms of discrimination and victimization are avoided; further, to be effective, social policies must be adapted to the specific circumstances faced by vulnerable children.

International organizations and governmental stakeholders play a crucial role in raising awareness of the situation of migrant children and in promoting the appropriate response from governments and civil society regarding the adaptation of respective legislation for the promotion and protection of the rights of migrant children in accordance with the CRC.

Moreover, there is a significant lack of information about migrant children or those who are left behind in countries of origin. Without accurate reliable data on the numbers of children affected by migration, including migrant children, it is difficult to develop and implement suitable programmes and policies to respond to their needs and promote the realization

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of their rights. Even without extensive substantiation, it is clear that the impact of migration on children is a matter of growing concern worldwide.

## D. Migrant Workers

### 1. Linkages between Protection of Rights, Decent Work and Development

The linkages between protection of rights and development are articulated in international labour conventions, in discussions at the International Labour Conferences and other international fora as well as in authoritative documents, such as the International Labour Organization (ILO) Multilateral Framework.<sup>196</sup> Analyses have revealed that deficits in decent work are at the origin of migration flows. In other words, the inability of workers to exercise their right to work in their own countries pushes them to migrate in search of employment.

### 2. The Conceptual Underpinning

According to ILO Director-General, Juan Somavía: "...gains from migration and protection of migrant rights are indeed inseparable. Migrant workers can make their best contribution to economic and social development in host and source countries when they enjoy decent working conditions, and when their fundamental human and labour rights are respected."<sup>197</sup>

Despite the positive experiences of many migrant workers, a significant number

face undue hardships and abuse in the form of low wages, poor working conditions, virtual absence of social protection, denial of freedom of association and workers' rights, discrimination and xenophobia, as well as social exclusion.<sup>198</sup> The granting and denial of visas based on the particular national origin of the applicant and on the grounds of national security are some of the common realities facing migrant workers and which is a cause of concern.<sup>199</sup> These developments erode the potential benefits of migration for all parties, and seriously undermine its development impact. The workers most vulnerable to abuse of human and labour rights are women migrant workers, especially domestic workers, migrant workers in irregular status, trafficked persons and youth migrants. Low skills add to the vulnerability of migrant workers while skilled workers are in a better position to protect their rights.

Great differences exist in the labour profiles of male and female migrants. Men and women circulate differently in the global economy. Education and skills enhancement opportunities for girls and women are limited in many sending countries. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) describes the need for equal rights with men in the field of education and in particular to ensure, on a basis of equality, their conditions for career and vocational guidance. With less educated women ending up predominantly in the service and welfare sectors,

in traditionally female occupations with precarious working conditions, many women migrants, especially those found in the informal sector of the economy are without adequate protection. This makes women more vulnerable to exploitation and human rights abuses, including low wages, illegal withholding of wages, and illegal and premature termination of employment because they are often found in gender-segregated and unregulated sectors of the economy, including domestic work, entertainment, and the sex industry which often are unprotected by local labour legislation.<sup>200</sup> The fact that gender roles are traditionally established and that men often do not share the domestic chores, particularly looking

after children on a daily basis, makes it even more difficult for women to develop personally and professionally.<sup>201</sup> The CEDAW<sup>202</sup> calls on countries of destination to support measures at the work place to prevent discriminatory treatment of female migrants and facilitate the integration of women including by enforcing labour rights and encouraging the host community to accept them as contributing members of society. To reduce female migrants' vulnerability and marginalization, their cultural diversity needs to be respected. Countries of origin should facilitate the migrants' return and reintegration into society especially for those who have been victims of human rights abuse and human trafficking.

### *Decent Work for Domestic Workers*

The item of promoting decent work for domestic workers has been proposed for the agenda of the International Labour Conference in 2010 with a view to developing ILO instruments, possibly in the form of a Convention supplemented by a Recommendation, to provide badly-needed protection for this category of workers. Reports and research have evidenced growing decent work deficits for domestic workers worldwide. Most domestic workers are women and their work is enabling others to improve their living standards. The ILO has long expressed the need for specific attention to these workers and as far back as 1965 the International Labour Conference called for normative action. Indeed, many of the problems faced by domestic workers can be attributed to the specificity and nature of their occupation

and to inadequate attention to key aspects of their situation in international law and national legislation. Their particular vulnerability to abuses of basic human rights, including fundamental principles and rights at work, as well as the differences in employment arrangements, methods of remuneration, working time and other aspects of their working conditions warrant separate consideration and standards adapted to their circumstances. In recent years, a number of governments have initiated steps to improve legal protection for domestic workers and others are considering doing so. The development of international standards is meant to fill an important gap in the promotion of decent work for all and to provide appropriate and timely guidance to constituents on policy and practice in this area.<sup>203</sup>

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A number of issues are at the intersection of protection and development. Wages of migrant workers, significant parts of which become the remittances they send back home, are one such issue. Remittances are the most tangible way in which migrant workers contribute to poverty reduction, employment creation and development in their countries of origin. Article 9 of Convention No. 97 on Migration for Employment<sup>204</sup> states that each party to the Convention undertakes to permit, taking into account national laws and regulations, the transfer of such part of the earnings and savings as the migrant may desire. Article 47 of the ICRMW<sup>205</sup> provides that migrant workers shall have the right to transfer their earnings and savings and that States concerned shall take appropriate measures to facilitate such transfers. Non-payment or underpayment of wages denies migrant workers part or all of their incomes and deprives their countries of origin of remittances that could be used for reducing poverty and promoting development. Ensuring the payment of wages as such is laid down in the Protection of Wages Convention of 1949, and is a right that has important implications for migrant workers and their countries of origin.<sup>206</sup>

The Committee on Migrant Workers<sup>207</sup> emphasized that equality in remuneration and conditions of employment on the

one hand protects migrant workers from abuse and, on the other hand, removes the incentive for employers to resort to irregular recruitment or employment.

In countries of destination, migrant workers are better able to meet labour demand, use their entrepreneurial skills and enlarge the supply of goods and services when they have access to training, skill recognition and labour mobility, in equality with native workers. Remuneration and social security benefits allow them, as consumers, to increase demand for goods and services and thus to contribute to economic growth.

The exercise of these rights also contributes to preserving the competitiveness of native workers in labour markets of countries of destination. Allowing migrant workers to work for a lower pay, for longer hours and/or without access to social security can reduce the cost of their labour compared with national workers, thereby undermining the latter's chances in their own labour markets.

Social integration of migrant workers and their families, manifested in their exercise of the rights to work, to education, to housing and other relevant rights, allows them to raise their productivity and the level of their contributions to the economies of countries of destination.<sup>208</sup>

## *Putting into Practice the Right to Decent Work in Countries of Origin: the Global Employment Agenda (GEA)*

The essential root of labour migration is a deficit in decent work opportunities in countries of origin, as reflected in high unemployment and underemployment and ensuing poverty. As stated in Paragraph I (1) of the ILO Employment Policy Recommendation, 1984 (No. 169), the promotion of full, productive and freely chosen employment (provided for in the Employment Policy Convention, 1964 (No. 122)) should be regarded as a means to achieving the realization of the right to work.

In response to a call made by the 24<sup>th</sup> Special Session of the United Nations General Assembly in 2000, the International Labour Organization (ILO) developed the Global Employment Agenda (GEA) – a coherent and coordinated international strategy for the promotion of freely chosen productive employment. The GEA seeks to put into practice the right to work. The aim of the GEA is to place employment at the heart of economic and social policies. Ten core elements make up the GEA, some relating to the economic environment, others to the labour market. Elements addressing the economic environment are: 1) promoting trade and investment for productive employment and market access for developing countries, 2) promoting technological change for higher productivity and job creation and improved standards of living, 3) promoting sustainable development for sustainable livelihoods, and 4) macroeconomic policy for growth and employment: a call for policy integration. Elements addressing the labour market are: 5) decent employment through entrepreneurship, 6) employability by improving knowledge and skills, 7) active labour market policies for employment, security in change, equity and poverty reduction, 8) social protection as a productive factor, 9) occupational safety and

health: synergies between security and productivity, and 10) productive employment for poverty reduction and development. Policies for implementing elements of the Agenda fall into two categories: those that can be addressed by national policies, and those that need a global policy response.

Labour mobility and migration have been identified as one of the key policy areas where the elements of the GEA should be put into practice.

An example of the operationalization of the GEA is the inclusion by the Committee on Skills at the 97<sup>th</sup> session of the International Labour Conference (June 2008) of migration in its discussion of skills for improved productivity, employment growth and development. The conclusions of the Committee recognized that “improved portability of skills, supported by national and/or regional or international qualification frameworks, helps migrant workers obtain employment commensurate with their qualifications and expertise.” The Committee considered it appropriate for governments to take certain measures to respond to the question of skill development related to migration. The conclusions further recognized that the ILO can assist Member States within the ILO Multilateral Framework on Labour Migration by developing strategies for providing skills development to migrant workers, developing regional skills recognition schemes, promoting circular migration and taking other measures to address and reverse the impact of brain drain. By citing the Multilateral Framework in conclusions focused on guiding action, the ILO approach has brought together its conceptual tools and its practical advice to put them into practice.

Rights of migrant workers, the use of their full potential and their contributions to development would be furthered by the licensing and supervision of recruitment and placement services. The Private Employment Agencies Convention 1997 (No. 181)<sup>209</sup> and its Recommendation (No. 188)<sup>210</sup> draw the parameters of policy in this respect.

Temporary migration is an issue of importance in current discussions on the protection of rights and development. Its goal is to help meet specific short to medium-term demand for labour in countries of destination, while avoiding the permanent loss of skills and the detrimental consequences for development in countries of origin. These are worthy considerations. However, the proliferation of temporary migration schemes should not lead to the curtailment of the rights of migrant workers in the work place, especially regarding the principles of equality of treatment with national workers and non-discrimination. The view that such programmes

necessarily involve a trade off of migrant numbers with their rights undermines the framework of migrant protection and rights elaborated in international instruments. "It is extremely important that those programmes [of temporary and circular migration] are in strict compliance with the relevant international human rights instruments, in particular to ensure non discrimination with regard to remuneration and other conditions of work."<sup>211</sup> The ILO Multilateral Framework has provided some guidelines on this issue. The most relevant is Guideline 5.5 which calls for: "ensuring that temporary work schemes respond to established labour market needs, and that these schemes respect the principle of equal treatment between migrant and national workers, and that workers in temporary schemes enjoy the rights referred to in principles 8 and 9 of this Framework." Guideline 9.9 calls for ensuring that "restrictions on the rights of temporary migrant workers do not exceed relevant international standards."<sup>212</sup>

### *Working Towards Respect for Human Dignity of Migrant Workers*

Directly or indirectly, the International Organization for Migration (IOM) works towards the respect for human dignity and the protection of the individual in the implementation of its activities, that is, through its *action*. For example, through facilitating the promotion,

selection, recruitment, deployment and integration process of foreign workers in temporary labour migration schemes, IOM contributes to safe, orderly, transparent and fair labour migration, promoting respect for the human dignity and well-being of foreign workers.

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Less concern about human rights is usually voiced in the current discourse on skilled and highly-skilled migrants. Rather, the discussion is framed in terms of migrants' value as human capital and focused on potential modes of sharing human resources ("a mobile and global pool of professionals")<sup>213</sup> among States. Indeed, often the language applied to highly skilled migrants and diasporas reflects associations of resource extraction, using terms such as "tap into," "harness" and "leverage." Not only is this at odds with a human rights-based perspective, it also neglects the fact that many migrant associations and diaspora organizations represent an elite not because of their educational achievements or abundant resources, but because they choose to act.

## E. Refugees

Serious human rights or humanitarian law violations are at the origin of refugee flows. Refugee protection itself is about upholding human rights of individuals during displacement. Voluntary return of refugees in safety and dignity is only possible if root causes generally linked with serious human rights violations have been addressed in a sustainable manner. Speaking broadly of humanitarian action, the Inter-Agency Standing Committee (IASC)<sup>214</sup> has stated: "Protection of human rights is intrinsic to effective humanitarian action."<sup>215</sup> This statement points to the fact that human rights violations and resulting protection issues are usually a central

element of complex crisis situations. They are also typically at the heart of the problem that has contributed to, or been exacerbated by, armed conflict.

### 1. Current Refugee Protection Challenges

The Office of the United Nations High Commissioner for Refugees (UNHCR) estimates that over 16 million people were refugees at the end of 2007. As of the end of this year, roughly one third of all refugees were residing in countries in the Asia and Pacific region. The Middle East and North Africa region hosted a quarter of all refugees, while Africa and Europe were host to respectively 20 and 14 per cent of the world's refugees. The Americas had the smallest share of refugees – 9 per cent.<sup>216</sup>

Thousands of persons in various countries of the world, who are fearful of applying for refugee status or who are denied that status, go underground and become illegal migrants. The right to seek asylum is often threatened where asylum-seekers are part of mixed population movements. Many who flee persecution and conflict are unable to use legal means to reach safety and undertake perilous journeys with those fleeing poverty or precarious living conditions. In the process, they frequently face torture, rape, abuse and exploitation by smugglers, pirates, officials and others. Unaccompanied and separated children caught up in irregular movements are at particular risk of sexual and labour exploitation.

The right to seek asylum is jeopardized if shipmasters do not rescue those in distress and when governments are unwilling to disembark those rescued, including asylum-seekers. States' protection responsibilities are relatively clear where individuals are intercepted or rescued in territorial waters, but differences remain over protection obligations outside such waters. The right to seek asylum is also jeopardized by difficulties regarding access to fair and effective asylum procedures or those which are poorly developed, not based on timely and accurate country of origin information, or duly sensitive to age, gender and diversity. Refugee recognition rates for asylum-seekers of certain nationalities diverge widely among and within States.

The right to life, liberty and security of person<sup>217</sup> is central to the enjoyment of asylum. Yet physical insecurity is increasingly the hallmark of many situations of displacement. Cases of camps attacked by rebel groups and forced recruitment of children by armed groups pose problems in a number of operations. Insecurity also restricts humanitarian access by the United Nations Office of the High Commissioner for Refugees (UNHCR), and other United Nations and non-governmental organization partner staff, and exposes refugees to high risk. As noted by United Nations Secretary-General, Ban Ki-Moon, critical humanitarian access to civilian populations is often currently "anything but safe, certainly not timely and far from unhindered."<sup>218</sup>

### *Monitoring and Intervening in Detention Facilities in Support of Asylum Seekers and Refugees*

The United Nations Office of the High Commissioner for Refugees (UNHCR) frequently intervenes on behalf of asylum-seekers and refugees threatened with deportation. In 2007, several individuals detained for expulsion were released for emergency resettlement. Others who had been deported were readmitted. UNHCR and its partners are engaged in numerous operations to

monitor detention facilities, discourage placement of asylum-seekers in prisons alongside criminals, help identify asylum-seekers within undocumented migrant groups, promote access to advice and medical attention and urge States to resort to detention of asylum-seekers only on an exceptional basis and in full consideration of possible alternatives.

In many situations, sexual and gender-based violence remains a major problem for asylum-seekers and refugees, particularly women and girls. Many are exposed

to rape, the risk of HIV infection, attack, abduction, honour killings, female genital mutilation,<sup>219</sup> child marriage, sexual harassment, and other violations of the

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rights to life, freedom from torture, cruel, inhuman or degrading treatment<sup>220</sup> and an effective remedy.<sup>221</sup> Their abuse is often linked to anti-migrant sentiments, reflected in the policies and frameworks of the countries of destination and transit designed to manage migratory flows in a purely restrictive manner. Refugee camps do not always provide protection from such abuse. Caught up in general anti-foreigner violence or specifically targeted, asylum seekers are sometimes forced to move to other parts of the country or even killed. Refugee protection has become more complex in recent years due to the increasing difficulty in availing access to asylum systems resulting from heightened security considerations. Many who have been refused asylum remain in the country of destination and, together with those who have overstayed their visas or crossed borders without the proper documents, contribute to the growing numbers of irregular or undocumented migrants. Irregular migrants often cannot fully exercise their human rights, lack basic health services and face abuse and exploitation.<sup>222</sup>

States increasingly resort to the detention of asylum-seekers and refugees, including children. Sometimes detention periods are prolonged, at times even indefinite. In some situations, conditions are so overcrowded and poorly ventilated, without the most basic amenities or nutrition, as to amount to inhuman and degrading treatment. In some cases detention has resulted in death.

Continuing difficulties in securing access to the right to work for asylum-seekers and refugees<sup>223</sup> reflect reluctance on the part of many States to allow foreigners access to national labour markets. Yet, access to employment is essential to realizing other human rights and is inherent to human dignity. It can protect against sexual and gender-based violence and is integral to achieving self-reliance and durable solutions.

The right to a standard of living adequate for health and well-being, including to clothing, housing and medical and necessary social services<sup>224</sup> is related to numerous rights, access to which should be granted on a non-discriminatory basis, including as regards national origin, physical or mental disability, or health status (for instance, regarding HIV/AIDS). It encompasses access to safe, potable water and adequate sanitation and access to health-related education and information, including on sexual and reproductive health. In urban environments, many asylum-seekers and refugees are unable to access housing, health-care and other services, whereas due to resource constraints, facilities often remain poor in refugee camps.

The right to adequate food<sup>225</sup> is critical to the enjoyment of all other human rights. It has become an urgent issue particularly in light of the most recent rise in food commodity prices, diminishing food stocks and resulting in shortfalls in delivery of humanitarian assistance in a number of displacement situations.

## 2. Addressing the Challenges and Gaps

States bear the primary responsibility for protecting the human rights of all persons within their territory or subject to their jurisdiction.

Recurring global protection challenges are brought to the attention of the Executive Committee of the UNHCR Programme (ExCom)<sup>226</sup> for its guidance, including through ExCom Conclusions. In the field of refugee protection and international migration, the High Commissioner's Dialogue on

Protection Challenges,<sup>227</sup> involving a wide range of stakeholders, took place in Geneva in December 2007 to discuss refugee protection, durable solutions and international migration. The meeting recognized that there are protection gaps in mixed flows, especially as regards migrants deemed by the authorities "irregular" who fall outside established protection frameworks, but who otherwise need humanitarian assistance or other kinds of protection. The Dialogue called for rights-based approaches in addressing these gaps and placing all migrants' human rights and dignity to the fore.

### *Capacity-Building to Support Member States in Establishing Functioning National Asylum Procedures*

An important aspect of the work of the United Nations Office of the High Commissioner for Refugees (UNHCR) is capacity-building initiatives to support States in establishing functioning national asylum procedures. These include providing advice on draft legislation; visiting reception and detention facilities; and counselling asylum-seekers on their rights. Border guards, immigration officials, police, adjudicators and judges are trained by UNHCR

in their obligations under international refugee and human rights law and in such issues as cross-cultural communication, gender sensitivity and determination of the best interests of the child. The Office makes legal interventions in national and regional courts to support the progressive development of international refugee law, drawing also on complementary developments in international human rights law.

Other global issues may be addressed, such as those issued to assist States in properly applying the refugee definition contained in Article 1 of the 1951 Convention,<sup>228</sup> addressing gender-based persecution,<sup>229</sup> or determining when victims of trafficking are at risk of persecution on refugee grounds if returned.<sup>230</sup>

Why is it necessary at all to envisage refugee protection in reference to human rights? In answering this question, in the first instance, the importance and validity of the refugee law and protection regime in its own right must be reaffirmed. This regime clearly lays down the duties and obligations that are owed to refugees and

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the rights they are entitled to claim as a matter of international law. Refugee law and protection have, over the years become well-known, accepted and essentially adhered to across the world. This predictability is critical in actual, concrete actions to protect refugees whether through diplomatic means or judicial litigation. All this deserves to be respected, re-validated, nurtured and further developed.

To assert the relationship between this regime and that of human rights protection is, however, not only about making an academic point, although that is useful in its own right in advancing the knowledge and awareness that still needs to be fostered on this issue. The emphasis is, however, also useful as a reminder, which remains necessary from time to time, that refugees are not some obscure technicality but are, after all, human beings. They bear human rights, and the imperative to respect and advance those rights as do all other human beings. The connection thus plays both a tactical and operational function.

Even in situations where the 1951 Refugee Convention is applicable because of accession, reference to human rights of refugees, and not only refugee law entitlements, has a strong rhetorical and reinforcing function. But in those countries which have not acceded to the 1951 Convention or any other international or regional refugee instruments, human rights law comes to provide the essential bedrock for protection advocacy and action. For all these

reasons, every opportunity must be taken to elaborate, foster and make known the nature and interconnections between the two regimes.

## F. Smuggled Migrants and Victims of Trafficking

Developing effective responses to address human trafficking and migrant smuggling, as issues of irregular migration that impact on the human rights of those who are trafficked or smuggled, raises many challenges.

At the point or country of origin, traffickers and smugglers alike take advantage of people's vulnerabilities, particularly those who may be desperate to migrate in an attempt to establish a better life. Traffickers and smugglers look to profit from the vulnerabilities of people by offering them incentives and the means to migrate looking for better opportunities. Smuggled migrants may suffer violence, sexual abuse and other life threatening situations along their migration route to the destination point. Trafficked victims may suffer the same and are subject to exploitation. Once at the destination, smuggled migrants' status as illegal immigrants makes them vulnerable to abuse and discrimination while trafficked victims will suffer exploitation at the hands of their traffickers. It is essential that the differences between trafficking in persons and smuggling of migrants are understood before an effective policy response

to both crimes can be developed and implemented.

There are increasing reports of abuse by smugglers inflicted against those who are smuggled. In this regard, smugglers and the activity of people smuggling has the potential to seriously endanger the life and

health of those who are smuggled. The death and serious injury toll from smuggling has dramatically increased in recent years, indicating the potentially serious human rights abuses that smugglers can inflict against those who employ their services.

### *Supporting Member States in the Prevention of Human Trafficking*

The United Nations Development Programme (UNDP) has supported efforts to reduce trafficking in Tajikistan (interactive training for authorities in the area of illicit drugs and crime), Armenia (an assessment of current policies, institutions and capacity with a view

to strengthening the anti-trafficking framework), and Thailand (tracing activities for suspected trafficked persons). It has also engaged in regional level work in Asia and the Pacific, and Europe and the Commonwealth of Independent States (CIS).

## **1. Knowledge and Awareness of Trafficking in Persons and Smuggling of Migrants as Crimes Against Human Rights**

When responding to instances of human trafficking and migrant smuggling, it is often the case that law enforcement and criminal justice practitioners will approach the investigation and prosecution with a focus on targeting the smugglers and traffickers for their role in the facilitation of illegal immigration. At the same time, they often look to deport those who are illegal immigrants as a result of being trafficked and/or smuggled. Human trafficking is often incorrectly treated by law enforcement officials as a crime of illegal

immigration first, before it is recognized as a crime against the person who has suffered extreme human rights violations from having been exploited. While trafficking in persons and smuggling of migrants often involve illegal methods of migration, it is not always the case. More knowledge and awareness among law enforcement and criminal justice practitioners of the human rights aspect of human trafficking and migrant smuggling needs to be developed. Responding to human trafficking from a human rights-based approach (as opposed to an approach that targets only the traffickers) works to protect and support the trafficked victims as well as to benefit the criminal investigation and prosecution case. Where trafficked persons

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are treated as victims of crime as opposed to illegal immigrants, they are more likely to assist in the criminal investigation and recover from their trafficking ordeal. Smuggled migrants need to be recognized by law enforcement and criminal justice practitioners as potential victims of human rights abuse. Smuggled migrants may have been subject to human rights abuse during the journey, at the border crossing, during periods of illegal stay in the destination country, in detention facilities or during the course of removal. Smuggled migrants, regardless of their immigration status, have the right to have their human rights and dignity upheld and prioritized at all stages by those who deal with their case from discovery and identification, to detention, to removal – where such cases permit – to the granting of asylum.

## 2. A Comprehensive Policy Response to Human Trafficking

A comprehensive and multi-disciplinary approach comprising and balancing repressive strategies is needed in order to effectively tackle the issue of human trafficking, suppressing the organized crime networks and prosecuting the traffickers, as well as empowering potential and actual victims of trafficking. A comprehensive policy response should begin with prevention to help combat trafficking; provide protection and support for the victims and ensure that traffickers are prosecuted. Effective action against trafficking in persons must take into account the recognition and promotion of the rights of victims of trafficking.

## 3. Prevention is Key to the Anti-Trafficking Response

Preventive measures to fight trafficking in persons should be multi-disciplinary, address all root causes of trafficking, including both supply and demand side and foster opportunities to migrate legally and safely. The main goal of prevention mechanisms is the reduction of vulnerability to trafficking and the increase in livelihood options for individuals at risk, with special focus on women and children. There is an urgent need to address issues of human rights violations in countries of origin to prevent vulnerability. Governments should train local and national authorities and sensitize the public at large to promote understanding of human trafficking and take action against it. It is essential to raise the awareness of potential and actual victims, warn of the risks and dangers of trafficking and inform about legal and safe migration channels. On the supply side, measures should include the empowerment of persons at risk, and include efforts to spur socio-economic development, employment generation, gender-equality, and anti-discrimination measures. States should foster stronger links between anti-trafficking measures and existing national action plans, particularly national employment plans, development plans, child protection plans, gender equality plans and national migration plans. Local community development, socio-economic development and employment generation schemes as well as micro-credit schemes are often not accessible to women. Such schemes should actively target women

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and other vulnerable groups at risks of being trafficked and returned trafficked victims, so as to support their social and economic reintegration. If legal and safe migration channels would be available as an alternative to irregular migration, the dependency of migrants on the abusive intermediary network would decrease. Therefore, stronger cooperation between countries of origin, transit and destination is essential.

In order to prevent abuse, authorities should monitor the practices of licensed recruiters. On the demand side, it is essential to reduce the need for cheap exploitative labour in all sectors in countries of destination. Victims are trafficked mostly into the unprotected, unregulated, informal sectors of the destination economies. Even if legal migratory channels are enhanced, these will most likely not target the informal sector. Countries of destination should take a standards-based approach to trafficking and migration in order to foster migrants' rights and migrant workers' rights both for the formal and informal sectors of the economy. They should furthermore ensure the enforcement of these labour and protection standards and promote measures to address the protection of the rights of workers in the informal sector. This calls for collaboration with trade unions, migrant associations and employers.<sup>231</sup>

#### 4. Protection and Support for Trafficked Victims

Victim protection and support schemes are an essential element of a comprehensive and effective response to human trafficking. Trafficked victims need safety, support and care while undergoing social and economic reintegration once their distress has ended. They require protection from further exploitation and access to medical and psychological care, including voluntary and confidential counseling. Victims should be given access to confidential HIV testing on a voluntary basis. Where victims are given the opportunity to recover from their trafficking ordeal with professional support, they are more likely to cooperate in the criminal investigation and provide evidence against their traffickers. Effectively responding to human trafficking therefore requires a balanced approach that is based on enforcing the law against the traffickers and protecting the human rights of trafficked victims. It should be the victim's right to access protection and support services on an unconditional basis. Despite an increased awareness of the need to identify trafficked persons as victims of crime and also of the human rights violations suffered by those who are trafficked, many States have yet to establish effective victim protection and support mechanisms.

## *Protecting and Supporting Victims of Human Trafficking and Smuggling*

The protection and support of trafficked victims in recognition of the human rights abuse they have suffered is an essential part of any comprehensive response to human trafficking and is supported and promoted by the United Nations Office for Drugs and Crime (UNODC) in line with the Trafficking Protocols. The Smuggling Protocol recognises and promotes the protection of the rights of smuggled migrants. UNODC can assist Member States in: 1) Reviewing and revising domestic legislation at the request of Member States concerning the protection and support of trafficked

victims and smuggled persons; 2) Developing and implementing victim and witness support and protection schemes for trafficked victims, based upon close cooperation between criminal justice institutions and NGOs. Responding to the needs of trafficked victims will encourage them to cooperate during investigations and criminal proceedings, thereby increasing the likelihood of a successful prosecution of the trafficker/s; 3) Establishing measures to uphold and protect the human rights of irregular migrants in the return and repatriation process.

The challenge for national authorities is to protect the rights of migrants while maintaining border security. While States have the right to detain and remove irregular migrants, they have the responsibility to do so using measures which respect human rights and the safety and dignity of the individual. States also have a role to play in reducing the causes of involuntary migration through greater rights

protections in home countries. Situations of poverty, lack of access to education, gender inequality and high unemployment make people vulnerable to irregular migration. Many States view human trafficking and migrant smuggling as a 'victimless' crime which impacts on the security of a State and this prevents adequate protection of the human rights of trafficked and/or smuggled persons.

## *Combating Child Trafficking*

In 2005, the United Nations Children's Fund (UNICEF) and the United Arab Emirates signed an agreement to return children involved in camel racing, many of them victims of trafficking, back to their countries. According to recent information, more than 1,000 child

camel jockeys have been sent home and many have been reunited with their families. UNICEF provided technical assistance and expertise. As follow-up to this initiative, in 2006, UNICEF helped organize the first ever workshop on combating child trafficking in the Arab world.

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## 5. Prosecution

International cooperation is essential to uncover and combat transnational trafficking networks. Traffickers must be brought to justice. Governments should effectively investigate, prosecute and adjudicate trafficking, including its component acts and related conduct, whether committed by governmental or by non-State actors. It is essential to ensure that trafficking, its component acts and related offences constitute offences under national law and extradition treaties.<sup>232</sup> Perpetrators, including those who recruit and harbor trafficked persons, must be prosecuted and their assets confiscated. Employers who hire trafficked persons should be punished. While countries are stepping up their efforts to crack down on trafficking, challenges remain, including inadequate data, lack of government programmes, corruption and resilience of criminal syndicates that frequently change tactics and utilize legal businesses and mechanisms as fronts.

## 6. The Capacities of Criminal Justice and Law Enforcement to Respond to Trafficking in Persons and Smuggling of Migrants

Although combating human trafficking appears to be high on the agenda of

Member States, it is evident that even with legislation in place, many national law enforcement and criminal justice practitioners do not have the necessary knowledge, expertise or capacity to fight trafficking in persons in an effective and multi-dimensional manner, including responding to the human rights aspect of the crime. It is essential that the professional skills of law enforcement and criminal justice practitioners be developed through education and training to specifically and effectively respond to this crime not only through law enforcement, but also by addressing human rights violations suffered by trafficked victims. The response capacity of States is even more limited with respect to the smuggling of migrants. Law enforcement efforts are often limited to border controls without being embedded in a wider comprehensive policy framework. Smuggled migrants often end up in detention centers, jail or face deportation because of their illegal status. There is little regard or concern displayed towards the human rights abuses they may have suffered during their journey or for the protection of their human rights in the destination country. It has been increasingly reported that human rights of irregular migrants in detention and jail facilities are often not respected or upheld.

## *Strengthening Criminal Justice and Law Enforcement Capacities to Fight Human Trafficking and Migrant Smuggling*

As custodian of the trafficking and smuggling Protocols, the United Nations Office for Drugs and Crime (UNODC) has as its primary goal the promotion of global adherence to the Protocols and provision of assistance to States in their efforts to effectively implement the Protocols. In particular, UNODC focuses its work on assisting States in bringing their domestic legislation in line with the Protocols and in developing effective criminal justice responses to human trafficking and migrant smuggling. Against this backdrop, UNODC activities in the field of migration can be summarized under the heading of focusing on the crime-related aspects and driving forces of human trafficking and migrant smuggling.

The UNODC assists governments in strengthening the institutional and human capacities of their criminal justice systems to effectively prevent, investigate, prosecute and adjudicate cases of human trafficking and migrant smuggling by: 1) Assessing overall policies and the interaction of the criminal justice system actors with a view to identifying gaps in the national criminal justice response to human

trafficking and migrant smuggling, 2) Developing and implementing coherent anti-human trafficking and counter-migrant smuggling policies, including policies for victim protection and support, as well as effective coordination and cooperation mechanisms between the various criminal justice actors, 3) Empowering criminal justice actors to effectively collect, exchange and analyze information and generate criminal intelligence in order to: a) increase law enforcement capacities to effectively investigate and prosecute traffickers and smugglers on an operational level; and b) enhance the development of adequate counter-trafficking and smuggling policies on a strategic level, 4) Providing in-depth training on good practice responses to trafficking in persons and smuggling of migrants for law enforcement, prosecution and the judiciary and incorporating the training into the respective national criminal justice training curricula, and 5) Providing in-depth training to law enforcement actors (such as police and border guards), prosecutors and judges on victim identification and treatment of persons who have been trafficked.

For countries of origin, offering pre-departure training for migrants and informing the public about the dangers of human trafficking is considered good practice. So is proactive consular outreach and assistance, including through the posting of trained labour attachés. During the discussions on migration and development leading up to the High Level Dialogue on Migration and Development, it was stressed

that migrants must assume their share of responsibility by being informed and aware of the impact of their personal (or communal) decision to migrate. Migrants themselves are expected to seek information about the risks of migration. They are not just held co-responsible for their own security. Migrants are also seen as having an active role to play in their successful integration, which often entails learning

the language of the host society and knowing one's rights and responsibilities.

In 2007 the Global Initiative to Fight International Human Trafficking (UN.GIFT) was launched by the United Nations Office on Drugs and Crime (UNODC) to raise awareness among business leaders of the need to effectively manage and monitor global supply chains. The Global Initiative

is based on a simple principle: human trafficking is a crime of such magnitude and atrocity that it cannot be dealt with successfully by any government alone. In addition, information campaigns targeting shareholders and consumers are being discussed as a means to encourage them to use their leverage and provide companies with stronger incentives to comply with labour rights standards.

### *The United Nations Global Initiative to Fight Human Trafficking (UN.GIFT)*

UN.GIFT was conceived in 2007 to join forces and coordinate the global fight against human trafficking, on the basis of international agreement reached at the United Nations. UN.GIFT aims to mobilize State and non-State actors to eradicate human trafficking by reducing both the vulnerability of potential victims and the demand for exploitation in all its forms; ensuring adequate protection and support to those

who fall victim; and supporting the efficient prosecution of the criminals involved, while respecting the fundamental human rights of all persons. In carrying out its mission, UN.GIFT increases the knowledge and awareness of human trafficking; promotes effective rights-based responses; builds capacity of State and non-State actors; and fosters partnerships for joint action against human trafficking.<sup>234</sup>

## **G. Migrants in Detention**

Migrants, especially irregular migrants who lack legal status and migrants who are victims of smuggling and trafficking, are particularly vulnerable to detention, restriction on their freedom of movement or deprivation of their liberty, usually through enforced confinement, either in the receiving country or during transit (by land or sea). In the following paragraphs the most frequent violations and

abuses suffered by migrants in detention are identified, based on the information provided in the recent reports of the Special Rapporteur on the Rights of Migrants.

Administrative measures of detention are undertaken often without regard for the individual status of the migrant. The various challenges can be grouped under two main categories including: 1) the legislative framework of protection mechanisms

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of migrants in detention and 2) the conditions of migrants kept in detention.

“Deprivation of liberty of migrants must comply not only with national law, but also with international legislation. It is a fundamental principle of international law that no one should be subjected to arbitrary detention. International human rights norms, principles and standards... apply to all individuals, including migrants and asylum-seekers, and to both criminal and administrative proceedings.”<sup>235</sup> Irregular migrants are particularly vulnerable to deprivation of liberty both in the context of criminal and administrative proceedings.

In some cases, national immigration regulations criminalize and punish in an attempt to discourage irregular migration. Irregular migrants therefore become particularly vulnerable to criminal detention for such reasons as irregularly crossing international borders, using false identification, overstaying their visas, irregular stay or leaving their residence without authorization. “Victims of trafficking and smuggling commit infractions or offences, such as irregular entry, use of false documents and other violations of immigration laws and regulations, which make them liable to detention.”<sup>236</sup> The law of some countries punishes as criminal offences or administrative infractions irregular entry, entry without valid documents or engaging in prostitution, including forced prostitution. Victims of trafficking are thus often detained and deported without regard for their victimization and without

consideration for the risks they may be exposed to if returned to their country of origin.”<sup>237</sup>

The Working Group on Arbitrary Detention holds the view that criminalizing the irregular entry into a country exceeds the legitimate interest of States to control and regulate irregular immigration and can lead to unnecessary detention. Moreover, irregular migrants detained for immigration offenses considered a criminal offense by the receiving State should be given the opportunity to appeal before an independent judiciary, but are not afforded such protection in practice.<sup>238</sup> In such cases, detention of migrants may become arbitrary. In international and regional human rights law, arbitrary arrest and detention is expressly prohibited and migrants’ nationality or lack of legal status in the destination country cannot excuse States from their obligations under international law to ensure due process guarantees and dignified and humane treatment while migrants are held in detention.

Despite these standards, the Special Rapporteur has received numerous reports that in certain cases detention can become prolonged and the detainees subject to ill-treatment. Migrants in detention often face increased risk of physical or sexual abuse and violation.<sup>239</sup>

Differences exist between immigration regulations among States, making oversight of detention conditions and States’ adherence to international standards in

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this practice a challenge.<sup>240</sup> Some States entirely lack a legal regime governing immigration and asylum procedures that, when in place, can help to manage detention practices. Others have enacted immigration laws but often do not provide for a legal framework for detention. Some States have legislation which provides for a maximum period of detention, whereas others lack a time limit.

With such diversity in national policy and law governing detention and expulsion, it is important that irregular migration is seen as an administrative offense and irregular migrants processed on an individual basis. Where possible, detention should be used only as a last resort and in general irregular migrants should not be treated as criminals.

Migrants are often not informed of their rights to appeal and of the status of their situation. If detention centers do not provide for judicial review of administrative detention of migrants, the lack of awareness of the right to appeal and the lack of access to free legal counsel may prevent migrants from exercising their rights in practice. Even in the presence of legitimate claims, the difficulty of receiving assistance impedes the exercise of the rights of the migrant in detention. Moreover, incidents in which detainees are not informed about their rights and status of detention, in a language they understand, have been repeatedly reported. When lawyers and interpreters are not available, migrants in detention may feel intimidated

by immigration officers and obliged to sign documents without understanding their implications.

Migrants and asylum-seekers are sometimes detained at airport transit zones and other points of entry, under no clear authority, either with the knowledge of government officials at the airport or simply on the instructions of airline companies before being returned to their countries. The difficulty or impossibility of reaching any outside assistance impedes the exercise of the right of the persons concerned to challenge the lawfulness of the State's decision to be detained and returned and to apply for asylum, even in the presence of legitimate claims. In practice, some States misleadingly label migrant detention centres as "transit centres" or "guest houses" and "detention" as "retention" in the absence of legislation authorizing deprivation of liberty.

Foreign nationals can be detained if immigration officers have reasonable grounds to believe that the migrant is inadmissible, a danger to the national public, unlikely to appear for future examinations etc. "The failure to provide legal criteria can result in de facto discriminatory patterns of arrest and deportation of irregular migrants. At times migration authorities stop migrants at the border and take them arbitrarily to the police station where they are asked for money or sexual favours in exchange for their release. Cases of prolonged detention because of refusal to pay were reported."<sup>241</sup> Migrants belonging to certain ethnic groups

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or nationalities are more likely to be intercepted and detained than others.

The absence of internal monitoring and external inspection mechanisms in detention centers gives rise to abuse and violence. Often no particular provisions exist regarding detention of children or other vulnerable groups such as women and irregular migrants, which gives rise to the violation of basic human rights. Irregular migrants in detention often do not receive legal, medical, social or psychological assistance and protection.

“Migrants sentenced to imprisonment for immigration offences are detained with common criminals and subjected to the same punitive regime; they are not always separated from the rest of the prison population and have difficulties

in understanding and communicating... There are often no arrangements to provide culturally appropriate foods and to allow them to practise their faiths. Racist attacks against migrants detained with common prisoners were also reported [by the Special Rapporteur on the Rights of Migrants]. Prison personnel in most of the cases do not receive specific training on how to deal with foreign detainees.”<sup>242</sup>

The poor conditions of certain detention centers lead to serious deterioration in the living standards of foreign nationals, including inadequate access to medical treatment and other services, poor hygienic conditions, the absence of separated space for men and women, and adults from minors etc. Furthermore, freedom of movement is limited within the detention facility.<sup>243</sup>

# V. Migration, Globalization and the Right to Development

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## A. Globalization: Setting the Stage for Easier and Faster Circulation of People

Migration is among the constants in the history of mankind. People have moved either to explore new horizons, for survival or in search of better means of livelihood, or were forced to move because of persecution. With globalization came expanded market opportunities and more affordable and accessible communications and transportation facilities. This meant ease in the flow and transfer of factor endowments, including people. Globalization has thus set the stage for the easier and faster circulation of people but such mobility could either be facilitated or hampered by a country's unilateral policies, bilateral agreements, regional and multilateral arrangements.

The existing need of many developed and developing countries for foreign labour is a reality, primarily due to their ageing populations and the absence or lack of locals or nationals to fill key occupations. Despite this need, many countries remain conservative in opening up their markets for foreign workers. The approach taken by most countries in need of migrant labour is that of "cautious, selective opening-up", either through unilateral policies or bilateral arrangements that allow them to choose

specific countries and occupational groups to access their labour markets for a specified duration or on a seasonal basis. Commitments to facilitate the entry and stay of foreign personnel for work or provision of service remain very limited at the regional and multilateral fora.

This is despite the fact that, from the trade perspective, liberalizing the movement of labour was estimated to bring global welfare gains of US\$ 356 billion,<sup>244</sup> with benefits accruing both to labour sending and labour receiving countries. If the share of foreign workers grew to three per cent of the labour force of rich countries it would involve an increase of 14 million people over 25 years (roughly 500,000 a year). The global gains would therefore be US\$ 675 billion a year by 2025.<sup>245</sup> For the labour sending countries, tapping one of their comparative advantages, i.e., abundant labour supply helps ease unemployment pressures at home, siphons in additional resources for the economy through remittances, ushers in improvements in human capital and allows the economy to benefit from technology and skills transfer and investments from returning workers. On a more macro level, remittances to developing countries estimated at US\$ 251 billion in 2007,<sup>246</sup> are a significant source of foreign exchange

for these countries and have been associated with reduction in poverty, improvements in school attendance, better health care practices and gender empowerment. Migrant remittances provide a safety net to migrant households in times of hardship and contribute to the stability of recipient economies. Remittances, however, remain private small transfers and cannot replace official development assistance of large public flows. Remittances do not lessen the responsibility of the receiving government to put in place adequate social protection mechanisms.

Migrants contribute to the development of their countries of origin through remittance flows, investment and business ventures, and skills and technology transfer. As migration affects the development of both sending and receiving countries, co-development initiatives should be scaled up and should include projects such as: a) effective monitoring of migration flows with the eventual aim of ensuring return or facilitating circular migration, b) supporting

migrants and diaspora communities' link-ups and investment interests with their communities of origin, c) setting-up training institutions and other infrastructure for human resource replenishment so that they may contribute to development, and d) adopting ethical recruitment policies, among others. Co-development mechanisms between migrant-sending and migrant-receiving countries could encourage the progressive realization of the right to remain in the country of origin through the improvement of economic, social, and cultural conditions in the countries of origin. Article 2 of the International Covenant on Economic, Social and Cultural Rights on inter-state cooperation underlies this approach.

Migrants are important vehicles for transmitting "social remittances" including new ideas, products, information and technology. Migrants can also make use of enhanced skills and knowledge acquired abroad once they return to their countries of origin.<sup>247</sup>

### *Making Migration Work for Development*

The World Bank's migration-related projects include focusing on regional transport corridors for the control of HIV transmission (in Sub-Saharan Africa), supporting government efforts to mobilize resources from the diaspora, support for temporary migration to

more developed neighbors, social protection of migrants through training, provision of information, and the regulation of recruitment, and strengthening health education and incentives to reduce the impact of the brain drain.

For labour receiving countries, foreign workers fill in shortages of key personnel for the efficient production of goods and services and, more importantly, for the provision of health, education and

computer-related and IT-related services. All of these have key implications for efficiency and productivity of the economy and essential services delivery.

### *Focusing on the Economic Dimensions of Migration and Remittances*

The World Bank focuses largely on the economic dimensions of migration and remittances from a development perspective. The Bank's work on the development aspects has implications for migrants' rights, especially the right of migrants and their families back home to a decent livelihood, to have access to education and health care, and to be free from hunger and poverty. The Bank plays a global advocacy role in providing evidence-based analysis of the gains of migration for migrants, as well as the countries of origin and destination. The Bank's flagship *Global Development Finance 2003* report, *Global Economic Prospects 2006* report and other publications have highlighted the size and importance of migrant remittances and their beneficial role in reducing poverty and enhancing child health, education and small-business investments Migrant remittances

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The World Trade Organization (WTO) provides an avenue for facilitating the movement of service providers on a temporary basis through the General Agreement on Trade in Services (GATS)<sup>248</sup> or Mode 4<sup>249</sup> in the GATS parlance. The GATS Mode 4 of supply of services (presence of natural

persons) describes the process by which an individual moves to the economy of consumer to provide a certain service, whether on his/her own behalf or on behalf of his/her employer.<sup>250</sup> Through a schedule of commitments, WTO members specify categories of service providers or employees

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of service providers that are granted access into their territories. Given that Mode 4 covers only a small subset of migration and that present commitments are limited mostly to movement of intra-corporate transferees, business visitors and highly-skilled professionals, most labour movements still occur outside the multilateral context. Some developing and least-developed countries, stressing Mode 4 as among the modes of export interest to them, have continually sought for the expansion of commitments by major destination countries in occupations and skill sets that are of interest to them, including movement of contractual service suppliers and independent service suppliers at all skill levels.

At the regional level, regional and sub-regional free trade agreements also include provisions facilitating the movement of people, but as at the multilateral level, these, too, are beset with challenges. The Southern African Development Community (SADC),<sup>251</sup> has signed a new Protocol on the 'Facilitation of Movement of Persons in SADC' aimed at enabling the movement of people to other countries in the region. The Protocol, which is subject to ratification in order to take effect, has the objective of facilitating: the entry into a Member State without the need for a visa for a maximum period of 90 days per year for a bona fide visit and in accordance with the laws of the Member State; permanent and temporary residence in the territory of another Member State; and working in the territory of another Member State. The experience of countries implementing bilateral mobility

agreements provides examples of best practices for improving the development potential of migration, including the realization of economic, social, cultural, civil and political rights, and access to justice. The international community is increasingly conscious of the need to take a holistic view of migration – one that goes beyond a purely economic or security perspective to also incorporate the social and cultural aspects of this global phenomenon – if the problems related to today's migration flows are to be addressed effectively and humanely. Cooperation between countries of origin, transit and destination is critical for guaranteeing the protection of migrants' rights and minimizing the potential negative impact of migration for the long-term development of the country of origin. As the adoption of the Protocol is linked with the intricacies of the process of removing border control, allowing people to freely settle and obtain jobs where they want remains a far-fetched reality.

## **B. Migration and Development Linkages**

Every human being has the intrinsic right and desire to improve his/her living conditions, including through search for better livelihood opportunities within and outside his/her country of birth. The deprivation of the human right to development is one of the causes of migration itself. The International Convention on Economic Social and Cultural Rights<sup>252</sup> recognizes the right to work, including the right of

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everyone to the opportunity to gain a living by work which he/she freely chooses and accepts, as well as the enjoyment of just and favourable conditions of work, and the continuous improvement of living conditions.<sup>253</sup>

Every country has the right to development, and the more developed among them have the moral responsibility to help the developing and least developed countries achieve their development objectives. The mandate to promote the development of all persons becomes clear from Article 22 of the Universal Declaration of Human Rights: “Everyone as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.”<sup>254</sup>

The Declaration on the Right to Development<sup>255</sup> confirms that “the right to development is an inalienable human right and that equality of opportunity for development is a prerogative both of nations and of individuals who make up nations.” Thus, “steps should be taken to ensure the full exercise and progressive enhancement of the right to development, including the formulation, adoption and the implementation of policy, legislative and other measures at the national and international levels.”<sup>256</sup>

The Declaration further asserts that: “States have primary responsibility for the

creation of national and international conditions favourable to the realization of the right to development.”<sup>257</sup> It also places the human being at the centre of a development process respectful of human rights.

Models of economic development which create structural inequality promote irregular migration and place the human rights of millions of people at risk. The 1994 International Conference on Population and Development (ICPD) Programme of Action<sup>258</sup> and the 1999 Bangkok Declaration on Irregular Migration<sup>259</sup> draw conceptual connections between migration and development and urge States which receive irregular migration to aid developing countries and countries with economies in transition to reduce irregular migration through programmes which address poverty reduction, social development, and the achievement of sustained economic growth.<sup>260</sup>

The human rights to civil and political participation are integral to the democratic development of public policies which protect economic, social, and cultural rights.<sup>261</sup> “The forms of political organization and participation in decision-making processes that exist in different societies are closely linked with the degree of equity obtaining there. If socio-economic inequalities are acute, vast sectors of the population will find that the aspiration of exercising their rights as nationals is a virtually unattainable one. Exacerbation of tensions resulting from socio-political exclusion tends to lead to various forms of instability and violence, which generally result in forced movements of population.”<sup>262</sup>

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Effective development policies can reduce the need to migrate. Human rights can guide the development of linked migration and development policy initiatives at the national, regional, and international level. “Many less-developed countries have identified labor export as important in reducing unemployment, improving the balance of payments, securing skills and investment capital, and stimulating development.”<sup>263</sup>

The overall objective is to avoid migration as a matter of necessity by promoting positive human development outcomes and economic opportunities in developing countries. At the same time, it is recognized that under certain circumstances migration can contribute to development through remittances, the acquisition of skills by migrants, and the promotion of entrepreneurship in the country of origin through specific programmes assisting migrants to re-integrate in their home country. Specific mechanisms and ethical recruitment may address issues of brain drain.

A thin semantic line often separates commitments to support migrants in their efforts to promote development, and formulations that come close to suggesting their instrumentalization for the purpose of ensuring mutually agreeable and beneficial arrangements among States. Linking the question of international migration to the issue of development has opened up new avenues for dialogue and collaboration among governments, revolving around the identification of mutual interests and

the creation of “win-win” situations. While it is important to capitalize on the current political momentum, those supporting and driving this process should be mindful of avoiding inconsistencies in the migration and development discourse with regard to human rights.

A case in point is the often made argument that the protection of migrants’ rights will enhance the development gains to be reaped from migration. To quote Mary Robinson, former United Nations High Commissioner for Human Rights: “Respect for migrants’ rights actually contributes to economic and social development in sending and receiving countries. Migrants who have opportunities for decent and legal work contribute more to development than those who are exploited.”<sup>264</sup> Human rights – and the rights-holders – should not be portrayed as means to an end. It should not be implied that migrants are obliged to “pay back” – by contributing to development – for being treated decently. While States should assume responsibility for providing an enabling and empowering environment for migrants, a human rights-based approach implies that they must not patronize them in the exercise of their talents and initiative, and the use of their funds. The most effective way of ensuring this may be an honest commitment to including all groups of migrants in participatory consultations and decision-making processes on international migration and development.

The international community works at large to promote development, reduce poverty

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and achieve the Millennium Development Goals (MDGs):<sup>265</sup> poverty reduction, promoting education, improving maternal health, promoting gender equality, reducing child mortality, combating HIV/AIDS, malaria and other diseases, ensuring environmental sustainability and developing a global partnership for development. Although the link between migration and development is increasingly recognized, the relationship between migration and the Millennium Development Goals has not been adequately explored.

Studies have pointed to migration's positive impact in realizing some of the MDGs.<sup>266</sup> Remittances have directly benefited poor households in many countries with the money sent by relatives working abroad making daily subsistence affordable and access to health and educational services and amenities such as appropriate housing, electricity, water, sanitation more readily realizable for families left behind. Women migrants also benefit from improvements in skills and education and equality in household decision-making.

While migration could be a positive factor for development and the advancement of the rights to livelihood and development, it is likewise acknowledged that many migrants can be exposed and subject to conditions that deny them some rights, including those relating to their conditions at work and the upholding of their dignity. In most instances, it is the women and the less-skilled who are most vulnerable. Information is rife on abuses committed

by employers of domestic women workers, especially those who are hired as temporary contract workers, or those who are undocumented. For low-skilled women, the incidence of abuse is striking, with some of them being treated like slaves and prisoners, subjected to physical, emotional, psychological and sexual abuse.

One trap for the current human rights discourse on migration is to regard and promote human rights as the reserve of the vulnerable. Indeed, most discussions on human rights pertain to weak members of migration movements: female migrants, lower-skilled migrant workers and the undocumented, who often occupy so called "3 D work" (difficult, dirty, dangerous); as well as victims of trafficking, especially women and children. While it is undisputable that all these groups are entitled to and in need of human rights protection, it is also important to note that their vulnerability is not a fact of nature, but the result of social, cultural, economic and political factors that need to be addressed, including: inequalities, marginalization, lack of access to resources and information, lack of knowledge and skills, limited or no involvement in decision-making. Most importantly, it is the lack of voice of "the vulnerable" that cannot be remedied by focusing attention and efforts on protection alone, without pressing for greater representation and participation at the same time. A holistic approach which applies human rights standards to both the fundamental causes and impacts of irregular migration may, in the long run,

reduce the human rights violations against irregular migrants by reducing their desperation and vulnerability.

As such, a human rights approach to migration and development can form part of a set of strategies to ensure the dynamism, flexibility, and competitiveness of the economies of host and sending countries, thus

fostering the positive effects of migration for host societies and countries of origin. A human rights approach to migration will not only help to develop economic opportunities or guide the integration of migration, but also ensure that the concerns of the most vulnerable in a receiving society are addressed and the benefits of migration equitably shared.

### *Advocating for Human Rights of Migrants*

The Office of the High Commissioner for Human Rights (OHCHR) advocates actively for the human rights of migrants. In cooperation with States, United Nations bodies, National Human Rights Institutions, civil society actors and migrants, OHCHR works to ensure that migrants are treated with dignity, influencing the formation of policy and playing a key role in the development of research and scholarship.

The Office comments on draft migration laws at the domestic level and analyzes regional migration directives and treaties (for example, the Return Directive of the European Union). It consults bilaterally with governments on their migration legislation, suggests policies for more comprehensive human rights protection, and collaborates with governments, intergovernmental organizations and non-governmental organizations on consultations and seminars to promote the rights of migrants.

OHCHR conducts research and writes reports to the Human Rights Council and other United Nations bodies on current migration topics, including thematic issues such as climate

change and migration and on migrants who face double discrimination (women, minorities and indigenous communities, inter alia), and makes substantive suggestions for the development of migration policy, such as the *Recommended Guidelines and Principles on Human Rights and Human Trafficking*. It drafts discussion papers on migration topics, such as detention, and provides input on reports, handbooks, glossaries and other materials spearheaded by United Nations bodies, civil society actors and research centres to ensure the incorporation of a human rights-based approach to migration policy and protection.

OHCHR, through its headquarters in Geneva and its various country offices and field presence, regularly receives individual and group complaints from migrants about the abuses perpetrated against them. The Office regularly consults migrant groups and raises concern and awareness about pressing migration issues, including through press statements and information campaigns, and promotes constructive engagement with States and other actors. OHCHR annually commemorates December 18, International Migrant's Day.

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Emphasizing State responsibility for the promotion of economic, social, and cultural rights *ab initio* may recast development policies in a way that would limit emigration, taking on issues beyond the capacity of migrants themselves to fund development in their countries of origin. More work is needed to implement the goals of the 1986 United Nations Declaration on the Right to Development. “States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals.”<sup>267</sup>

Countries of origin may also be impacted by the migration of their nationals, especially those who provide essential services, such as health and education. Such migration often leads to “brain drain” – the migration of the best and brightest – resulting in inadequate service provision at home. Examples of brain drain have been highlighted in many African countries, particularly the flight of medical practitioners and health-care personnel.

## C. The Impact of Climate Change on Migration

Environmental factors have long had an impact on global migration flows. The scale of such flows, both internal and cross border, is expected to rise over the next decades as a result of gradual deterioration of environmental conditions and anthropogenic, or man-made, climate

change and its effects.<sup>268</sup> Both gradual environmental change and extreme environmental events influence population migration patterns but in different ways. The Intergovernmental Panel on Climate Change (IPCC) Fourth Assessment report identified the following more specific climate change impacts that have potential for triggering or increasing population migration: increases in the areas affected by droughts, increased tropical cyclone activity both in frequency and intensity, increased incidence of rising sea level (excludes tsunamis) and increased climate variability.<sup>269</sup> These environmental changes will occur slowly over a long period of time with small but cumulative manifestations. While predictions of the number, characteristics and location of people who would be forced or choose to migrate as a result of these processes still need to be refined using new methodologies to estimate flows, figures will be on the increase, with millions more vulnerable people on the move. Gradual forms of environmental change may most acutely affect those depending directly on fragile ecosystems to sustain farming, fishing and similar livelihoods. People affected by these changes endeavor to adapt through various measures, one of which being migration.

Environmentally induced migration flows can often be of temporary or seasonal nature, with migrants trying to diversify their risks against declining local earnings without cutting off ties with their communities at home. In some cases, entire

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households migrate abroad temporarily waiting for improvement in environmental conditions at home. In other situations, some household members migrate, sending remittances to sustain basic standards of living, while others stay behind caring for local assets and livelihood means.<sup>270</sup> However, if local areas become uninhabitable and the environmental degradation irreversible, then migration can become long-term or even permanent. This scenario poses two challenges. First, there exists the need to better determine where to draw the line between voluntary and forced migration by better defining the tipping point. Second, persons forcibly displaced across international borders remain without any specific protection today as they do not qualify as refugees or any other category under special protection of present international law.<sup>271</sup>

Predicting the impact of gradual deterioration in environmental conditions on migration patterns is complicated by a variety of factors that are part of the decision making process to migrate, including economic, social, cultural, civil and political factors and how they interact at the individual, household, community and national levels. Baseline data are needed to analyze the phenomenon of environmentally induced migration, develop conceptual and methodological tools to model different migration scenarios and formulate appropriate policies to ensure that the human rights of migrants are protected. Within the scope of other efforts aimed at improving the quality and availability of census and

survey information, quantifying and locating vulnerable populations is undoubtedly a priority.

## D. Migration and Health

Health and migration are linked and interdependent. Indeed, many of the same disparities that drive the global spread of disease also drive migration. That is not to say that movement should be stopped, but rather that the health implications have to be managed.

Governments are increasingly recognizing the need for a comprehensive approach to migration health that goes beyond infectious diseases and border control to include migration related health vulnerabilities, communicable diseases, mental health, occupational health, health implications of climate change as well as access to health care and human rights issues.

With more people travelling faster and to more destinations, migration health is today a major public health concern. The re-emergence of tuberculosis in developed parts of the world, the rapid spread of HIV (Human Immunodeficiency Virus) and SARS (Severe Acute Respiratory Syndrome) are only a few examples of the critical relationship between population mobility and health.

While migration itself is not, under normal circumstances, a risk to health, conditions surrounding the migration process can

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increase vulnerability for ill health. Some of the health risk factors are related to the circumstance before departure. Migrants depart with health profiles which have been influenced by their socio-economic status and accessibility to health-care services in their communities of origin. For instance, migrants who are fleeing poverty or conflict are likely less healthy than migrants who move by choice. The health of migrants is also affected by the conditions surrounding their movement. Irregular migrants, trafficked and smuggled persons as well as those forced to move because of natural or man-made disasters, are most vulnerable to poor health conditions, violence and lack of access to adequate health care during the migration process. Risk factors upon destination are often related to the legal status of migrants, which too frequently determines the level of access to health and social service. Further factors defining vulnerability to ill health and risk behaviours are stigma, discrimination and linguistic and cultural barriers. Finally, the return of migrants to their place of origin may imply returning to a location with high disease prevalence compared to the place where the migrant resided temporarily, or it may imply introduction of health conditions acquired during the migration process, into the home community.

The implications of migrant health extend well beyond the migrants themselves. Indeed, there are important public health considerations for the entire society. Inadequate attention to health in the migrant

community will be felt sooner or later by society at large.<sup>272</sup> In that sense, well managed migration health promotes the well being of all, protects global public health, and can facilitate integration and contribute to social and economic development.

The need for coordinated and sustained action to address migration related health challenges was addressed at the World Health Assembly of the World Health Organization (WHO)<sup>273</sup> in May 2008. A Resolution on Migrant Health was adopted by the WHO Member States.<sup>274</sup> The resolution, which promotes equitable access to health services without discrimination on the basis of gender, age, religion, nationality or race, urges Member States, WHO and its partners to promote the inclusion of migrant's health in regional health strategies; to develop/support assessments and studies and share best practices; to strengthen the capacity of service providers and health professionals to respond to migrant needs; to engage in bilateral and multilateral cooperation; and to establish a technical network to further research and enhance the capacity to cooperate.

Migrants have inalienable rights that States have an obligation to uphold. The right of everyone to enjoy the highest attainable standard of physical and mental health is an inherent human right as recognized in major human rights instruments, including the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child,

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the Convention on the Elimination of All Forms of Discrimination Against Women, and the International Convention on the Elimination of all Forms of Racial Discrimination, among others.<sup>275</sup>

Programming success often relies on empowering individuals to discuss issues that concern them and to claim their rights to life, health, information, freedom from discrimination, and to be part of the social and economic life in the countries of destination. Addressing the stigma associated with disease and infection, for instance HIV, and bringing the issue into the public sphere are critical to protecting the rights of those affected. Programmes must be designed with participation of the people (rights holders) they are intended to serve, and must have clear-cut strategies to be inclusive at all levels, from national plans to community-led interventions. In addition, legal mechanisms should be established or reinforced to ensure compliance of the different duty bearers (governments, service providers, community leaders) to meet their responsibilities to people affected.

Although the Joint United Nations Programme on HIV/AIDS (UNAIDS),<sup>276</sup> IOM and WHO have stated that there is no public health rationale for limiting the freedom of movement of people living with HIV, some 67 countries deny the entry, stay or

residence of HIV-positive non-nationals in their countries. Labour migrants often bear the brunt of such restrictions as they are often subject to mandatory testing of HIV without free and informed consent, and respect for confidentiality.<sup>277</sup>

## **E. Concretizing the Right to Development through Migration**

The challenge centers on how to manage the migration and development nexus in a holistic manner so that it becomes more a positive factor of economic and human development benefitting not just one segment of the population but the majority. Migration policies must be linked to development policies and vice versa and should be seen as complementing each other.

The level of development of both sending and receiving countries plays a role in migration decisions. For the sending country, the level of economic development defines the types of movements, length of stay, disposition to overstay or enter a country without proper documentation. Receiving countries, in general, attract migrants from countries where there are less opportunities of earning a decent living at home.

## Capacity Building to Develop Co-Development Policies

The United Nations Conference on Trade and Development (UNCTAD) engages in capacity-building through training and advisory activities by assisting trade negotiators and policy makers in identifying pro-development policy choices related to the movement of a wider spectrum of service providers and at all skill levels and helping countries reflect their comparative advantages in negotiated commitments at the regional and multilateral levels. Beyond market access, UNCTAD also helps countries address domestic regulation issues,

i.e. those relating to disciplines on qualification and licensing requirements and procedures and contributes to strengthening regulatory and institutional processes. In line with its accession-related work, projects with regional groupings and other capacity-building activities, UNCTAD contributes to strengthening developing countries' abilities to identify and promote their national interests and capabilities by conducting training at the national and regional levels on migration-related issues, including in the context of trade in services.

While countries of origin and destination have specific obligations with respect to the migrant, gains from migration are maximized and costs minimized if sending and receiving countries cooperate in the following areas, *inter alia*: mitigating brain drain through human resource training and capacity-building (e.g., retraining and education programmes, twinning arrangements and exchange of experts), facilitating return migration (e.g., by providing incentives and possibilities for lucrative investments, offering preferential interest rates on savings, transfer pension or social security contributions to the home country to be collected by the migrant upon return, providing other social benefits such as educational and health insurance grants, allowing for return and circular migration) and adopting ethical recruitment policies to discipline recruitment of personnel in occupations with shortages such as health and education; maximizing the benefits

from remittances through facilitating and supporting co-development projects, including encouraging entrepreneurship and small-scale businesses, addressing problems of corruption and the lack of access to credit; addressing protection of migrants and the promotion of their rights, most notably of women and the less-skilled who are most vulnerable.

For sending countries, it is important to distribute the benefits of migration, including by improving essential services delivery and access to basic services such as education and health, supporting agricultural infrastructure and other forms of assistance, investing in infrastructure and technological development to better utilize migrants' contributions to the economy including their acquired knowledge and training. In all these efforts, it is important that migrant-receiving governments provide support as well.

## *Facilitating Dialogue and Information Exchange on Migration and Development*

The United Nations Conference on Trade and Development (UNCTAD) carries out its migration-related activities through expert meetings and the annual Commission on Trade in Goods and Services, and Commodities where UNCTAD serves as a conducive venue for dialogue and exchange of best practices on migration and development-related regulatory frameworks and market access issues. Previous dialogues have raised key issues relating to barriers to access of developing country service providers such as limited commitments

on broader categories of persons at the multilateral level, lack or absence of mechanisms relating to recognition of qualifications, existence of administrative barriers including visa, nationality and residency requirements, among others. Such meetings have also reiterated the importance of ensuring temporary labour mobility and brain circulation at the bilateral, regional and multilateral levels to ensure a “triple-win” impact – i.e., serving beneficial effects for the migrant, the sending and receiving countries.

Such efforts need coherent migration management – a management that looks at migration throughout the migration life cycle (i.e., pre-, during- and post-migration) and that involves the sending and

receiving governments and other stakeholders, including the migrant and the employers, and international and non-governmental organizations through co-development and solidarity frameworks.

## *Strengthening Knowledge Regarding Migration and Development Challenges*

The United Nations Institute for Training and Research (UNITAR) hosts the Migration and Development Series (together with the United Nations Population Fund (UNFPA), the International Organization for Migration (IOM) and the MacArthur Foundation) for the diplomatic community at UN headquarters in New York to strengthen its knowledge and

understanding of current migration and development issues that are of relevance to international discussions. In addition, the Institute is re-launching its Migration Programme in Geneva, which will be implementing a multi-year joint project with the IOM to strengthen capacities in the field of international migration and development.

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Effective and coherent migration management is key to ensuring that a balance is achieved in the attainment of development and socio-economic goals. The long-term goal should be to generate adequate employment and sustainable economic growth so that migration becomes a matter of choice rather than a necessity.

## F. Making Migration Work for Development

The United Nations has put the debate on international migration and development on the international agenda through the convening in 2006 of the High Level Dialogue on International Migration and Development.<sup>278</sup> That meeting ushered in the reinvigoration and the expansion of the Global Migration Group<sup>279</sup> and the holding of the Global Forum on Migration and Development<sup>280</sup> to explore further ways of strengthening the commitment for genuine and effective international cooperation on the issue of migration and development. In 2007, a resolution on international migration and development<sup>281</sup> adopted by consensus by the General Assembly, called upon relevant United Nations bodies, other intergovernmental, regional and sub-regional organizations, “to continue to address the issue of migration and development with a view to integrating migration issues,... within the broader context of the implementation of internationally agreed development goals, including the Millennium Development Goals and respect for human rights.”<sup>282</sup>

A “triple win”<sup>283</sup> situation is possible. First of all, there is a need to treat migration and development in a comprehensive manner to ensure that the human and socio-economic development and dimensions are embedded in migration policy. This requires putting in place policies and setting up institutions that would play a role in each stage of the migration process, i.e., pre-, during and post-migration – from preparing and informing the migrants of their rights and where they could get assistance in their area of destination to putting in place mechanisms to maximize the benefits from remittances (including by channeling them into more productive uses) and minimizing the costs of remittance transfers. In all these, there are roles that the sending and receiving governments could play, either individually or jointly, but always in coordination with each other.

Furthermore, it is important to ensure policy coherence and explicit understanding nationally that migration policy should form part of an over-all development strategy and that migration should be considered as just one means towards attaining and realizing development goals but not as a goal in itself. For countries of origin, this means making labour mobility part of their development strategies relating to labour, employment, trade and human resource development policy.

Coherence also requires aligning migration policies with the realization of human rights and socio-economic development goals. This means, *inter alia*,: 1) crafting appropriate

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policies and incentives, including devising a concrete government plan and establishing institutions and offices to handle migration, labour and employment policies in a holistic manner ensuring the protection of the human rights of migrants, 2) advocating for better working conditions and addressing social protection (especially of less-skilled women who are most vulnerable), xenophobia and social marginalization through information dissemination and awareness-raising as part of the pre-departure orientation programme or through migrant resource centers and representations in major destination countries, 3) setting-up databases to maintain links and networks to allow migrants to be updated regarding the opportunities at home, and 4) putting in place mechanisms to maximize the benefits and minimize the costs of migration.<sup>284</sup>

The sensitivities of countries of destination regarding the acceptance of foreign workers that overstay are understandable. Effective migration management by both sending and receiving countries is a preferred option rather than barring migration altogether, given the complementary needs of sending and receiving countries when it comes to labour mobility. Effective migration management takes into account a mix of incentives and penalties including putting in place incentives to facilitate return, such as financial return incentives, re-entry programmes, investment incentives that provide grants and subsidies, low-interest loans, tax breaks, entrepreneurship training, housing and educational subsidies, etc. and imposing mechanisms

to discourage overstaying such as posting financial security bonds, mandatory savings schemes or pension contributions to be collected upon return, strict enforcement of laws on employers and migrants, etc. to discourage overstay.

Ultimately, it is imperative for countries of origin to set the stage to facilitate return by building a stable political and economic environment at home. Mechanisms should be put in place to allow for the possibility of return/re-entry, include appropriate duration of stay, make (temporary) return attractive, e.g., by allowing migrants to engage in productive activities and providing possibilities for the utilization of their acquired knowledge and training, including technology, at home. The sending and receiving country governments could pool some “transit migrants or circular migrants” funds (from contributions from beneficiaries of migration – governments, migrants, employers) to serve as seed money for any activity (including the incentive schemes discussed above, and monitoring and policing functions to ensure return) that would contribute to ensuring circular or return migration and/or other pro-development projects.

In order to maximize development impacts, it is imperative to have meaningful commitments in liberalization efforts at the unilateral, bilateral, regional and multilateral levels and at different skill levels or occupation groups. Often, destination countries institute unilateral policies for specific occupations with vacancies and

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target source countries to fill the shortages or enter into bilateral arrangements, again with specific terms and obligations for countries of destination and origin. While such arrangements facilitate access, they do so only for some chosen occupations and are afforded only to select countries. Thus they lack the predictability of access which is important for developing and least developed countries, whose comparative advantage is their abundant labour. Such schemes are also vehicles for abuse of workers. It is therefore imperative to devise a framework involving both sending and receiving governments and other stakeholders that would enable the migration community to operate in an environment of comfort and where migration could take place in an orderly manner and under mutually-acceptable conditions.

Thus, it is important that demands of developing and least developed countries for better and more predictable access of their service personnel/workers be reflected in commitments at the multilateral level as well as in regional integration frameworks. In this regard, it is important to further explore how GATS Mode 4 commitments at the World Trade Organization (WTO) could be made more meaningful.<sup>285</sup> Among the proposals made to facilitate market access in the on-going GATS negotiations at the WTO include: undertaking broader commitments to cover skill sets demanded by sending countries including those de-linked from commercial presence, removal or substantial reduction of economic or labour market needs tests

which serve as discretionary barriers to entry, specification of the duration of stay and providing for possibilities of renewal. Requests have also been made for alternative assessment of qualifications i.e., demonstrated competence in lieu of university degrees and for more basic verification of skills and competence in the absence of mutual recognition arrangements (MRAs). Some WTO members have also suggested greater transparency of regulations and administrative procedures, including sources of information/contact points relating to the movement of service suppliers and for these to be included as additional commitments in the countries' schedule of commitments. Regional North-South arrangements could also serve as vehicles to market openness as in the context of the economic partnership agreements (EPAs).

As there has been an observed trend towards "cautiousness" on the part of receiving countries towards market opening, there is a need to cushion their "fears" and veer away from protectionism by raising awareness of the costs and benefits of migration through sustained dialogue among key stakeholders, including between labour and global enterprises. Results of such dialogue must be communicated to the general public to assuage negative sentiments regarding migration and to policymakers to base migration-related policies on facts. In this light, there is a need to sensitize receiving country constituents regarding the development impacts of migration and awareness that migration is

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not a one-way street but a phenomenon that impacts on both the sending and the receiving country's development.

In relation to the above-mentioned points and to give substance to claims regarding the benefits of migration, there is a need to intensify and consolidate work on migration and labour mobility and to establish mechanisms for information and research exchange. As to research and analysis, in-depth studies on the following are required: 1) migration and development linkages, including: a) key indicators for understanding migration policies' impact on development and development policies' impact on migration, including developing a conceptual framework and tools to better understand and "measure" these linkages and their impacts, b) the appropriate policy mix to meet key Millennium Development Goals, including poverty reduction, gender empowerment, improvements in education and health conditions, through migration, c) specific country case studies where communities have benefitted from (or have been negatively affected by) migration using the MDGs as the development benchmark, 2) opportunities for trade, investment and developmental links between countries of origin and countries of destination, 3) "job-availabilities"/"employment opportunities" on a per sector, skill set, gender and age, country/group of country basis to enable sending countries to review and reinforce their supply capacities to meet the demands of the external market, 4) remittances and their productive uses,

highlighting the role played by sending and receiving governments, the diaspora population and migrant communities in the sending and receiving countries, either individually or in cooperation with each other (co-development initiatives), 5) best practices in migration management and maximizing migration and development linkages, preferably kept in a single database to be managed by a group of States (e.g., through the Global Forum on Migration and Development process) or organizations (e.g., through the Global Migration Group) to serve as a rich source of information for stakeholders, 6) brain drain, circular migration and temporary worker schemes, and 7) fostering recognition of qualifications, and 8) documentation, research and analysis of the extent of migrants' violation of human rights. Such studies will provide useful information to assess the human rights situation of migrants.

The on-going discussions, debate and work on migration and development issues, including by the Global Migration Group and the Global Forum on Migration and Development, should be sustained and scaled-up and the rich information, data and best practices arising from all these should produce lessons and serve as useful tools in untangling the intricacies of migration and development. The ultimate aim is to emphasize the complementary nature of migration and development, both as phenomena and at the policy level and to reach a "comfort zone" for all stakeholders where migration would finally be seen as beneficial for all.

# VI. Migration Data and the Human Rights Perspective

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Official statistics can provide useful information to monitor and assess the effectiveness of measures to safeguard the rights of migrants. Some data collection systems provide critical information about vulnerable groups, such as asylum-seekers, victims of trafficking or children migrating on their own (unaccompanied minors). Available statistics also permit, under certain circumstances, to estimate the number of migrants in an irregular situation who, because of such irregularity, tend to be more vulnerable to human rights violations. Administrative data can be used to monitor the implementation of human rights instruments at the country level. International organizations and special rapporteurs often rely on the compilation of national data to report on the compliance of States Parties with the international treaties that they have ratified.

For purposes of understanding the extent to which a receiving State and its institutions are successful in safeguarding the rights of migrants, the information of greatest interest is that relative to the foreign population, since non-nationals are more likely than nationals to be in situations where their human rights are not fully respected. Data on the number of foreigners living in a country can be obtained from population censuses provided they

record the country of citizenship of persons enumerated. According to the *Principles and Recommendations for Population and Housing Censuses, Revision 2*,<sup>286</sup> population censuses should record both the country of birth and the country of citizenship of each person enumerated. Having information on both of those characteristics allows the identification of migrants who are non-nationals and those who are nationals of the country they find themselves in and permits, therefore, an assessment of differential outcomes between those two groups. When differences exist, they may be indicative of problems in safeguarding the rights of non-nationals.

Census data on population by citizenship often provide information on the number of stateless persons, a group that requires special attention because stateless persons cannot avail themselves of the national protection of a State. Tabulations of the enumerated population by country of citizenship should present the number of stateless persons as a separate category.<sup>287</sup> Although stateless persons are not necessarily migrants, statelessness often arises as a result of international migration. Among the roughly 200 countries or areas that have carried out censuses since 1960, 77 have reported the number of stateless persons. Countries having

large numbers of stateless persons tend to be those that have emerged recently from the disintegration of larger States.<sup>288</sup> Consistent reporting of such data by all

countries would allow a better monitoring of the success of efforts to reduce statelessness in accordance with international instruments.

### *Compiling Data on the Number of International Migrants Classified by Age, Sex and Country of Origin*

At the United Nations, the Population Division of the Department of Economic and Social Affairs (UNDESA) has compiled a database presenting census data for as many countries as possible on the number of international migrants classified by age, sex and country of origin. Depending on the type of data gathered by each country, country of origin is either country of birth or country of citizenship. The numbers of stateless persons, as reported by each country with data available, are included in the database. On the basis of the data on the

overall number of migrants enumerated in each census, the Population Division produces a consistent time series of estimates of the number of international migrants by sex for each country. At the request of the United Nations Children's Fund (UNICEF), estimates of the number of international migrants by age and sex are under preparation to provide a baseline for the number of migrant children and young migrant women, which constitute two groups of migrants that, under certain circumstances, may be especially vulnerable to exploitation.

Comparisons between nationals and non-nationals by sex can be especially useful in determining whether foreign women face more barriers to the enjoyment of the full array of human rights than their male counterparts or than women who are nationals. For instance, analysis of differences in the labour force participation of women and men of different citizenships has been useful in unveiling major differences among groups having different nationalities and has provided the basis for further research into how overt or covert discrimination prevents some groups of non-nationals from fully enjoying their labour rights. Migrant women may also face particular

protection challenges during and after the migration process. For instance, available data suggest that migrant women are more vulnerable to human trafficking and related abuses than migrant men.

Children and young persons below the age of majority are more vulnerable than adults when faced with situations in which their basic human rights may be at risk. It is therefore important for countries to disseminate data on flows of international migrants classified by age group and sex as well as information on the number of unaccompanied minors and on migrant children separated from their families.

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One problem in gathering the data required to assess the prevalence of human rights violations is that, when migrants find themselves in irregular situations, they are unlikely to contact local authorities to report the abuses they may be experiencing, especially if the migrants concerned are not aware of the rights they are entitled to. Proactive action by countries of origin to inform their emigrants of the rights they are entitled to while abroad and to provide protection through embassies or consulates abroad can go a long way in eliciting the necessary information from migrants.

### Using Data in Assessing the Respect for Human Rights: Some Examples

Over the years, the special rapporteurs appointed by the United Nations Commission on Human Rights have often relied on appropriate data to document the extent of human rights violations, as illustrated in their ad hoc reports. In 1999, the Commission appointed a Special Rapporteur on Migrant Workers. In 2002, for instance, the Special Rapporteur used administrative data provided by the Filipino Overseas Workers Welfare Administration to document the extent to which migrant workers from the Philippines were being subject to arbitrary detention in countries of destination. Data were also presented on the number of cases in which Filipino migrant workers had been subject to abusive conditions by unscrupulous employers and the number of cases in which migrant workers had had problems related to identity documents. The Special Rapporteur has

also relied on data from various sources to document the prevalence of violence against migrant women and the extent to which women have fallen prey to trafficking. The reports of the Special Rapporteur have thus played a crucial role in documenting abuses, quantifying their prevalence and encouraging corrective action.

The institutionalization of data collection as a means of ensuring that there is adequate evidence to assess the degree to which human rights are respected is perhaps most advanced in the case of refugees and asylum-seekers. Thus, the availability of comprehensive data at both the aggregate and the case by case levels permits monitoring the compliance of States Parties with the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. The Convention itself has contributed to lay the basis for data collection by stipulating, in Article 35(2), that national authorities have to cooperate with the United Nations by providing statistical data on refugees. The large number of countries that have ratified the 1951 Convention and made it part of their national legislation as well as the capacity of the United Nations High Commissioner for Refugees to maintain offices in more than 120 countries have contributed to the institutionalization of a nearly global data collection system focusing on refugees and the timely dissemination of the data available.

Non-governmental organizations play a crucial role in monitoring the human

rights situation of migrants and in documenting violations. Amnesty International, for instance, includes in its annual report on the State of Human Rights a country-by-country review of the status of refugee protection and, as appropriate, respect for the rights of migrants. The Cingranelli-Richards (CIRI) Human Rights Data Project<sup>289</sup> makes publicly accessible a database on quantitative information indicating government respect for 13

internationally recognized human rights. The database presents annual data for 195 countries covering the period 1981-2006. The data gathered relate mainly to nationals, although information on non-nationals is presented for a few countries. In various parts of the world, research centres carry out surveys and produce reports based on quantitative information about various aspects of the human rights of migrants.<sup>290</sup>

### *Disseminating Statistics on International Migration*

Within the Department of Economic and Social Affairs of the United Nations Secretariat (UNDESA), the United Nations Statistics Division (UNSD) develops statistical standards and methods for demographic statistics including those related to international migration. In 1998, UNSD issued the latest version of the *Recommendations on Statistics of International Migration (Revision 1)*.<sup>291</sup> The Division has been developing a strategy to foster the implementation of those recommendations. In December 2006, it convened an Expert Group Meeting to identify priority areas for improving the measurement of international migration flows and stocks. The Meeting recommended the preparation of a *Handbook on Statistics of International Migration* to provide guidance in the implementation of the *Recommendations*. It also proposed the preparation of a *Technical Report on the Use of Censuses and Surveys for Statistics on International Migration* to provide guidance for the 2010 round of population censuses. A

draft of this report was reviewed in September 2007 by an Expert Group and is undergoing final revision.

UNSD relies on National Statistical Offices to report data on the foreign-born population and the foreign population as enumerated by censuses or population registers. UNSD compiles such information and makes it available online.<sup>292</sup> UNSD has developed a database<sup>293</sup> containing the questions included in the 2000 round of population censuses by country.

The United Nations Population Division/DESA uses the data available on the number of foreign-born or foreign persons enumerated by censuses or population registers to derive a time series of comprehensive and comparable estimates of the international migrant stock by sex for all countries or areas of the world. The full set of estimates can be accessed online.<sup>294</sup>

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## The Way Forward

Despite these examples of active data compilation and analysis, most countries still do not undertake the consistent collection and dissemination of data relevant for the analysis of the respect of the human rights of migrants. Given that the 2010 round of censuses is already ongoing, it is urgent for countries interested in migration to follow closely the United Nations recommendations on population and housing censuses<sup>295</sup> relative to the recording of country of birth and country of citizenship so as to obtain a timely and comprehensive baseline for the further analysis of international migration and its interrelations with the challenges of safeguarding the human rights of migrants. Availability of such data and their detailed tabulation by age and sex can provide the basis for developing other data collection initiatives to shed light on problem areas relative to the respect of the human rights of migrants.

In addition, better use could be made of administrative statistics generated during the admission or return of international migrants to assess outcomes from the perspective of human rights. Information on the success rate of asylum-seekers in obtaining asylum or temporary permission

to stay; the characteristics of persons sponsoring migrants for family reunification and the timing of the process; the naturalization of foreign nationals; information on the types of contracts used in hiring temporary migrant workers and on the number of violations reported or investigated could all shed light on the determinants of relevant migration outcomes and on whether laws and regulations governing them are being applied fairly and consistently with universally recognized human rights.

While census authorities are generally disposed to transparency in their processes of data collection and diffusion, other agencies with equally important data often are not. Law enforcement and migration agencies tend not to facilitate access to data in their possession, nor are they always amenable to suggestions from independent scholars regarding models for data collection. The data they generate are often not accessible to those who seek to monitor the human rights of the migrants. It would be important to elicit the collaboration of those agencies and to assist in devising guidelines for the appropriate and systematic dissemination of some of the administrative data they collect.

# VII. Conclusion: Key Messages

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Migrants are exposed to specific vulnerabilities and risks and are to be protected against those risks. The degree of exposure to vulnerability and risks of human rights abuses and violations differ greatly among migrants depending on several factors inter-playing together, such as regular or irregular immigration status; gender; nationality; ethnicity; age; migration policies of the country of destination; consular protection programmes of the country of origin; sector of occupation, etc. In varying scale, all migrants suffer some degree of vulnerability in respect of which they require protection.

Discrimination is an underlying factor of migrants' vulnerability, which limits or nullifies migrants' contribution to development. When it concerns migrants, discrimination takes multiple facets encompassing gender, race and religion and generates mutually reinforcing patterns of exclusion, disadvantage and abuse affecting the full spectrum of public life from conditions in the workplace, to access to social services, justice, education, housing, health care, and participation in the decision-making processes. The consequences fostered by such an environment jeopardize the contribution of migrant women and men to development. Discrimination against migrants thus needs to be addressed forcefully.

While States have the sovereign right to decide who can enter and remain in their territory, it is important to remember that fundamental human rights are non-negotiable. However, protection of the human rights of migrants should not be dissociated from, or set at variance with, the management and control of migration. The protection of the human rights of migrants must be guaranteed at every stage of the migratory process and in every procedure of migration management, both in the country of origin and in the country of transit and destination. Cooperation and coordination among governments of countries of origin, transit and destination in the setting of migration policy and ensuring implementation of human rights instruments are essential to safeguard the fundamental rights and freedoms of migrants.

## A. The Legal Framework

Migrating abroad can be an empowering experience that motivates women and men to seek better prospects beyond their countries' borders and that provides resources, in terms of remittances to countries of origin and labour and societal contributions to countries of destination. This mutually beneficial and legitimate aim must not be undermined by abuse;

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respecting the human rights of migrants is not only a legal obligation, but is also a pre-condition for societies to grow and prosper in peace and security. The key, therefore, is to realize more effectively the linkages between human rights, development strategies, and maximizing the potential of migration.

Human rights are not a matter of choice, but are legal obligations under international treaties which bind all governments that have accepted them. Human rights should, therefore, be an integral dimension of the design, implementation, monitoring and evaluation of migration policies and programmes. Moreover, respect for the rights of migrants is essential to maximize the potential benefits and positive contributions of migrants to development. Indeed, respect for the rights of migrants contributes to the economic and social development in both sending and receiving countries.

Increasing migrant flows have resulted in growing international attention to such complex issues as xenophobia, discrimination, racism, human trafficking, human rights of migrants, and most recently, terrorism and national security. There have been a number of initiatives to address these issues, including the appointment of a Special Rapporteur on the Human Rights of Migrants in 2000 and a Special Rapporteur on Trafficking in 2004. The United Nations General Assembly increased the visibility of migrants and their plight by proclaiming December 18 as “International Migrants Day”.

The primary reference document for the protection of the human rights of migrants is the Universal Declaration of Human Rights, followed by the principal international human rights instruments, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child, the Convention on the Elimination of All forms of Discrimination against Women, and the International Convention for the Protection of the Rights of All Migrant Workers and Members of their Families.

One of the main challenges in the protection of the human rights of migrants is the ratification, implementation and enforcement of existing human rights instruments. The objective of universal ratification has not been achieved. Thus, the challenge is to protect the rights of migrants by strengthening the normative human rights framework relating to international migrants and by ensuring that its provisions are applied on a non-discriminatory basis at the national level.

### Key Messages

- *Migrants are human beings with rights which must be protected by States as they exercise their sovereign right to determine who enters and remains in their territory.*
- *Migration, development and human rights are intrinsically interconnected. Respect for the fundamental rights and freedoms*

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*of all migrants is essential for reaping the full benefits of international migration.*

- *Human rights of migrants are a shared responsibility. Governments of origin, transit and destination each have an important role to play in safeguarding the human rights of migrants.*
- *The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families offers States the most comprehensive framework for the protection of the human rights of migrants. Concerns linked to its low level of ratification must be addressed and efforts must be intensified to better articulate a human rights approach to migration, including through greater dissemination of tools to strengthen States' capacities in this regard. Good practices should be documented to serve as guidance to inform States' approaches.*
- *Intergovernmental organizations and civil society have key roles to play in working with governments and migrants to achieve protection of their rights, and respect for their obligations. This should be encouraged and further cooperation developed.*

## **B. Challenges Faced by Different Migrant Groups**

### **1. Irregular Migrants**

Irregular migration is not only a phenomenon occurring between developed and developing countries, but in all parts of the

world. In a world where irregular migrants are more vulnerable to exploitation and more likely to be subjected to human and labour rights' violations, it is essential to remember that fundamental human rights are non-negotiable and that an individual's immigration status is irrelevant in this regard.

### **Key Messages**

- *Government measures to respond to persistent irregular migration through border enforcement, anti-trafficking initiatives and immigration control measures sometimes fail to take into account both the international human rights framework that exists to universally protect all people on foreign territory, regardless of nationality, and can result in abuses of non-nationals in all stages of the migration process, including transit and return.*
- *The uncertainty regarding full citizenship and legal status affects migrants' full participation and entitlements in society, such as their right to health and education and their right to work without being subjected to discrimination.*
- *Countries of origin and destination must urgently consider developing programmes which provide sound and easily accessible information on safe channels for legal migration, the possible harms of illegal migration including trafficking, and information concerning destination countries and cities, for instance on travel, job placement, legal rights and health. Information should also be provided on assistance*

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available to migrants in the countries of destination, such as those provided by women's groups and human rights organizations, legal aid services, various governmental services and counseling services.

## 2. Female Migrants

Increased female migration and the abuses often experienced by female migrants call for the recognition of a gender dimension as an integral part of the process of planning, monitoring and policy making at all levels which incorporates the particular needs of women.

### Key Messages

- *It is becoming increasingly evident that migration is not a "gender-neutral" phenomenon. Men and women display differences in their migratory behaviours and face different opportunities, risks and challenges. Gender-specific issues must be addressed, including factors leading to irregular migration; vulnerability to human rights abuses, exploitation, and discrimination; and health issues.*
- *The experience of female migrants differs from that of men from the moment women decide to migrate. Gender inequalities can increase with migration, therefore generating risks and vulnerabilities. In some cases, female migration is accompanied by human rights violations, exploitation and abuse. Women also have less access to information on migration opportunities.*
- *Gender issues and the protection of human rights must be at the centre of the migration agenda. Women who stay behind as heads of households have special needs, as do the increasing numbers of women who migrate across borders on their own. Female migrants, especially girls and irregular migrants are often vulnerable to trafficking, exploitation, HIV/AIDS and other human rights violations and need protection. In countries of origin, women and girls considering migration need to be informed about the risks of irregular migration.*
- *Many female migrants lack access to much-needed health services. National and local health authorities should pay more attention to the health conditions of international migrants. Even when health services are available, other obstacles, including language and communication problems, cultural differences regarding the perception of health and health care, and lack of information about what is available often prevent women migrants from seeking medical care and health services.*
- *Migration schemes which institutionalize family separation have a particular impact on women, whether they are mothers separated from their children or mothers raising children alone in the absence of migrant fathers.*
- *There is a need for more reliable data and research on female migration to identify gaps in gender equality, develop strategies to close those gaps, and monitor implementation. To protect the human*

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*rights of female migrants throughout the entire migration process, it is essential to consider female migration from a life cycle approach, examining the situation of women and girls before they migrate, as they migrate, their situation abroad, and upon return to the country of origin.*

### 3. Migrant Children

Over the last fifteen years, there has been a growing recognition that child migration is a significant and increasingly important phenomenon that requires the development of a more effective, protective approach. In addition to the International Bill of Human Rights, the Convention on the Rights of the Child (CRC) as well as its two Optional Protocols, and notably the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, provide a robust framework for the protection of migrant children, regardless of their migration status. International human rights instruments on migration, such as the International Convention on the Rights of All Migrant Workers and Members of their Families and the International Labour Organization (ILO) Conventions as well as the concluding observations and General Comments of human rights treaty bodies, in particular the Committee on the Rights of the Child also provide comprehensive guidance for ensuring the rights of migrant children.

#### Key Messages

- *Children must matter in migration policies and debates. Policies should take cognizance of how migration affects children*
- *It is essential that children are registered immediately after birth as a means of ensuring that they have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents.*
- *Children affected by migration are particularly vulnerable and should receive special social protection. Migration policies should be accompanied by additional investments in health, education and social protection to address the risks, exclusion and discrimination faced by children who are migrating or are left behind.*
- *When children migrate with parents or are born to migrants in countries of destination, the benefits of access to higher standards of social services may be reduced by disadvantages, including discrimination, relative poverty and language barriers. Children migrating alone are often at higher risk of trafficking, abuse, exploitation and violence. Children who are left behind can face challenges of family instability, increased household responsibilities and social stigmatization.*

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## 4. Migrant Workers

The lack of decent work and sometimes the lack of decent working conditions are among the chief reasons for out-migration. Human rights deficits must be addressed in order to make migration an informed choice. Migration should take place in conditions of dignity and be the result of choice rather than a strategy of survival. It is often violence, social and economic exclusion, poverty, lack of access to health care, food and education, inequality of opportunities, and gender discrimination that force people to leave their communities and livelihoods. People migrating because of these human rights deficits are less equipped to confront the challenges ahead of them in a foreign country. They are exposed to greater risks of abuse and violations. Migration policies must address the human rights including economic, social, cultural, civil and political rights and development deficits that are the causes of a substantial part of the migration phenomenon. Besides the obvious push factors that initiate movements, migrants are also attracted by the pull factors in developed countries, particularly employment opportunities and a higher standard of living. Others move for family reunification and social or cultural reasons. Refugees and asylum seekers move to escape political, religious or ethnic persecution.

### Key Messages

- *Migrant workers like all workers have entitlements to all labour rights. Migrants are, however, also a special category of workers who, because of their employment in foreign labour markets, need specific protection. Strong linkages exist between the protection of migrant workers and the contribution of labour migration to development. Deficits in the enjoyment of rights are, inter alia, at the origin of migration. Workers should be enabled to exercise the right to work in their own countries and thus only migrate out of choice.*
- *Recruitment agencies should be adequately regulated so that migrants are not given misleading information or exposed to exploitation. Agencies involved in labour recruitment and transportation of migrants must be regulated in efficient ways. Procedures for accountability as well as those which ensure safe living and working conditions must be developed and monitored. This would go a long way in preventing all kinds of harms and abuses, including trafficking.*
- *Employers' and workers' organizations, through their roles as social actors as well as through sensitization and training of their members, can enhance the effective protection of the rights of migrant workers. Equality of treatment and non-discrimination are a principle of particular importance in this regard. It is in the interest of all to avoid unfair competition based on discrimination that would undermine the chances of native workers in countries of destination and deprive migrant workers of the equitable fruits of their labour.*
- *A significant number of migrant workers face undue hardships and abuse in the*

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*form of low wages, poor working conditions, virtual absence of social protection, denial of freedom of association and workers' rights, discrimination and xenophobia, as well as social exclusion.*

- *Different forms of discrimination of migrant workers in countries of destination erode the potential benefits of migration for all parties, and undermine their development impact. The workers most vulnerable to abuse of human and labour rights are female migrant workers, especially domestic workers; migrant workers in irregular status; trafficked persons and migrant children. Low skills add to the vulnerability of migrant workers while skilled workers are in a better position to protect their rights.*
- *Remittances are the most tangible way in which migrant workers contribute to poverty reduction, employment creation and development in their countries of origin. Non-payment or underpayment of wages is a violation of the human rights of migrants and denies migrant workers part or all of their incomes and limits the amount of remittances that could be used for reducing poverty and promoting development.*
- *In countries of destination, migrant workers are better able to meet labour demand, use their entrepreneurial skills and enlarge the supply of goods and services when they have access to training, skill recognition and labour mobility, on par with native workers.*
- *Social integration of migrant workers and their families, manifested in their exercise of the rights to work, to education, to housing and other relevant rights, allows migrants to raise their productivity and the level of their contributions to the economies of countries of destination.*
- *The goal of temporary and circular migration is to help meet specific short-to medium-term demand for labour in countries of destination, while avoiding the permanent loss of skills and the detrimental consequences for development in countries of origin.*
- *It is important that equal treatment of migrant workers should also be observed under temporary foreign worker schemes. Increasing the number of migrants, by rotating them in and out of labour markets, should not be made at the expense of migrants' rights. Undermining rights and protection of migrant workers infringes development.*

## 5. Refugees

Human rights or humanitarian law violations are at the origin of refugee flows. The protection and voluntary return of refugees in safety and dignity is only possible if the root causes generally linked with serious human rights violations are addressed in a sustainable manner.

### Key Messages

- *Refugees are forced to flee as a result of human rights violations and contraventions of international humanitarian law. If*

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refugees are to return safely to their own country and community, and if future refugee movements are to be averted, such violations and contraventions must be brought to a halt.

- *The right to life, liberty and security is central to the institution of asylum, and yet in too many instances, refugees and asylum seekers are unable to find the protection which they need and to which they are entitled under international law. The right to seek asylum is often threatened where asylum-seekers are part of mixed population movements and jeopardized where shipmasters do not rescue those in distress and when governments are unwilling to disembark those rescued, including asylum-seekers. The international community must ensure that people who are fleeing from their homeland have access to the territory of other States and are able to enjoy peaceful, productive and dignified lives while living in exile.*
- *Sexual and gender-based violence (SGBV) remains a major threat to many refugees and asylum seekers, particularly women and girls. Every effort must be made to ensure that refugee camps and assistance programmes are designed in a way to prevent SGBV and to provide effective support to its victims.*
- *Too many refugees and asylum seekers are held in detention centres or are obliged to live in confined and overcrowded camps. Such situations are unacceptable and*

*every effort must be made to ensure that refugees can exercise the full range of human rights granted to all people in the Universal Declaration of Human Rights.*

## 6. Smuggled Migrants and Victims of Trafficking

Human trafficking and migrant smuggling are global challenges affecting virtually all countries. Traffickers and smugglers effectively exploit common human vulnerabilities, including the various factors that make people consider leaving their homes. Smuggled migrants are often exposed to abuse and deadly risks during their journey. Once at the destination, smuggled migrants' status as irregular immigrants makes them vulnerable to abuse, discrimination and exploitation. Trafficking victims suffer systematic exploitation at the hands of their traffickers, including working in sweatshops, exploitation in the sex industry and domestic servitude.

### Key Messages

- *The rule of law and effective criminal justice systems actively addressing the crimes of human trafficking and migrant smuggling are essential for the protection of migrants' human and legal rights and of those who are trafficked and smuggled. Adequate legal frameworks and institutions are essential to ensure that justice is served and that victims receive compensation when appropriate for the suffering they are forced to endure.*
- *Criminal profits generated through human trafficking and migrant smuggling are*

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high, while enforcement and conviction rates, globally, are low: human trafficking and migrant smuggling are high-profit/low risk crimes. Preventing and combating these crimes necessitates a comprehensive, multi-dimensional response, of which strengthening the criminal justice response to migrant smuggling and human trafficking is a core element. When designing such policies, upholding human rights and protecting the safety and lives of migrants must be paramount.

- *The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol against Smuggling of Migrants by Land, Sea and Air, both supplementing the United Nations Convention against Transnational Organized Crime, provide the first internationally accepted definitions of human trafficking and migrant smuggling and are the primary international legal instruments addressing these criminal activities. Global adherence to the Protocols and their effective implementation remains a challenge today.*
- *Measures to protect the human rights of victims of human trafficking and smuggled migrants are urgently needed. States have a responsibility under international law to act with due diligence to prevent human trafficking and smuggling of migrants, to investigate and prosecute traffickers and smugglers, and to assist and protect victims of trafficking. Anti-trafficking and anti-smuggling measures must protect the human rights*

*and dignity of persons, in particular the rights of those who have been trafficked and smuggled, and of migrants, internally displaced persons, refugees and asylum-seekers. The Recommended Principles and Guidelines on Human Rights and Human Trafficking, produced by the Office of the High Commissioner for Human Rights (OHCHR), seek to inform State action in devising measures to protect and provide redress to the victims of trafficking.*

## C. Linkage between Migration and Development

The right to development and economic and social rights are inalienable human rights. The Declaration on the Right to Development confirms that steps should be taken to ensure the full exercise and progressive enhancement of the right to development, including the formulation, adoption and the implementation of policy, legislative and other measures at the national and international levels.

### Key Messages

- *Development is more than an economic parameter and encompasses human rights. Development goes beyond economic growth to embrace notions linked to human development, which focuses on the individual, his/her family and community, and seeks to expand individual capabilities and choices through health, education, a decent standard of living and political freedom.*

- *Migration policy should form part of an over-all comprehensive development strategy to ensure policy coherence and proper understanding of the two-way linkage between migration and development. Labour mobility should be part of an over-all strategy relating to labour employment, trade, investment and human resource development policy.*
- *Migrants contribute to the development of their countries of origin through remittance flows, investment and business ventures, and skills and technology transfer. As migration affects the development of both sending and receiving countries, co-development initiatives should be encouraged and scaled up.*
- *Countries of origin have a significant role to play in ensuring that migration fosters development and protects the rights of the emigrating workers, inter alia, by: 1) Putting in place appropriate mechanisms to ensure that migrant workers are afforded protection and provided relevant information at each stage of their migration cycle, and 2) Creating an enabling environment to encourage and facilitate return and active engagement and linkages between migrants and diaspora populations.*
- *Properly managed, migration can contribute to the achievement of the Millennium Development Goals (MDGs), including poverty reduction (MDG 1), improvements in education (MDG 2), gender equality (MDG 3), reduction of child mortality (MDG 4), improvement of maternal*

*health (MDG 5), and combating HIV/AIDS, malaria and other diseases (MDG 6).*

- *Migration can be a positive factor and help achieve the realization of the right to development, both at the collective and individual levels, as well as economic and social rights. However, the achievement of these rights as well as the achievement of the MDGs may be hampered in the short-run if brain drain is not addressed.*

## 1. Migration Data

Official statistics can provide useful information to monitor and assess the effectiveness of measures to safeguard the rights of migrants. Some data collection systems provide critical information about vulnerable groups, such as asylum-seekers, victims of trafficking or children migrating on their own (unaccompanied minors). Available statistics also permit, under certain circumstances, to estimate the number of migrants in an irregular situation who, because of such irregularity, tend to be more vulnerable to human rights violations.

## Key Messages

- *To understand the extent to which countries of destination and their institutions successfully safeguard the rights of migrants it is essential to have good age- and sex-disaggregated data for both nationals and non-nationals.*
- *Comparisons between nationals and non-nationals by sex can be especially useful in*

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*determining whether and to what extent female migrants face more barriers to the enjoyment of the full range of human rights than their male counterparts or than women who are nationals.*

- *Administrative statistics, generated during the admission or return of migrants,*

*can be used to assess outcomes from the perspective of human rights. Detailed information can shed light on the determinants of relevant migration outcomes and on whether laws and regulations governing them are being applied fairly and consistently with universally recognized human rights.*

# Appendix A:

## The Global Migration Group

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The Global Migration Group (GMG) is an inter-agency group bringing together heads of agencies to promote the wider application of all relevant international and regional instruments and norms relating to migration, and to encourage the adoption of more coherent, comprehensive and better coordinated approaches to the issue of international migration. The GMG is particularly concerned with improving the overall effectiveness of its members and other stakeholders in capitalizing upon the opportunities and responding to the challenges presented by international migration.

The GMG was established by the United Nations Secretary-General in early 2006 in response to a recommendation of the Global Commission on International Migration for the establishment of a high-level inter-institutional group of agencies involved in migration-related activities. The GMG was created by building on an existing inter-agency group with a more limited membership, the Geneva Migration Group, which was established in April 2003. Four new members were admitted at the end of 2007: UNESCO, UNICEF, UNITAR, and the Regional Commissions.

The GMG meets at regular intervals. The Chair is held on a rotating basis for periods

of 6 months by the executive heads of its member organizations. The GMG contributed actively to preparations for the 2006 General Assembly High Level Dialogue on International Migration and Development and to the meetings of the Global Forum on Migration and Development the first of which was held in Brussels in July 2007.

The GMG consists of 14 organizations that are actively involved in international migration and related issues:

The **International Labour Organization (ILO)**, the UN specialized agency on labour issues, has been dealing with labour migration since 1919. It has pioneered international Conventions to guide migration policy and protection of migrant workers. All major sectors of ILO – standards, employment, social protection and social dialogue – work on labour migration within its overarching framework of ‘decent work for all’. ILO adopts a rights-based approach to labour migration and promotes tripartite participation (governments, employers and workers) in migration policy. It provides advisory services to Member States, promotes international standards, provides a tripartite forum for consultations, serves as a global knowledge base, and provides technical assistance and capacity-building to constituents. ILO has recently developed

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a multilateral framework on labour migration to guide its constituents in labour migration policy.

The **International Organization for Migration (IOM)** is dedicated to promoting humane and orderly migration for the benefit of all. IOM acts with its partners to: uphold the human dignity and well-being of migrants; encourage social and economic development through migration; assist in meeting the growing operational challenges of migration management; and advance understanding of migration issues. It does these by using its long experience and world-wide presence to provide a full range of services and advice to governments and migrants, from projects and practical solutions to policy and broad strategic approaches, from data collection, research and analysis to the provision of a forum for States, intergovernmental organizations and civil society to exchange views and experiences and promote cooperation and coordination of efforts on international migration issues.

The **Office of the High Commissioner for Human Rights (OHCHR)** promotes a human rights approach to migration throughout its work. In particular, it supports the mandates of the UN Special Rapporteur on the Human Rights of Migrants and the UN Special Rapporteur on Trafficking and services the Committee on Migrant Workers, the treaty body supervising compliance with the International Convention on the Protection of the Rights of All Migrant Workers

and Members of their Families. OHCHR also implements a technical cooperation project on Trafficking which is guided by OHCHR's Recommended Principles and Guidelines on Human Rights and Human Trafficking. Issues of migration, development and human rights are further addressed and analyzed, including at the regional and country level, through a variety of other mandates and programmes, such as that of national human rights institutions.

The **United Nations Conference on Trade and Development (UNCTAD)**, the United Nations focal point for the integrated treatment of trade and development, aims, inter alia, to make migration work for development and contribute to the achievement of the MDGs. Under its three pillars (research and analysis, technical assistance and inter-governmental consensus-building), UNCTAD actively promotes coherence and global understanding by offering strategic policy analysis and options on the nexus between migration, trade and development, including through expert meetings and key publications. It undertakes analytical work and provides advice and technical assistance to policy makers, trade negotiators and regulators on: contribution of migrants to development; the potential benefits and opportunities of trade, investment and developmental links between countries of origin of migrants and their communities abroad; and the potential of migrants' remittances to contribute to development. It also contributes to the knowledge base

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on trade- and development-related issues and trends including on circular migration; gender-related migration; brain-drain and brain circulation. UNCTAD's work on trade in services include market access, regulatory issues and institutional frameworks to facilitate the temporary movement of natural persons at the multilateral (GATS Mode 4), regional and bilateral levels as well as trade in labour intensive services and fostering skills development and recognition of qualifications. UNCTAD collects migration-related data and information and participates in the interagency Task Force on Statistics of International Trade in Services.

The **Department of Economic and Social Affairs (UNDESA)** of the United Nations Secretariat is the primary source of information on matters related to international migration and development for the General Assembly, ECOSOC and its functional commissions. UNDESA's activities in this area are part of its overall responsibilities for the analysis of development prospects globally, and aim at providing the foundation for the policy debate on maximizing the benefits of international migration for development. They include providing objective analyses of the causes and consequences of international migration; compiling, analyzing and disseminating statistics on international migration; working to improve the availability and comparability of those statistics; and, in collaboration with the Regional Commissions, monitoring national and regional policies on international migration.

The **United Nations Development Programme's (UNDP)** aim is to maximize the developmental benefits of migration for poor countries, and mitigate any negative consequences. UNDP country offices provide capacity development support to governments that wish to develop pro-poor, prodevelopment and human rights-based migration strategies, as part of their broader MDG-based national development strategies. Particular attention is given to the efficiency and use of remittances, retaining key skills, improving the participation of diasporas, strengthening local governance and investment in education. Within the international debate on migration, UNDP advocates for a focus on sustainable human development and protecting the rights of migrants, as well as progress on the GATS Mode 4 negotiations on the temporary movement of labour.

**United Nations Educational, Scientific and Cultural Organization (UNESCO)** emphasizes the human face of migration and addresses the implications of the movement of people in its fields of competence. These include: the migration education nexus and the challenges raised by brain drain/gain, student mobility, and the international recognition of qualifications; the migration-development nexus, with a particular emphasis on the development of knowledge diasporas through the use of ICTs; the impact of environmental trends and climatic change on forced migration; the cultural integration of migrants in host societies, with particular attention

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to the balance between social cohesion and the respect for cultural diversity; and the research-policy nexus through the creation of research networks and of innovative platforms enabling exchanges between researchers and policy-makers. It does so by cooperating with a wide range of partners, including intergovernmental organizations, civil society groups and universities.

International migration has important implications for demographic dynamics and thus for the core mandate of the **United Nations Population Fund (UNFPA)**. UNFPA's approach towards policy and programmatic interventions in this area is rights-based and culture and gender sensitive. Among issues of particular concern are the challenges of female migration, including trafficking and smuggling; migration and the spread of diseases such as HIV/AIDS; the provision of basic social services, including reproductive health services, in areas of destination; and protection of the human rights of migrants. UNFPA seeks to improve data, research and institutional capacity for formulating and implementing migration policies and programmes. UNFPA is strongly dedicated to providing directed policy, advocacy and technical support to ensure that international migration is recognized as an important factor in development.

In order to fulfill its mandate to protect refugees and find durable solutions for them, the **Office of the United Nations High Commissioner for Refugees (UNHCR)**

is actively involved in a range of activities with a direct bearing on migration. They include contributing to the work of regional fora on migration and asylum; assisting states to address the phenomenon of mixed migratory movements; capacity-building and institutional support relating to asylum; data-collection and analysis on forced migration and secondary movements of refugees; advocacy relating to asylum, statelessness and the phenomenon of internal displacement; provision of assistance for the voluntary repatriation and reintegration of refugees and return of displaced persons; advocacy to encourage the development aid community to recognize and mitigate the development impact of hosting large numbers of refugees or receiving back large number of refugees and displaced persons.

**The United Nations Children Fund (UNICEF)**, guided by the Convention of the Rights of the Child, is dedicated to the realization of the rights of children and women affected by migration. It carries out policy research and evidence-based analyses to find practical solutions to the challenges that migration can bring, including an assessment of unaccompanied and separated migrant children. UNICEF focuses on the social impact of migration and remittances on children left behind, and the role that social protection and legislative reform can play in supporting the realization of the rights of affected children and women. UNICEF is currently testing methodologies to measure the social impact

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of migration and remittances on children left behind, and is working jointly with the United Nations Department of Economic and Social Affairs (UNDESA) to estimate the numbers of international migrant children. In addition to its research and analysis, UNICEF is also strongly committed to working directly with governments and civil society to develop protective policies for children, adolescents and women affected by migration, including human sustainable development, child trafficking and child protection.

The **United Nations Institute for Training and Research's (UNITAR)** mandate is to strengthen the effectiveness of the United Nations system through capacity development. For over a decade, UNITAR has been involved in inter-agency collaboration on international migration and related issues, providing training to government officials in most regions of the world. In addition, it supports the progress of international policy dialogue processes, principally the Global Forum on Migration and Development and the United Nations General Assembly's debate on international migration and development. Together with its partners, UNITAR works to enhance knowledge on legal underpinnings, policies and good practices related to migration and development, thereby enabling governments to make informed decisions in this field. Dedicated to promoting inclusive dialogue among all stakeholders in the migration process across sectors and world regions, the Institute offers a platform for networking, trust building, the

exchange of ideas and the dissemination of lessons learned.

The **United Nations Office on Drugs and Crime (UNODC)**, as custodian of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children as well as the Protocol against the Smuggling of Migrants by Land, Sea and Air, which both supplement the Convention against Transnational Organized Crime, assists governments in their ratification and implementation. UNODC promotes international cooperation among governments, assisting them in implementing comprehensive, multi-disciplinary approaches, with a special focus on criminal justice responses. It provides legal assistance and supports capacity-building for law enforcement, prosecution and the judiciary. Victim support and witness protection are also part of UNODC's work. The implementation of the two Protocols will contribute to the reduction of irregular migration and related criminal activities.

International migration is a phenomenon that exhibits regional specificities. The work of the five **United Nations Regional Commissions** is dedicated to fostering incorporation of the regional perspective in any analysis of international migration and in addressing the multidimensional aspects of migration, which entails the integration of this phenomenon with development goals. Their activities include monitoring the development of regional and sub regional consultative processes

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focusing on migration, striving to move towards interregional convergence and regional integration initiatives. As a complement to these efforts, the regional commissions are actively engaged in analyzing the countries' priorities and experiences regarding labour markets, training, exchanges of human capital and portability of pension and health benefits.

The **World Bank's** engagement on international migration focuses on the development impact of migration and remittances for developing countries. The focus to date has been largely on generating reliable data and deepening existing knowledge on

the potential benefits and costs of migration at both the household and aggregate level. This work has led to a number of important global and regional reports and has improved the availability and quality of data on priority issues. Operational work to date has focused on reducing the costs of remittances and better channeling of these resources; enhancing the portability of pensions and strengthening the protection of migrant workers. The World Bank has also been actively engaged in the attempt to gain global policy coherence in the area of international migration by means of improved partnerships and coordination.

# Appendix B: Relevant Migration and Human Rights Instruments<sup>296</sup>

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## Fundamental Instruments

- Universal Declaration of Human Rights, 1948
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1950
- Convention Relating to the Status of Refugees, 1951
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 1966
- International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966
- International Covenant on Civil and Political Rights (ICCPR), 1966
- Protocol Relating to the Status of Refugees, 1967
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984
- Convention on the Rights of the Child (CRC), 1989
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW), 1990
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000
- Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, 2000
- Convention on the Rights of Persons with Disabilities (CRPD), 2006
- Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, 2008

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## Female Migrants

- Convention for the Suppression of the Traffic in Women and Children, 1947
- Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 1999
- Freedom of Association and Protection of the Right to Organise Convention, (No.87), 1948
- Migration for Employment Recommendation (Revised), (No.86), 1949
- Migration for Employment Convention (Revised), (No.97), 1949

## Migrant Children

- Worst Forms of Child Labour Convention, 1999 (No.182)
- Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2000
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000
- Committee on the Rights of the Child, General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside their Countries of Origin, 2005
- Right to Organise and Collective Bargaining Convention, (No.98), 1949
- Equal Remuneration Convention, (No.100), 1951
- Abolition of Forced Labour Convention, (No.105), 1957
- Discrimination (Employment and Occupation) Convention, (No.111), 1958
- Optional Protocol to the International Covenant on Civil and Political Rights, 1966
- Minimum Age Convention, (No.138), 1973
- Migrant Workers (Supplementary Provisions) Convention, Concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, (No.143), 1975
- Migrant Workers Recommendation, (No.151), 1975

## Migrant Workers

- Forced Labour Convention, (No.29), 1930
- Declaration of Philadelphia, 1944
- Migrant Workers Recommendation, (No.151), 1975

- Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty, 1989
- Declaration on Fundamental Principles and Rights at Work and its Follow-up, 1998
- Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2002
- International Labour Organization (ILO) Multilateral Framework on Labour Migration, 2005

## Refugees and Stateless Persons

- Convention Relating to the Status of Stateless Persons, 1954
- Convention on the Reduction of Statelessness, 1961

## Smuggled Migrants and Victims of Trafficking

- United Nations Convention against Transnational Organized Crime, 2000
- Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations

Convention against Transnational Organized Crime, 2001

- Recommended Principles and Guidelines on Human Rights and Human Trafficking, 2002
- United Nations Convention against Corruption, 2003

## Other Instruments

- Declaration on the Human Rights of Individuals Who are Not Nationals of the Country in Which They Live, General Assembly Resolution 10/144, 1985
- Declaration on the Right to Development. General Assembly Resolution 41/128, 1986
- Human Rights Committee General Comment No. 15: The Position of Aliens under the Covenant, 1986
- General Agreement on Trade in Services (GATS) Mode 4, 1995
- Final Report on the Rights of Non-Citizens by Special Rapporteur David Weissbrodt Prepared for the United Nations Sub-Commission on the Protection and Promotion of Human Rights, United Nations Doc. E/CN.4/Sub.2/2003/23, 2003

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- Committee on the Elimination of Racial Discrimination, General Recommendation No. 30: Discrimination against Non-Citizens, 2004

## Other ILO Conventions

- Equality of Treatment (Accident Compensation) Convention, 1925 (No.19)
- Labour Inspection Convention, 1947 (No.81)
- Protection of Wages Convention, 1949 (No.95)
- Social Security (Minimum Standards) Convention, 1962 (No.118)
- Employment Policy Convention, 1964 (No.122)
- Minimum Wage Fixing Convention, 1970 (No.131)
- Tripartite Consultation (International Labour Standards) Convention, 1976 (No.144)
- Occupational Safety and Health Convention, 1981 (No.155)
- Maintenance of Social Security Rights Convention, 1982 (No.157)
- Occupational Health Services Convention, 1985 (No.167)
- Working Conditions (Hotels and Restaurants) Convention, 1991 (No.172)
- Safety and Health in Mines Convention, 1997 (No.176)
- Private Employment Agencies Convention, 1997 (No.181)

# Appendix C: Adoption of Key United Nations Legal Instruments on International Migration

## *Number of Countries Ratifying, by Region\**

Adopted as of September 2008

Instrument	Year adopted	Entry into force	Total Number of Countries	Africa	Asia	Europe	Latin America and Caribbean	North America	Oceania
Convention Relating to the Status of Refugees	1951	1954	144	48	19	42	27	1	7
Protocol Relating to the Status of Refugees	1967	1967	144	48	19	41	27	2	7
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families	1990	2003	39	14	8	2	15	-	-
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children	2000	2003	116	35	17	36	23	2	3
Protocol against the Smuggling of Migrants by Land, Sea and Air	2000	2004	108	32	17	35	19	2	3

\*Composition of Regions according to United Nations Population Division  
 Compiled from United Nations Treaty Collection (2008).  
<http://treaties.un.org/Pages/Home.aspx?lang=en>.

## Endnotes

- <sup>1</sup> United Nations Population Division. Department of Economic and Social Affairs. (2006). *International Migration 2006*, International Migration Wall Chart. New York. The equivalent figure in 1960 amounted to 75 million persons or 2.5 per cent of the world's population.
- <sup>2</sup> United Nations Population Division. Department of Economic and Social Affairs. (2006). *Trends in Total Migrant Stock: The 2005 Revision*. CD-Rom Documentation (POP/DB/MIG/Rev.2005/Doc). New York.
- <sup>3</sup> Boswell, Christina. (2006). *Migration in Europe*. A Paper Prepared for the Policy Analysis and Research Programme of the Global Commission on International Migration. For more information see: <http://www.gcim.org/en/>.
- <sup>4</sup> United Nations Population Division. Department of Economic and Social Affairs. (2006). *Trends in Total Migrant Stock: The 2005 Revision*. CD-Rom Documentation (POP/DB/MIG/Rev.2005/Doc). New York.
- <sup>5</sup> Economic Commission for Latin America and the Caribbean (ECLAC), Population Division (CELADE) There has been a significant increase in the number of Latin American and Caribbean migrants living abroad: from an estimated total of 21 million in 2000 to almost 26 million in 2005, representing 13 per cent of the almost 200 million migrants in the world. These numbers indicate a strong presence of Latin Americans and Caribbean nationals residing outside their countries of origin, even though in relative terms the impacts on the national population in the countries of origin vary.
- <sup>6</sup> Article 2. Universal Declaration of Human Rights. (1948).
- <sup>7</sup> For the full text of the Protocol Relating to the Status of Refugees see: <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterV/treaty5.asp>.
- <sup>8</sup> For the full text of the Convention Relating to the Status of Refugees see: <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterV/treaty2.asp>.
- <sup>9</sup> For the full text of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families see: <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterIV/treaty24.asp>.
- <sup>10</sup> For the full text of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children see: <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterXVIII/treaty14.asp>.
- <sup>11</sup> For the full text of the Protocol against the Smuggling of Migrants by Land, Sea and Air see: <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterXVIII/treaty15.asp>.
- <sup>12</sup> For the full text of the Convention against Transnational Organized Crime see: <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterXVIII/treaty13.asp>.
- <sup>13</sup> For more information on the International Conference on Population and Development see: <http://www.un.org/popin/icpd2.htm>.
- <sup>14</sup> For more information on the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance see: <http://www.unhchr.ch/pdf/Durban.pdf>.
- <sup>15</sup> Article 22. Universal Declaration of Human Rights. (1948).
- <sup>16</sup> Article 2. Declaration on the Right to Development. (1986).
- <sup>17</sup> For more information on the High Level Dialogue on Migration and Development see: <http://www.un.org/migration/>.
- <sup>18</sup> For more information on the Global Forum on Migration and Development see: [www.gfmd2008.org](http://www.gfmd2008.org).
- <sup>19</sup> Malhotra, Kamal. (2003). *Making Global Trade Work for People*. Earthscan Publications. London. p.273.
- <sup>20</sup> Committee on Migrant Workers. Press Release 16 December 2005.
- <sup>21</sup> International Organization for Migration (IOM). (2004). *International Migration Law. Glossary on Migration*. Geneva. p. 3.
- <sup>22</sup> International Organization for Migration (IOM). (2004). *International Migration Law. Glossary on Migration*. Geneva, p. 34.
- <sup>23</sup> Article 1. United Nations Convention on the Rights of the Child. (1989). For more information see: <http://untreaty.un.org/>.
- <sup>24</sup> This category should also logically include the 30,000 trans-national adoptees who migrate across

borders each year for family reunion purposes. However they are not included in this analysis.

<sup>25</sup> Bhabha, Jacqueline. (2008). *Independent Children, Inconsistent Adults: International Child Migration and the Legal Framework*. Discussion Papers. UNICEF. Innocenti Research Centre.

<sup>26</sup> International Organization for Migration (IOM). (2004). *International Migration Law. Glossary on Migration*. Geneva. p. 20.

<sup>27</sup> Article 2(1). International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, (1990). For more information see: <http://untreaty.un.org/>.

<sup>28</sup> Article 2. International Convention on the Rights of All Migrants Workers and Members of Their Families. (1990).

<sup>29</sup> International Organization for Migration (IOM). (2008). *International Dialogue on Migration No. 10. Expert Seminar: Migration and the Environment*. In collaboration with the United Nations Population Fund (UNFPA). Geneva. p. 23.

<sup>30</sup> International Organization for Migration (IOM). (2008). *International Dialogue on Migration No. 10. Expert Seminar: Migration and the Environment*. In collaboration with the United Nations Population Fund (UNFPA). Geneva. p. 23.

<sup>31</sup> Events occurring in Europe before 1 January 1951; or events occurring in Europe or elsewhere before 1 January 1951, and each contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention.

<sup>32</sup> Convention and Protocol Relating to the Status of Refugees. (1951). For more information see: <http://untreaty.un.org/>.

<sup>33</sup> Türk, Volker. (2001). UNHCR'S Supervisory Responsibility, *Revue québécoise de droit international*, Volume 14.1. pp. 135, 138. The understanding of the term 'international protection' "has evolved generally over time from the idea of international protection as a surrogate for consular and diplomatic protection to including gradually broader notions of human rights protection. Today, the institution of international refugee protection, while unique in the international legal system, is embedded in the broader international

human rights protection regime and also generally linked to effective forms of international cooperation".

<sup>34</sup> International Organization for Migration (IOM). (2004). *International Migration Law. Glossary on Migration*. Geneva. p. 8.

<sup>35</sup> International Organization for Migration (IOM). (2004). *International Migration Law. Glossary on Migration*. Geneva. p. 25.

<sup>36</sup> Article 6(c). International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. (1990).

<sup>37</sup> International Organization for Migration (IOM). (2004). *International Migration Law. Glossary on Migration*. Geneva. p. 56.

<sup>38</sup> For more information on the United Nations Protocol on Trafficking in Person see: <http://untreaty.un.org/English/TreatyEvent2003/Texts/treaty2E.pdf>.

<sup>39</sup> For more information on the United Nations Protocol on Smuggling of Migrants see: <http://untreaty.un.org/English/TreatyEvent2001/pdf/18e.pdf>.

<sup>40</sup> Regarding networks involved in trafficking for degrading sex work, there does not appear to be any action or appropriate legislation to combat these extreme forms of abuse or the use of degrading and forced labor in those countries. Human Rights of Migrants Note by the Secretary-General (A/57/292 – p. 15).

<sup>41</sup> Article 3 (a). Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. (2000).

<sup>42</sup> The language of the definition and criminalization requirements of the Smuggling of Migrants Protocol (Art.3 (a), and Art.6) makes it clear that smuggling should only be criminalized where it involves the illegal entry of migrants into a State Party, which requires an element of transnationality. No such requirement occurs in the provisions that deal with trafficking in persons: this must be criminalized regardless of whether victims are trafficked within a country or from one country to another.

<sup>43</sup> Article 3 (a). Protocol against the Smuggling of Migrants by Land, Sea and Air. (2000).

<sup>44</sup> International Organization for Migration (IOM). (2004). *International Migration Law. Glossary on Migration*. Geneva. p. 25.

- <sup>45</sup> Article 33 (1) and (2). Convention Relating to the Status of Refugees. (1951).
- <sup>46</sup> Article 3. Convention against Torture. (1984).
- <sup>47</sup> Report of the Special Rapporteur on the Human Rights of Migrants, Ms. Gabriela Rodriguez Pizarro. (2003). Specific Groups and Individuals - Migrant Workers. (E/CN.4/2003/85). p. 23.
- <sup>48</sup> Human Rights of Migrants Note by the Secretary-General (A/57/292 - p. 12).
- <sup>49</sup> Vohra, S. (2007). Detention of Irregular Migrants and Asylum Seekers. In: Cholewinski, R., Perruchoud, R. and MacDonald, E. (eds). *International Migration Law: Developing Paradigms and Key Challenges*. Asser Press.
- <sup>50</sup> For more information on the International Covenant on Civil and Political Rights (ICCPR) see: [http://www.unhcr.ch/html/menu3/b/a\\_ccpr.htm](http://www.unhcr.ch/html/menu3/b/a_ccpr.htm).
- <sup>51</sup> For more information on the International Covenant on Economic, Social and Cultural Rights (ICCPR) see: [http://www.unhcr.ch/html/menu3/b/a\\_cescr.htm](http://www.unhcr.ch/html/menu3/b/a_cescr.htm).
- <sup>52</sup> For more information on the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) see: [http://www.unhcr.ch/html/menu3/b/d\\_icerd.htm](http://www.unhcr.ch/html/menu3/b/d_icerd.htm).
- <sup>53</sup> For more information on the Convention on the Rights of the Child (CRC) see: <http://www.unhcr.ch/html/menu3/b/k2crc.htm>.
- <sup>54</sup> For more information on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) see: <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>.
- <sup>55</sup> For more information on the Convention against Torture (CAT) see: <http://www2.ohchr.org/english/law/cat.htm>.
- <sup>56</sup> For more information on the Convention on the Rights of Persons with Disabilities (CRPD) see: <http://www2.ohchr.org/english/law/disabilities-convention.htm>.
- <sup>57</sup> See for instance article 25 of the ICCPR.
- <sup>58</sup> Human Rights Committee. *The Nature of the General Legal Obligation Imposed on States Parties*. General Comment No. 31. paragraph 10.
- <sup>59</sup> Committee on the Elimination of Racial Discrimination (CERD). *General Recommendation: Discrimination against Non Citizens*. paragraph 7.
- <sup>60</sup> For more information on the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW) see: [http://www.unhcr.ch/tbs/doc.nsf/0/090469d84455b335c1256fe0004bd30d/\\$FILE/G0540819.pdf](http://www.unhcr.ch/tbs/doc.nsf/0/090469d84455b335c1256fe0004bd30d/$FILE/G0540819.pdf).
- <sup>61</sup> Article 3. Resolution 1999/44. For more information on the mandate of the Special Rapporteur on the Human Rights of Migrants see: <http://www2.ohchr.org/english/issues/migration/rapporteur/>
- <sup>62</sup> Report on the Rights of Non-Citizens. (E/CN.4/Sub.2/2003/23).
- <sup>63</sup> Article 65. International Convention for the Protection of the Rights of All Migrant Workers and Members of their Families. (1990)
- <sup>64</sup> Article 68. International Convention for the Protection of the Rights of All Migrant Workers and Members of their Families. (1990)
- <sup>65</sup> Office of the High Commissioner for Human Rights (OHCHR). *Recommended Principles and Guidelines on Human Rights and Human Trafficking*. (E/2002/68/Add. 1). For more information see: <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf>.
- <sup>66</sup> Committee on Economic, Social and Cultural Rights (CESCR). General Comment No. 18 on the Right to Work. paragraph 10.
- <sup>67</sup> United Nations Population Fund (UNFPA). (2004). *The International Migration Policy Programme (IMP). Meeting the Challenges of Migration. Progress since the ICPD. Human Rights of Migrants*. pp. 40-47. New York.
- <sup>68</sup> For more information on the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) see: <http://untreaty.un.org/>.
- <sup>69</sup> For more information on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979) see: <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>.
- <sup>70</sup> International Labour Organization (ILO). *Convention Concerning Migration for Employment C-97*. (Revised 1949). <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C097>.
- <sup>71</sup> For more information on the Convention for Suppression of the Traffic in Women and Children see: <http://untreaty.un.org/>.

<sup>72</sup> Article 6. International Convention for the Suppression of the Traffic in Women and Children. (1947).

<sup>73</sup> Article 7. International Convention for the Suppression of the Traffic in Women and Children. (1947).

<sup>74</sup> For more information on the Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children see: <http://untreaty.un.org/English/TreatyEvent2003/Texts/treaty2E.pdf>.

<sup>75</sup> Ferrer, Marcela. (2005). *La población y el desarrollo desde un enfoque de derechos humanos: intersecciones, perspectivas y orientaciones para una agenda regional*. pp. 36-41. Serie población y desarrollo. No. 60. Santiago, Chile: División de Población. CELADE. Naciones Unidas.

<sup>76</sup> For more information on the International Conference on Population and Development see: <http://www.un.org/popin/icpd/conference/offeng/poa.html>.

<sup>77</sup> For more information on the Beijing Declaration and Platform for Action see: <http://www.un.org/womenwatch/daw/beijing/platform/declar.htm>.

<sup>78</sup> For more information on General Assembly Resolution 58/143 see: <http://daccessdds.un.org/doc/UNDOC/GEN/N03/502/62/PDF/N0350262.pdf?OpenElement>.

<sup>79</sup> For more information on the United Nations Charter see: <http://www.un.org/aboutun/charter/>.

<sup>80</sup> Redpath, J. (2006). Human Rights of Migrants Women and International Protection Mechanisms. pp. 85 - 90. In: UNFPA. *Female Migrants: Bridging the Gaps Throughout the Life Cycle*. Selected Papers of the UNFPA-IOM Expert Group Meeting: New York. 2-3 May 2006. New York.

<sup>81</sup> Human Rights Council. (2008). *Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*. Report of the Special Rapporteur on the Human Rights of Migrants. Jorge Bustamante (A/HRC/7/12). New York.

<sup>82</sup> Paragraph 10.10. ICPD Programme of Action. (1994).

<sup>83</sup> Paragraph 10.11. ICPD Programme of Action. (1994).

<sup>84</sup> Paragraph 232i. The Beijing Platform for Action. (1995).

<sup>85</sup> Paragraph 124g. The Beijing Platform for Action. (1995).

<sup>86</sup> The CRC provides protection for children and adolescents: left behind by both or one of the parents in the country of origin; migrating with one or both parents; facing obstacles in acquiring citizenship in country of destination; confronted with difficulties of integrating the country of destination; affected by migration even though they may not be directly involved in the migration process.

<sup>87</sup> For more information on the Committee on the Rights of the Child see: <http://www2.ohchr.org/english/bodies/crc/>

<sup>88</sup> Paragraph 1. Convention on the Right of the Child. General Comment No. 5 (2003). *General measures of Implementation of the Convention on the Rights of the Child*.

<sup>89</sup> Paragraph 12. Convention on the Right of the Child Committee General Comment No. 6 (2005). *Treatment of Unaccompanied and Separated Children Outside their Countries of Origin*.

<sup>90</sup> According to the CRC, "the enjoyment of rights stipulated in the Convention is not limited to children who are citizens of a State Party and must therefore, if not explicitly stated otherwise in the Convention, also be available to all children - including asylum-seeking, refugee and migrant children - irrespective of their nationality, immigration status or statelessness" (Committee of the Rights of the Child. Convention on the Right of the Child Committee General Comment No. 6 (2005). *Treatment of Unaccompanied and Separated Children Outside their Countries of Origin*. (CRC/GC/2005/6). paragraph 12.

<sup>91</sup> Article 6. Convention on the Rights of the Child. (1990).

<sup>92</sup> Article 12. Convention on the Rights of the Child. (1990).

<sup>93</sup> Lundy, Christine. (1998). *An Introduction to the Convention on the Rights of the Child*. St. Thomas, Ontario. Full Circle Press. p. 52.

<sup>94</sup> United Nations Children's Fund (UNICEF). (2007). *Protecting the World's Children: Impact of the Convention on the Rights of the Child in Diverse Legal Systems*. Cambridge University Press.

<sup>95</sup> Committee of the Rights of the Child. General Comment No. 6. *Treatment of unaccompanied and*

*separated children outside their country of origin*, (CRC/GC/2005/6). 1 September 2005, p. 84-88.

<sup>96</sup> For more information on the Working Group on Arbitrary Detention see: <http://www.unhchr.ch/html/menu6/2/fs26.htm>.

<sup>97</sup> Convention on the Right of the Child Committee General Comment No. 6 (2005). *Treatment of Unaccompanied and Separated Children Outside their Countries of Origin*. (CRC/GC/2005/6). paragraph 61.

<sup>98</sup> Human Rights of Migrants Note by the Secretary-General. (A/57/292). p. 14.

<sup>99</sup> Article 6. International Convention for the Suppression of the Traffic in Women and Children. (1947). For more information see: [http://untreaty.un.org/English/CTC/CTC\\_04.asp](http://untreaty.un.org/English/CTC/CTC_04.asp).

<sup>100</sup> Article 7. International Convention for the Suppression of the Traffic in Women and Children. (1947). For more information see: [http://untreaty.un.org/English/CTC/CTC\\_04.asp](http://untreaty.un.org/English/CTC/CTC_04.asp).

<sup>101</sup> The Declaration of Philadelphia was adopted in 1944 defining the aims and purposes of the International Labour Organization (ILO) and the principles which should inspire the policy of its Members. For more information see: <http://www-ilo-mirror.cornell.edu/public/english/about/iloconst.htm#annex>.

<sup>102</sup> Adopted in 1998, the ILO Declaration on Fundamental Principles and Rights at Work is an expression of commitment by governments, employers' and workers' organizations to uphold basic human values - values that are vital to our social and economic lives. For more information see: <http://www.ilo.org/dyn/declaris/DeclarationWeb.IndexPage>.

<sup>103</sup> For more information on the Fundamental Principles and Rights at Work see: <http://www.ilo.org/dyn/declaris/DeclarationWeb.IndexPage>.

<sup>104</sup> Freedom of Association and Protection of the Right to Organise Convention. (1948). (No.87). and the Right to Organise and Collective Bargaining Convention. (1949). (No.98).

<sup>105</sup> Marshall, Ray. (2005). *Labour Standards, Human capital, and Economic Development*. Economic Policy Institute. (EPI Working Paper No. 271). pp. 2-4.

<sup>106</sup> Forced Labour Convention. (1930). (No.29); and Abolition of Forced Labour Convention. (1957) (No.105). For more information see: <http://www.unhchr.ch/html/menu3/b/31.htm>.

<sup>107</sup> Minimum Age Convention. (1973) (No.138); and Worst Forms of Child Labour Convention. (1999). (No.182). For more information see: <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C138>.

<sup>108</sup> Persons under the age of majority who are not accompanied by a parent, guardian, or other adult who by law or custom is responsible for them. Unaccompanied minors present special challenges for border control officials, because detention and other practices used with undocumented adult aliens may not be appropriate for minors. International Organization for Migration (IOM). (2004). *International Migration Law. Glossary on Migration*. Geneva. p. 67.

<sup>109</sup> Equal Remuneration Convention. (1951) (No.100); and Discrimination (Employment and Occupation) Convention. (1958). (No.111).

<sup>110</sup> Migration for Employment (Revised) Convention. (1949). (No. 97). For more information see: <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C097>.

<sup>111</sup> Migrant Workers (Supplementary Provisions) Convention. (1975). (No. 143). For more information see: <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C143>.

<sup>112</sup> Available at: <http://www.ilo.org/ilolex/english/>.

<sup>113</sup> Organization for Security and Co-Operation in Europe (OSCE), International Organization for Migration (IOM), and International Labour Organization (ILO). (2006). *"Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination."* - Article 14 (a) of the Convention No.143 permits limited restrictions on equality of opportunity in access to employment. Available at: <http://www.osce.org/item/19187.html>.

<sup>114</sup> Discrimination (Employment and Occupation) Convention. (1960). (No. 111) Concerning Discrimination in Respect of Employment and Occupation. For more information see: <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C111>.

<sup>115</sup> For more information on the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW) see: [http://www.unhchr.ch/tbs/doc.nsf/O/090469d84455b335c1256fe0004bd30d/\\$FILE/G0540819.pdf](http://www.unhchr.ch/tbs/doc.nsf/O/090469d84455b335c1256fe0004bd30d/$FILE/G0540819.pdf).

<sup>116</sup> Article 6, and 7. International Covenant on Economic, Social and Cultural Rights (ICESCR), and General Comment No. 18. (2005). paragraph 7.

<sup>117</sup> International Labour Organization (ILO). (2006). *ILO Multilateral Framework on Labour Migration*. Geneva. For more information see: [www.ilo.org/public/english/protection/migrant/download/tmmflm-en.pdf](http://www.ilo.org/public/english/protection/migrant/download/tmmflm-en.pdf)

<sup>118</sup> International Labour Organization (ILO). Declaration on Fundamental Principles and Rights at Work. For more information see: <http://www.ilo.org/public/english/standards/relm/ilc/ilc86/com-dtxt.htm>.

<sup>119</sup> Committee on the Rights of the Child (CRC). General Comment No. 28. paragraph 12.

<sup>120</sup> ExCom Conclusion No. 82 (XLVIII). (1997). paragraph (b).

<sup>121</sup> Türk, Volker. (2001). UNHCR'S Supervisory Responsibility, *Revue québécoise de droit international*, 14,1, pp. 135, 138. The understanding of the term 'international protection' "has evolved generally over time from the idea of international protection as a surrogate for consular and diplomatic protection to including gradually broader notions of human rights protection. Today, the institution of international refugee protection, while unique in the international legal system, is embedded in the broader international human rights protection regime and also generally linked to effective forms of international cooperation".

<sup>122</sup> For more information on the principle of non-refoulement see: [http://www.unhcr.bg/global\\_consult/principe\\_non\\_refoulement\\_en.pdf](http://www.unhcr.bg/global_consult/principe_non_refoulement_en.pdf).

<sup>123</sup> For more information on the Convention Relating to the Status of Refugees see: [http://www.unhcr.ch/html/menu3/b/o\\_c\\_ref.htm](http://www.unhcr.ch/html/menu3/b/o_c_ref.htm).

<sup>124</sup> Article 33. Convention Relating to the Status of Refugees. (1951). For more information see: <http://untreaty.un.org/>.

<sup>125</sup> Article 5. Universal Declaration of Human Rights (1948), and subsequent developments in international human rights law.

<sup>126</sup> Convention Relating to the Status of Refugees. (1951).

<sup>127</sup> For more information on the 1967 Protocol Relating to the Status of Refugees see: <http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf>.

<sup>128</sup> United Nations Office of the High Commissioner for Refugees (UNHCR). (2007). *Introductory Note by*

*the United Nations Office of the High Commissioner for Refugees. Convention and Protocol Relating to the Status of Refugees*. Geneva.

<sup>129</sup> For more information on the United Nations Convention against Transnational Organized Crime see: <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCbook-e.pdf>.

<sup>130</sup> For more information on the Protocols on Trafficking in Persons and Smuggling of Migrants see: <http://untreaty.un.org/>.

<sup>131</sup> Human Rights of Migrants Note by the Secretary-General. (A/57/292 - p. 16).

<sup>132</sup> For more information the Convention and its Protocol on the Smuggling of Migrants by Land, Sea and Air see: <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCbook-e.pdf>.

<sup>133</sup> The OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking provide practical, rights-based approach policy guidance on the prevention of trafficking and the protection of trafficked persons and with a view to facilitating the integration of a human rights perspective into national, regional, and international anti-trafficking laws, policies and interventions.

<sup>134</sup> For more information on article 9 of the Universal Declaration of Human Rights see: <http://www.un.org/Overview/rights.html>.

<sup>135</sup> For more information on article 9 of the International Covenant on Civil and Political Rights

<sup>136</sup> Report of the Special Rapporteur on the Human Rights of Migrants, Ms. Gabriela Rodriguez Pizarro (2003). Specific Groups and Individuals - Migrant Workers. (E/CN.4/2003/85). p. 15.

<sup>137</sup> Article 16 (4). International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. (1990).

<sup>138</sup> Article 16 (8) and (9). International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. (1990).

<sup>139</sup> United Nations Office of the High Commissioner for Human Rights (OHCHR). *Administrative Detention of Migrants*. Migration Discussion Papers. <http://www2.ohchr.org/english/issues/migration/taskforce/discpapers.htm> based on Report E/CN.4/2003/85.

<sup>140</sup> Report of the Special Rapporteur on the Human Rights of Migrants, Ms. Gabriela Rodríguez Pizarro (2003). Specific Groups and Individuals - Migrant Workers. (E/CN.4/2003/85). p. 12.

<sup>141</sup> For more information on Key United Nations Instruments on International Migration see the table in Appendix C.

<sup>142</sup> The American region includes Latin America and the Caribbean and Northern America.

<sup>143</sup> For more information on the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children see: <http://untreaty.un.org/English/TreatyEvent2003/Texts/treaty2E.pdf>.

<sup>144</sup> For more information on the Protocol against the Smuggling of Migrants by Land, Sea and Air see: <http://untreaty.un.org/English/TreatyEvent2001/pdf/18e.pdf>.

<sup>145</sup> For more information on the International Convention on the Protection of the Rights of All Migrant Workers and their Families see: [http://www.unhcr.ch/tbs/doc.nsf/0/090469d84455b335c1256fe0004bd30d/\\$FILE/G0540819.pdf](http://www.unhcr.ch/tbs/doc.nsf/0/090469d84455b335c1256fe0004bd30d/$FILE/G0540819.pdf).

<sup>146</sup> For more information regarding the number of countries that have ratified the Key United Nations Instruments on International Migration see Appendix C.

<sup>147</sup> For more information regarding the number of countries that have ratified the Key United Nations Instruments on International Migration see Appendix C.

<sup>148</sup> For more information on the Organization of African Unity see: <http://www.un.org/popin/oau/oauhome.htm>.

<sup>149</sup> Organization of African Unity (OAU) Convention Governing the Specific Aspects of the Refugee Problems in Africa. (CAB/LEG/24.3). (1974).

<sup>150</sup> For more information on the African Charter on Human and People's Rights see: [http://www.achpr.org/english/\\_info/charter\\_en.html](http://www.achpr.org/english/_info/charter_en.html).

<sup>151</sup> For more information on the African Commission on Human and Peoples' Rights see: <http://www.achpr.org>.

<sup>152</sup> The American Declaration of the Rights and Duties of Man, adopted in 1948, is the first international instrument of its type, as it was adopted prior

to the United Nations Universal Declaration of Human Rights.

<sup>153</sup> For more information on the Organization of American States (OAS) see: <http://www.oas.org>

<sup>154</sup> Opening Paragraph. American Declaration of the Rights and the Duties of Man. (1948)

<sup>155</sup> Article 17. American Declaration of the Rights and the Duties of Man. (1948)

<sup>156</sup> Cartagena Declaration on Refugees. (1984). Annual Report of the Inter-American Commission on Human Rights. OAS Doc. OEA/Ser.L/V/II.66/doc.10, rev. 1, at 190-93 (1984-85).

<sup>157</sup> Article 3. Cartagena Declaration on Refugees. (1984).

<sup>158</sup> In 2008, the IACHR appointed the current Rapporteur, Commissioner Felipe González, to a four year term. For more information on the activities of the Special Rapporteur see: <http://www.cidh.org/Migrantes/migrantes.activities.htm>.

<sup>159</sup> For general information on the Court see: <http://www.corteidh.or.cr/> For the Consultative Opinion on the Legal Status and Rights of Undocumented Migrants (OC 18/03) of 17 September 2003 see: <http://www.corteidh.or.cr/opiniones.cfm?idOpinion=24>.

<sup>160</sup> For more information on the Regional Conference on Migration see: <http://www.rcmvs.org/>.

<sup>161</sup> For more information on the Declaration of Salamanca see: <http://www.cumbre-iberoamericana.org/cumbreiberoamericana/ES/Prensa/comunicadosPrensa/15-10-2005-60.htm>.

<sup>162</sup> For more information on the Salamanca Summit, 2005 see: <http://www.segib.org/upload/File/CONVOCATORIAINGLes.pdf>.

<sup>163</sup> For more information on the Ibero-American Summit in Montevideo, 2006 see: <http://cumbresiberoamerica.cip.cu/cumbres/xvi-cumbre-iberoamericana/>.

<sup>164</sup> For more information on the Ibero-American Summit in Santiago, 2007 see: <http://cumbresiberoamerica.cip.cu/cumbres/xvii-cumbre/>.

<sup>165</sup> For more information on the Ibero-American Forum on Migration and Development see: <http://www.segib.org/upload/File/CONVOCATORIAINGLes.pdf>.

<sup>166</sup> See: <http://www.echr.coe.int/ECHR/EN/Header/Case-Law/HUDOC/HUDOC+database/>.

<sup>167</sup> Pécoud, Antoine and De Guchteneire, Paul. (2006). Migration, Human Rights and the United Nations. An investigation into the low ratification record of the UN Migrant Workers Convention. In: *Windsor Yearbook of Access to Justice* 24(2). pp. 241-266. And MacDonald, Euan and Cholewinski, Ryszard. (2007). *The Migrant Workers Convention in Europe: Obstacles to the Ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families: EU/EEA Perspectives*. Paris: UNESCO Migration Papers No. 1.

<sup>168</sup> On 27 June 2006, the United Nations Institute for Training and Research (UNITAR) in collaboration with the United Nations Population Fund (UNFPA) and International Organization for Migration (IOM) hosted a workshop on Migration and Human Rights as part of the "UNITAR/UNFPA/IOM Key Migration Issues Workshop Series". Gabriela Rodriguez, the former United Nations Special Rapporteur on the Human Rights of Migrants stressed the link between training and the protection of the human rights of migrants during the workshop. The event was held in the Dag Hammarskjöld Auditorium of the United Nations Library at UN Headquarters and at the Church Center. The attendees included 36 delegates representing 32 countries; 31 staff from UN Secretariat, agencies and other international organizations; and 13 members of civil society. For more information on the workshop see: <http://www.unitarny.org/mm/File/HR%20Summary%20Report.pdf>.

<sup>169</sup> For more information on Status of Multilateral Treaties Deposited with the Secretary General see: <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/bible.asp>.

<sup>170</sup> For more information on the United Nations High Level Dialogue on International Migration and Development see: <http://www.un.org/migration/>.

<sup>171</sup> For more information on the Global Forum on Migration and Development see: <http://www.gfmd-fmmd.org/>.

<sup>172</sup> For more information on the second Global Forum on Migration and Development in Manila, Philippines in 2008 see: <http://www.gfmd2008.org/welcome.html>.

<sup>173</sup> For more information on the Global Commission on International Migration see: <http://www.gcim.org/en/>.

<sup>174</sup> Global Commission on International Migration. (2005). *Report on Migration in an Interconnected World. New Directions for Action*. For more information see: <http://www.gcim.org/en/finalreport.html>.

<sup>175</sup> For more information on UNDP's Human Development Report see: <http://hdr.undp.org/en/>

<sup>176</sup> United Nations Development Programme (UNDP). (2004). *Human Development Report, Cultural Liberty in Today's Diverse World*. New York. p.30.

<sup>177</sup> Zlotnik, Hania. (2003). *The Global Dimension of Female Migration. Paper presented at the Migration Policy Institute* (1 March 2003). For more information see: <http://www.migrationinformation.org/feature/display.cfm?ID=109>.

<sup>178</sup> United Nations Population Division. Department of Economic and Social Affairs. (2006). *Trends in Total Migrant Stock: The 2005 Revision: CD-Rom Documentation* (POP/DB/MIG/Rev.2005/Doc). New York.

<sup>179</sup> United Nations Population Division. Department of Economic and Social Affairs. (2006). *Trends in Total Migrant Stock: The 2005 Revision: CD-Rom Documentation* (POP/DB/MIG/Rev.2005/Doc). New York.

<sup>180</sup> Zlotnik, Hania. (2003). *The Global Dimension of Female Migration*. Paper presented at the Migration Policy Institute (1 March 2003). For more information see: <http://webs.uvigo.es/cfacal/The%20Global%20Dimensions%20of%20Female%20Migration.htm>.

<sup>181</sup> Zlotnik, Hania. (2003). *The Global Dimension of Female Migration*. Paper presented at the Migration Policy Institute (1 March 2003). For more information see: <http://webs.uvigo.es/cfacal/The%20Global%20Dimensions%20of%20Female%20Migration.htm>.

<sup>182</sup> United Nations Economic Commission for Africa (UNECA). (2006). *Report on International Migration and Development: Implications for Africa*. Addis Ababa. Estimates suggest that between 700,000 to 4 million people, mostly women, are trafficked every year.

<sup>183</sup> Collyer, M. (2006). *States of Insecurity. Consequences of Saharan Transit Migration*. Centre on Migration. Policy and Society. University of Oxford.

<sup>184</sup> Roig, Marta. (2007). *Transit Migration. Challenges of Transit Migration from Sub-Saharan African Countries*

to the Maghreb and Beyond. United Nations Population Fund (UNFPA). New York.

<sup>185</sup> Carballo, Manuel. (2006). Female Migrants, Reproductive Health, HIV/AIDS and the Rights of Women, pp. 93-104. In: United Nations Population Fund (UNFPA). (2006). *Female Migrants: Bridging the Gaps throughout the Life Cycle*. Selected Papers of the UNFPA-IOM Expert Group Meeting: New York. 2-3 May 2006. New York.

<sup>186</sup> The international women's right regime acknowledges the different rights of women at distinct stages of their lives – to support women as mothers, in old age if they haven't worked outside their homes, to support equal pay when they are working etc. For more information see the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). <http://untreaty.un.org/ENGLISH>.

<sup>187</sup> For more information on the MDGs see: <http://www.un.org/millenniumgoals/>.

<sup>188</sup> United Nations. (2006). *Protecting the Rights of all Migrants Workers as a Tool to Enhance Development*. Note by the Secretary-General (A/61/120). New York.

<sup>189</sup> According to the Human Rights Watch webpage, "Children's physical and intellectual immaturity makes them particularly vulnerable to human rights violations. Their ill-treatment calls for special attention because, for the most part, children cannot speak for themselves, their opinions are seldom taken into account and they can only rarely form their own organizations to work for change."

<sup>190</sup> "Unaccompanied children" (also called unaccompanied minors) are children, as defined in article 1 of the Convention on the Rights of the Child, who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so (Committee of the Rights of the Child. General Comment No. 6 (2005). *Treatment of Unaccompanied and Separated Children Outside their Countries of Origin*. paragraph 7.

<sup>191</sup> "Separated children" are children, as defined in article 1 of the Convention, who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members

(Committee of the Rights of the Child. General Comment No. 6 (2005). *Treatment of unaccompanied and separated children outside their country of origin*. (CRC/GC/2005/6). paragraph 8.

<sup>192</sup> Article 10. Convention on the Rights of the Child. (1990).

<sup>193</sup> United Nations Children's Fund (UNICEF). (2008). *Migration and Children's Rights*. Division of Policy and Practice.

<sup>194</sup> Jacqueline, Bhabha. (2008) *Independent Children, Inconsistent Adults: International Child Migration and the Legal Framework*. UNICEF Discussion Papers. IDP.

<sup>195</sup> <http://www.unhcr.org/protect/protection/476146702>.

<sup>196</sup> For more information on the ILO Multilateral Framework see: <http://www.ilocarib.org.tt/oldwww/infosources/migration/ILOMultilateralFrameworkonLabourMigrationtmmflm-en.pdf>.

<sup>197</sup> Statement by the Director-General of the International Labour Office (ILO). Roundtable 3 on Globalization and labour migration. 2006 ECOSOC High-Level Segment. Geneva. For more information see: [http://www.ilo.org/pubcgi/links\\_ext.pl?http://www.un.org/docs/ecosoc/meetings/2006/hls2006/documents/DG%20ILO-RT3.pdf](http://www.ilo.org/pubcgi/links_ext.pl?http://www.un.org/docs/ecosoc/meetings/2006/hls2006/documents/DG%20ILO-RT3.pdf).

<sup>198</sup> International Labour Organization (ILO). (2004). *Towards a Fair Deal for Migrant Workers in the Global Economy*. op. cit., Chapter III. Geneva.

<sup>199</sup> Human Rights of Migrants Note by the Secretary-General. (A/57/292) p. 12.

<sup>200</sup> United Nations Population Fund (UNFPA). (2004). *The International Migration Policy Programme (IMP) 2004. Meeting the Challenges of Migration. Progress since the ICPD. Human Rights of Migrants*. pp. 40-47. New York.

<sup>201</sup> Human Rights of Migrants Note by the Secretary-General. (A/57/292) p. 13.

<sup>202</sup> Article 11. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). For more information on the CEDAW see: <http://www.un.org/womenwatch/daw/cedaw/>.

<sup>203</sup> For more information on the 99<sup>th</sup> session of ILO's International Labour Conference 2010 see: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_090361.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_090361.pdf)

<sup>204</sup> For more information on the Convention on Migration for Employment No. 97 see: <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C097>.

<sup>205</sup> For more information on Article 47 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families see: <http://www2.ohchr.org/english/law/cmw.htm#a47>

<sup>206</sup> For more information on the Protection of Wages Convention No.95 see: <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C095>.

<sup>207</sup> For more information see the Committee's Written Contribution to the High Level Dialogue on Migration and Development. ( A/61/120). [http://www2.ohchr.org/english/bodies/cmw/docs/HLMigration/A.61.120E.pdf?bcsi\\_scan\\_232E6C93C4B63649=1](http://www2.ohchr.org/english/bodies/cmw/docs/HLMigration/A.61.120E.pdf?bcsi_scan_232E6C93C4B63649=1).

<sup>208</sup> For more information on the Migrant Workers Recommendation No.151 see: <http://www.ilo.org/ilolex/cgi-lex/convde.pl?R151>.

<sup>209</sup> For more information on the Private Employment Agencies Convention see: <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C181>.

<sup>210</sup> For more information on the Private Employment Agencies Recommendations see: <http://www.ilo.org/ilolex/cgi-lex/convde.pl?R188>.

<sup>211</sup> United Nations High Commissioner on Human Rights (OHCHR). (2006). *Migration and Development: A Human Rights approach*. Geneva. <http://www.ohchr.org/english/bodies/cmw/docs/HLMigration/MigrationDevelopmentHC'spaper.pdf>.

<sup>212</sup> International Labour Organization (ILO). (2006). *ILO Multilateral Framework on Labour Migration*. Geneva.

<sup>213</sup> For more information on the Global Commission on International Migration (GCIM) see: <http://www.gcim.org/en/>.

<sup>214</sup> For more information on the Inter-Agency Standing Committee see: <http://www.humanitarianinfo.org/iasc/content/default.asp>.

<sup>215</sup> Inter-Agency Standing Committee (IASC). (2006). *Human Rights Guidance Note for Humanitarian Coordinators*. Section 2. Prepared by the IASC Task force on Human Rights and Humanitarian Action with strong involvement of UNHCR and endorsed and issued by the Inter Agency Standing Committee (IASC).

<sup>216</sup> United Nations High Commissioner for Refugees (UNHCR). (2008). *2007 Global Trends: Refugees, Asylum-Seekers, Returnees, Internally Displaced and Stateless Persons*. For more information see: <http://www.unhcr.org/statistics/STATISTICS/4852366f2.pdf>.

<sup>217</sup> Article 3. Universal Declaration of Human Rights. (1948). For more information see: <http://www.udhr.org/UDHR/ART03.HTM>.

<sup>218</sup> Sixth Report on the Protection of Civilians in Armed Conflicts (S/2007/643). paragraph. 33.

<sup>219</sup> Inter-Agency Statement on Eliminating Female Genital Mutilation. (2008). Joint Statement by a number of United Nations agencies, including OHCHR, UNAIDS, UNDP, UNECA, UNESCO, UNFPA, UNHCR, UNICEF, UNIFEM and WHO.

<sup>220</sup> For more information on Article 5 of the Universal Declaration of Human Rights (1948) see: <http://www.udhr.org/UDHR/ART05.HTM>.

<sup>221</sup> For more information on Article 8 of Universal Declaration of Human Rights (1948) see: <http://www.udhr.org/UDHR/ART08.HTM>.

<sup>222</sup> United Nations Population Fund (UNFPA). (2006). *Key Issues for the High-Level Dialogue during the Sixty-First Session of the General Assembly in 2006*. New York. For more information see: [http://www.un.org/esa/population/meetings/thirdcoord2004/P09\\_UNFPA.pdf](http://www.un.org/esa/population/meetings/thirdcoord2004/P09_UNFPA.pdf).

<sup>223</sup> For more information on Article 23 of the Convention Relating to the Status of Refugees (1951) see: <http://www.udhr.org/UDHR/ART23.HTM>.

<sup>224</sup> For more information on Article 25 of the Universal Declaration of Human Rights (1948) see: <http://www.udhr.org/UDHR/ART25.HTM>.

<sup>225</sup> For more information on Article 25 of the Universal Declaration of Human Rights (1948) see: <http://www.udhr.org/UDHR/ART25.HTM>.

<sup>226</sup> For more information on the Executive Committee of the High Commissioner's Programme (ExCom) see: <http://www.unhcr.org/excom.html>.

<sup>227</sup> For more information on the High Commissioner's Dialogue on Protection Challenges see: <http://www.unhcr.org/protect/473db6522.html>.

<sup>228</sup> For more information on the Convention and the Protocol Relating to the Status of Refugees see: <http://www.unhcr.org/cgi-in/taxis/vtx/protect/opensdoc.pdf?tbl=PROTECTION&id=3b66c2aa10>.

- <sup>229</sup> United Nations Office of the High Commissioner for Refugees (UNHCR). (2002). *Guidelines on International Protection, Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*.
- <sup>230</sup> United Nations Office of the High Commissioner for Refugees (UNHCR). (2006). *Guidelines on International Protection, The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked*.
- <sup>231</sup> Theuermann, Gerda. (2005). Trafficking in Human Beings and the Millennium Development Goal No. 3, Promoting Gender Equality and the Empowerment of Women. In: United Nations Population Fund (UNFPA): *International Migration and the Millennium Development Goals. Selected Papers of the UNFPA Expert Group Meeting*. New York.
- <sup>232</sup> United Nations Office of the High Commissioner for Human Rights (OHCHR). (2002). *Recommended Principles and Guidelines on Human Rights and Human Trafficking*. Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council.
- <sup>233</sup> Council of Europe Commission for Human Rights. (2007). *The Human Rights of Irregular Migrants*. Strasbourg. pp. 9-11.
- <sup>234</sup> UN.GIFT is managed in cooperation with the International Labour Organization (ILO), the International Organization for Migration (IOM), the UN Children's Fund (UNICEF), the Office of the High Commissioner for Human Rights (OHCHR), and the Organization for Security and Co-operation in Europe (OSCE).
- <sup>235</sup> Report of the Special Rapporteur on the Human Rights of Migrants, Ms. Gabriela Rodriguez Pizarro (2003). Specific Groups and Individuals - Migrant Workers. (E/CN.4/2003/85). p. 8.
- <sup>236</sup> See provision against criminalization in 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, Supplementing the United Nations Convention against Transnational Organized Crime.
- <sup>237</sup> Report of the Special Rapporteur, Ms. Gabriela Rodriguez Pizarro (2003). Specific Groups and Individuals - Migrant Workers. (E/CN.4/2003/85). p. 13.
- <sup>238</sup> United Nations Office of the High Commissioner for Human Rights (OHCHR). Fact Sheet No.26, *The Working Group on Arbitrary Detention*. For more information see: <http://www.unhcr.ch/html/menu6/2/fs26.htm#IV>, pursuant to resolution 1991/42, as clarified by resolution 1997/50.
- <sup>239</sup> Numerous international standards with regard to detention can be found in, *inter alia*, the ICCPR, CMW, the Vienna Convention on Consular Relations, the Convention on the Rights of the Child. See Amnesty International. (2007), *Migration-Related Detention: A Research Guide on Human Rights Standards Relevant to the Detention of Migrants, Asylum-Seekers and Refugees*. For more information see: <http://www.amnesty.org/en/library/asset/POL33/005/2007/en/f07d6dce-ad6b-11dc-a4b5-ef6c4a573348/pol330052007eng.pdf>.
- <sup>240</sup> For more information see the various reports to the Commission for Human Rights of the Working Group on Arbitrary Detention available at [www2.ohchr.org/english/issues/detention/annual.htm](http://www2.ohchr.org/english/issues/detention/annual.htm).
- <sup>241</sup> Report of the Special Rapporteur, Ms. Gabriela Rodriguez Pizarro (2003). Specific Groups and Individuals - Migrant Workers. (E/CN.4/2003/85). p. 9.
- <sup>242</sup> Report of the Special Rapporteur, Ms. Gabriela Rodriguez Pizarro (2003). Specific Groups and Individuals - Migrant Workers. (E/CN.4/2003/85). p. 15.
- <sup>243</sup> Report of the Special Rapporteur, Ms. Gabriela Rodriguez Pizarro (2003). Specific Groups and Individuals - Migrant Workers. (E/CN.4/2003/85). p. 16.
- <sup>244</sup> World Bank. (2006). *Global Economic Prospects and the Developing Countries (GEP)*. Washington. For more information see Winters, L. Alan, et al. (2002). *Negotiating the Liberalization of the Temporary Movement of Natural Persons*. Discussion Papers in Economics. No. 87. Brighton, United Kingdom: University of Sussex at Brighton. See also Rodrik, Dani. (2002). *Feasible Globalizations*. Centre for Economic Policy Research Discussion Papers. No. 3524. London: CEPR.
- <sup>245</sup> Anderson, Kym and Winters, Alan. (2008) In: *The Economist*. 27 May 2008.
- <sup>246</sup> World Bank. (2008). *Revision to Remittance Trends 2007*. Washington. Authors' calculation based on data from IMF Balance of Payments Statistics Yearbook 2008 and data releases from central banks, national statistical agencies, and World Bank country desks.

Remittances are defined as the sum of workers' remittances, compensation of employees, and migrant transfers – see [www.worldbank.org/prospects/migrationandremittances](http://www.worldbank.org/prospects/migrationandremittances) for data definitions and the entire dataset.

<sup>247</sup> International Organization for Migration (IOM). (2005). *Mainstreaming Migration into Development Policy Agendas*. International Dialogue on Migration No. 8.

<sup>248</sup> For more information on the General Agreement on Trade in Services see: [http://www.wto.org/english/tratop\\_e/serv\\_e/gatsintr\\_e.htm](http://www.wto.org/english/tratop_e/serv_e/gatsintr_e.htm).

<sup>249</sup> The GATS provides for four modes by which services may be traded. These include: (1) cross-border supply (Mode 1): the supply of a service from the territory of one Member into the territory of any other Member; (2) consumption abroad (Mode 2): the supply of a service in the territory of one Member to the service consumer of any other Member; (3) commercial presence (Mode 3): the supply of service through setting up of commercial presence by a service supplier in the territory of any other Member; and (4) temporary movement of natural persons (Mode 4): the supply of a service by a service supplier of one Member, through the presence of natural persons of a Member in the territory of any other Member.

<sup>250</sup> United Nations Statistics Division. Department of Economic and Social Affairs. (2004). *Statistics related to GATS Mode 4 Trade in Services for Hong Kong, China*. New York.

<sup>251</sup> For more information on the Southern African Development Community see: <http://www.sadc.int/>.

<sup>252</sup> For more information on the International Convention on Economic Social and Cultural Rights see: <http://untreaty.un.org/English/TreatyEvent2001/pdf/O8e.pdf>.

<sup>253</sup> Article 6, 7 and 11. (respectively) International Covenant on Economic, Social and Cultural Rights.

<sup>254</sup> Article 22 of the Universal Declaration of Human Rights. (1948).

<sup>255</sup> Declaration on the Right to Development, adopted by General Assembly resolution 41/128. (1986). For more information see: <http://www.unhchr.ch/html/menu3/b/74.htm>.

<sup>256</sup> Declaration on the Right to Development. (1986).

<sup>257</sup> Article 3. Declaration on the Right to Development. (1986).

<sup>258</sup> For more information on the 1994 ICPD Programme of Action see: <http://www.un.org/popin/icpd/conference/bkg/egypt.html>.

<sup>259</sup> For more information on the 1999 Bangkok Declaration on Irregular Migration see: <http://www.thaiembdc.org/info/bdim.html>.

<sup>260</sup> Chinmi. (2003). *Development and Migration*. In: *Migration and International Legal Norms*. Aleinikoff, Alexander and Chetail, Vincent. eds.

<sup>261</sup> Martha. (2000). *Women and Human Development: the Capabilities Approach*. Cambridge University Press; and Sen, Amartya. (1992). *Inequality Re-examined*. Russell Sage Foundation and Harvard University Press.

<sup>262</sup> International Organization for Migration (IOM) and the Population Division (CELADE) of the Economic Commission for Latin America and the Caribbean (ECLAC). (2003). *Migration and Development in North and Central America: a Synthetic View*. This concept was explicitly applied to the relationship between migration and development in the North American corridor in the 1998 report For more information see: <http://www.rcmvs.org/investigacion/synthetic.htm>.

<sup>263</sup> Castles, Stephen. (2004). *The Factors that Make and Unmake Migration Policies*. In: *International Migration Review*. Vol. 38, No. 3. pp.852-884.

<sup>264</sup> Ms. Robinson spoke at the UNITAR/UNFPA/IOM workshop on Migration and Human Rights that was held on 26 June 2006 at UN Headquarters. For more information see: <http://www.unitaryn.org/en/migrationhr.html>.

<sup>265</sup> For more information on the MDGs see: <http://www.un.org/millenniumgoals/>.

<sup>266</sup> United Nations Population Fund (UNFPA). (2005). *International Migration and the Millennium Development Goals*. Selected Papers of the UNFPA Expert Group Meeting. New York.

<sup>267</sup> Article 2. Declaration on the Right to Development. (1986).

<sup>268</sup> In 2007, more than 400 natural disasters affected over 234 million persons, cost over 16,000 lives, and displaced millions of people for longer or shorter periods of time. For more information see: Kälén, Walter. (2008). Representative of the United Nations Secretary General on the Human Rights of Internally

Displaced Persons. *The Climate Change – Displacement Nexus*. Paper presented at the Economic and Social Council (ECOSOC) Panel on Disaster Risk Reduction and Preparedness: Addressing the Humanitarian Consequences of Natural Disasters.

<sup>269</sup> IPCC Working Group II Contribution to the Intergovernmental Panel on Climate Change. For more information see: [http://www.ipcc-wg2.org/fourth/assessment/report/climate\\_change\\_2007:Climate\\_change\\_impacts,\\_adaptation\\_and\\_vulnerability/](http://www.ipcc-wg2.org/fourth/assessment/report/climate_change_2007:Climate_change_impacts,_adaptation_and_vulnerability/), April 2007.

<sup>270</sup> International Organization for Migration (IOM). (2008). International Dialogue on Migration No. 10. Expert Seminar: Migration and the Environment. In collaboration with the United Nations Population Fund (UNFPA). Geneva. pp. 25-29.

<sup>271</sup> Kälin, Walter. (2008). Representative of the United Nations Secretary General on the Human Rights of Internally Displaced Persons. *The Climate Change – Displacement Nexus*. Paper presented at the Economic and Social Council (ECOSOC) Panel on Disaster Risk Reduction and Preparedness: Addressing the Humanitarian Consequences of Natural Disasters.

<sup>272</sup> Carballo, Manuel. (2005). Migration and Maternal and Child Health: The Example of Western Europe. In: United Nations Population Fund (UNFPA): *International Migration and the Millennium Development Goals*. Selected Papers of the UNFPA Expert Group Meeting. New York. And International Organization on Migration (IOM). (2004). *Migrant Health for the Benefit of All*. Eighty-Eight Session of the IOM Council (MC/INF/275).

<sup>273</sup> For more information on the World Health Organization (WHO) see: <http://www.who.int/en/>.

<sup>274</sup> World Health Organization (WHO). (2008). *Resolution on Migrant Health*. (WHA 61.17) Geneva.

<sup>275</sup> World Health Organization (WHO). (2003). *International Migration, Health and Human Rights*. Health and Human Rights Publication Series. No 4, Geneva.

<sup>276</sup> For more information on the Joint United Nations Programme on HIV/AIDS (UNAIDS) see: <http://www.unaids.org/en/>. For more information on UNAIDS's statement see: [http://data.unaids.org/Publications/IRC-pub07/jc1252-internguidelines\\_en.pdf](http://data.unaids.org/Publications/IRC-pub07/jc1252-internguidelines_en.pdf).

<sup>277</sup> Joint United Nations Programme on HIV/AIDS (UNAIDS) and International Organization for Migration

(IOM). (2004). *Statement on HIV/AIDS Related Travel Restrictions*, (2004). Geneva, For more information see: [http://data.unaids.org/Publications/IRC-pub07/jc1252-internguidelines\\_en.pdf](http://data.unaids.org/Publications/IRC-pub07/jc1252-internguidelines_en.pdf).

<sup>278</sup> For more information on the United Nations High Level Dialogue on Migration and Development see: <http://www.un.org/migration/>.

<sup>279</sup> For more information on the Global Migration Group see: <http://www.globalmigrationgroup.org/>.

<sup>280</sup> For more information on the Global Forum on Migration and Development see: <http://www.gfmd-fmmd.org/>.

<sup>281</sup> For more information on Resolution A/RES/62/270 see: <http://www.un.org/Depts/dhl/resguide/r62.shtml>.

<sup>282</sup> General Assembly Resolution A/RES/61/208. (2007). For more information see: [http://www.iom.int/jahia/webdav/shared/shared/mainsite/policy\\_and\\_research/un/61/A\\_RES\\_61\\_208\\_EN.pdf](http://www.iom.int/jahia/webdav/shared/shared/mainsite/policy_and_research/un/61/A_RES_61_208_EN.pdf),

<sup>283</sup> Win for the migrant, the sending and the receiving countries.

<sup>284</sup> Such mechanisms could cover: a) mitigating the negative effects of migration through effective migration management and continuously building human capital where, for instance, receiving countries could contribute to training funds to enhance sending countries' supply capacities and help identify shortages and skill set needs for sending countries, b) instituting co-development initiatives especially where countries of origin are targeted for specific categories of occupations, e.g., health and education-related occupations and where the impact on the countries of origin may be significant. Such initiatives could involve projects ranging from effective monitoring of migration flows with the eventual aim of ensuring return or facilitating circular migration to instituting activities that maximize the benefits of migration, such as projects supporting diaspora communities' link-ups with their communities of origin, enforcing some form of forced savings on migrants to be used upon return to set up businesses or be put in other attractive investment schemes facilitated by the countries of origin; setting-up training institutions and other infrastructure for human resource replenishment; adopting ethical recruitment policies, etc., c) crafting policies and setting-up institutions to ensure that the migrants and their families and

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countries of destination take full advantage of the benefits from remittances including by channeling them into more productive uses and minimizing the costs of remittance transfers, and d) ensuring that benefits accrue to the migrants, particularly the less-skilled and the migrants from the poorer segments of the population, governments must consciously reach out to them, if necessary, through their local government representatives to raise their awareness and provide them with useful information and tools in every stage of the migration cycle, including information regarding their rights, the resource centers in their countries of destination, and options for making full use of their remittance contributions.

<sup>285</sup> See for example the UNDP commissioned report on Lessons for the GATS 4 Negotiations and Other Agreements. [http://www.undp.org/poverty/docs/inclglob/pov\\_red\\_low\\_skilled\\_workers\\_report.pdf](http://www.undp.org/poverty/docs/inclglob/pov_red_low_skilled_workers_report.pdf).

<sup>286</sup> United Nations Statistics Division. Department of Economic and Social Affairs. (2008). *Principles and Recommendations for Population and Housing Censuses, Revision 2*.

<sup>287</sup> United Nations Statistics Division. Department of Economic and Social Affairs. (2008). *Principles and Recommendations for Population and Housing Censuses, Revision 2*.

<sup>288</sup> In 2002, the Russian Federation reported 430,000 stateless persons. It was followed by Latvia with 392,000 and by Serbia and Montenegro with 104,000. Among countries with recent data, an additional eight reported to have over 10,000 stateless persons each.

<sup>289</sup> The CIRI Human Rights Data Project was developed by David Louis Cingranelli and David L. Richards. For more information see: <http://ciri.binghamton.edu/index.asp>.

<sup>290</sup> Two such centres are the Scalabrini Migration Center in the Philippines and the Southern African Migration Project (SAMP) in South Africa.

<sup>291</sup> For more information see United Nations publication: ST/ESA/STAT/SER.M/58/Rev.1, Sales No. E.98.XVII.14

<sup>292</sup> For more information see: <http://unstats.un.org/unsd/demographic/products/dyb/dybcens.htm>

<sup>293</sup> For more information see: <http://unstats.un.org/unsd/demographic/sconcerns/migration/migration-Meta.aspx>

<sup>294</sup> For more information see: <http://esa.un.org/migration/>

<sup>295</sup> United Nations. 2008.

<sup>296</sup> For more information on all relevant Migration and Human Rights Instruments see: <http://untreaty.un.org/> and International Organization for Migration (IOM). (2007). *International Migration Law - Developing Paradigms and Key Challenges*, Edited by R. Cholewin-sky, R. Perruchoud and E. MacDonald, T.M.C. Asser Press, The Hague.





International Labour Organization (ILO)  
International Organization for Migration (IOM)  
United Nations Office of the High Commissioner for Human Rights (OHCHR)  
United Nations Regional Commissions  
United Nations Conference on Trade and Development (UNCTAD)  
United Nations Department of Economic and Social Affairs (UNDESA)  
United Nations Development Programme (UNDP)  
United Nations Educational, Scientific and Cultural Organization (UNESCO)  
United Nations Population Fund (UNFPA)  
United Nations High Commissioner for Refugees (UNHCR)  
United Nations Children's Fund (UNICEF)  
United Nations Institute for Training and Research (UNITAR)  
United Nations Office on Drugs and Crime (UNODC)  
World Bank



Global Migration Group