

# **Migration in an interconnected world: New directions for action**

## **REPORT OF THE GLOBAL COMMISSION ON INTERNATIONAL MIGRATION**



**GLOBAL COMMISSION ON  
INTERNATIONAL MIGRATION (GCIM)**

COMMISSION MONDIALE SUR LES MIGRATIONS INTERNATIONALES (CMMI)  
COMISION MUNDIAL SOBRE LAS MIGRACIONES INTERNACIONALES (CMMI)

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GLOBAL COMMISSION  
ON INTERNATIONAL  
MIGRATION

OCTOBER 2005

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Printed in Switzerland by SRO-Kundig

# Table of contents

<b>Preface: The Global Commission on International Migration</b>	<b>vii</b>
<b>Synopsis: Migration in an interconnected world</b>	<b>1</b>
Maximizing positive outcomes	1
Capacity, coherence and cooperation	2
Principles for Action	4
<b>Introduction: Dimensions and dynamics of international migration</b>	<b>5</b>
Disparities and differentials	5
The complexity of human mobility	7
Conflicting interests and attitudes	9
<b>I. A world of work: Migrants in a globalizing labour market</b>	<b>11</b>
Differentials, disparities and migration	12
Liberalization of the global labour market?	15
Permanent and temporary migration programmes	16
The movement of service providers	19
The mobility of highly educated personnel	20
Creating jobs and livelihoods in countries of origin	20
<b>II. Migration and development: Realizing the potential of human mobility</b>	<b>23</b>
The migration of professional personnel	24
Migrant remittances: Facilitating the flow	26
Maximizing the developmental impact of remittances	27
Diasporas and development	39
Return and development	31
<b>III. The challenge of irregular migration: State sovereignty and human security</b>	<b>32</b>
The negative consequences of irregular migration	33
The need for a comprehensive and long-term approach	35
Addressing the demand for irregular migrant labour	36
Resolving the situation of migrants with irregular status	37
Migrant smuggling and human trafficking	39
Irregular migration and asylum	40

<b>IV. Diversity and cohesion: Migrants in society</b>	<b>42</b>
State policies and practices	43
Integration and marginalization	44
A coherent approach to integration	45
Migrant women and children	49
Temporary migrants and migrants with irregular status	51
The public discourse on international migration	51
<b>V. A principled approach: Laws, norms and human rights</b>	<b>53</b>
The human rights framework	54
State sovereignty and responsibility	58
The rights and labour standards of migrant workers	61
The role of the United Nations	63
<b>VI. Creating coherence: The governance of international migration</b>	<b>65</b>
Governance at the national level	67
Capacity-building	69
Interstate cooperation at the bilateral level	69
Interstate cooperation at the regional level	70
Interstate cooperation at the global level	72
Institutional arrangements	73
<b>Annexes</b>	
I. Principles for Action and Recommendations	79
II. International migration at a glance	83
III. States parties to universal legal instruments affecting international migrants	86
IV. Acknowledgements	88

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## PREFACE

# The Global Commission on International Migration

1. International migration has risen to the top of the global policy agenda. As the scale, scope and complexity of the issue has grown, states and other stakeholders have become aware of the challenges and opportunities presented by international migration. In every part of the world, there is now an understanding that the economic, social and cultural benefits of international migration must be more effectively realized, and that the negative consequences of cross-border movement could be better addressed.

2. In response to this situation, and acting on the encouragement of UN Secretary-General Kofi Annan, in December 2003 a Core Group of States established the Global Commission on International Migration, with a mandate to provide the framework for the formulation of a coherent, comprehensive and global response to the issue of international migration. Created as an independent body and consisting of 19 people from different parts of the world with a variety of high-level international experience, the Commission was more specifically requested to promote a comprehensive debate among states and other actors with respect to migration; to analyse gaps in current policy approaches to migration; to examine inter-linkages between migration and other global issues; and to present appropriate recommendations to the UN Secretary-General, governments and other stakeholders.

3. To achieve these objectives, in 2004 and 2005 the Commission and its Geneva-based Secretariat met on a regular basis and undertook extensive consultations with a wide variety of stakeholders. This included five major regional

hearings in the Asia-Pacific region, the Mediterranean and Middle East, Europe, Africa and the Americas, attended by government officials at the local, national, regional and international levels, representatives of international and non-governmental organizations, trade unions, migrant associations, and other civil society institutions, as well as employers, corporate managers, recruitment agents, academic experts and journalists. The Co-chairs, Commission members, Executive Director and Secretariat also held numerous bilateral meetings with governments and institutions, in capitals, as well as Geneva and New York.

4. In addition to these activities, the Commission convened a series of thematic workshops with stakeholder groups, including parliamentarians, the private sector, human rights organizations, the media, migration policy specialists and African researchers. The Commission's Secretariat established a wide-ranging policy analysis and research programme, involving both leading experts and younger scholars in the field of international migration. Throughout the process, the Core Group of States – which in August 2005 included 32 governments from all regions – acted as an informal consultative body to the Commission.<sup>1</sup>

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<sup>1</sup> Algeria, Australia, Bangladesh, Belgium, Brazil, Canada, Egypt, Finland, France, Germany, Holy See, Hungary, India, Indonesia, Islamic Republic of Iran, Japan, Mexico, Morocco, Netherlands, Nigeria, Norway, Pakistan, Peru, Philippines, Russian Federation, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Turkey, United Kingdom, and the EC/EU.



5. Given the breadth of the issue of international migration, the Commission decided to focus on those migratory movements that are largest in scale and those migration issues that are of broadest and current concern to the international community. In accordance with these criteria, this report gives primary attention to migration within developing regions and from developing regions to industrialized states, and concentrates primarily on the economic, social, human rights and governance dimensions of international migration. The report does not look in any detail at the psychological and health dimensions of the issue.

6. The report does not employ a formal definition of international migrants, but focuses generally on people who have been living outside their country of origin for more than one year, as well as on temporary migrants. While it considers the situation of individual asylum seekers and the nexus between asylum and migration, the report does not examine issues related to large-scale refugee situations in developing countries. Nor does it address the issue of internal migration and internal displacement.

7. This document represents the views of the entire Commission, which has set out to produce a report that is brief, and which serves as a policy document for decision-makers in government, international organizations and civil society institutions. The report does not attempt to reproduce the large amount of statistical data and other information on international migration that is available from other sources. The report does, however, include a selection of pertinent data, both in the text and in Annex II. A substantial amount of supporting evidence gathered by the Commission in the course of its work can be found on the Commission's website, [www.gcim.org](http://www.gcim.org).

8. The work of the Commission has been kindly supported by the governments of Switzerland, Sweden, Netherlands, United Kingdom, Norway, Australia and Germany, as well as the MacArthur Foundation, Ford Foundation and World Bank. The Commission's regional hearings were generously hosted by the governments of the Philippines, Egypt, Hungary, South Africa and Mexico.

## SYNOPSIS

# Migration in an interconnected world: Principles for Action

1. The world has been transformed by the process of globalization. States, societies, economies and cultures in different regions of the world are increasingly integrated and interdependent. New technologies enable the rapid transfer of capital, goods, services, information and ideas from one country and continent to another. The global economy is expanding, providing millions of women, men and their children with better opportunities in life. But the impact of globalization has been uneven, and growing disparities are to be found in the standard of living and level of human security available to people in different parts of the world.

2. An important result of these rising differentials has been an increase in the scale and scope of international migration. According to the UN's Population Division, there are now almost 200 million international migrants, a number equivalent to the fifth most populous country on earth, Brazil. It is more than double the figure recorded in 1980, only 25 years ago. Migrants are now to be found in every part of the globe, some of them moving within their own region and others travelling from one part of the world to another. Almost half of all migrants are women, a growing proportion of whom are migrating independently.

### Maximizing positive outcomes

3. During the past two years, the Global Commission on International Migration has undertaken a comprehensive examination of the way states and other stakeholders are addressing the issue of international migration. The Commis-

sion has travelled to many parts of the world and met hundreds of people who have an interest and involvement in this issue. It has heard about the lives, the achievements and the hardships of the world's 200 million migrants, as well as the complex issues that confront states and societies when people move in significant numbers from one country to another.

4. In the course of its work, the Commission has listened a lot, learned a great deal and deliberated at length on the evidence it has collected. The Commission has witnessed many examples of good practice in the domain of international migration, both by states and by other stakeholders, including international organizations, the private sector and civil society. It has also heard of many success stories: migrants who have gained new skills while working abroad and who have returned to their own country and established successful businesses; asylum seekers who have escaped from persecution in their own country and who have been able to find safety in another state; migrant communities that have successfully integrated in their adopted country while maintaining their culture and links with their country of origin, and governments and international organizations that have worked closely together in order to protect the victims of human trafficking.

5. The Commission has also encountered the contradictions, constraints and challenges of current migration policies. In some parts of the world, negative attitudes towards migrants persist, despite the fact that entire sectors of the economy depend on foreign labour. States which

have ratified the core UN human rights treaties are not implementing the provisions of those legal instruments, with the result that many migrants continue to experience exploitation, discrimination and abuse. Some governments admit considerable numbers of migrants to their country, but fail to invest in the integration process that is required for those people to realize their potential and make a positive contribution to their new society. At the same time, certain migrants do not respect the law of their host countries, and, as recent events have shown, can also pose a serious threat to public security. Countries that are active supporters of the health and education objectives included in the UN's Millennium Development Goals are nevertheless recruiting personnel from hospitals and schools in low-income countries that are unable to offer basic health and education services to their own citizens.

### **Capacity coherence and cooperation**

6. The Commission concludes that the international community has failed to capitalize on the opportunities and to meet the challenges associated with international migration. New approaches are required to correct this situation.

7. First, the Commission was struck by the extent to which states and other stakeholders, especially but not exclusively those in less prosperous regions of the world, lack the capacity required to formulate and implement effective migration policies. Officials dealing with the issues of migration, development, the labour market, education and health need access to more timely, accurate and detailed migration data. They require more extensive professional training, a better knowledge of migration issues, institutions and law, as well as an understanding of the

way in which migration and other policies impact on each other. They need resources to monitor and evaluate the impact of their policies and programmes. And they should be able to draw more systematically upon the experience and expertise gained by other countries.

8. A second issue that must be addressed is that of coherence. In meetings with the Commission, government representatives from every part of the world have openly acknowledged the difficulties they encounter in formulating coherent migration policies. In many instances, they are confronted with competing priorities and short-term demands from different ministries within government and from different constituencies outside government. Important decisions taken in areas such as development, trade, aid and the labour market are rarely considered in terms of their impact on international migration.

9. Wider consultation is also required at the national level. While governments remain the primary actors in the domain of international migration, many other stakeholders, including local authorities, the private sector, NGOs, civil society institutions and migrant associations, are well placed to contribute to the formulation and implementation of migration policy. The engagement of these actors is especially needed to ensure that migration policies and programmes are culturally sensitive, take account of local specificities and recognize the importance of gender issues.

10. The establishment of a coherent approach to migration requires states to demonstrate a greater respect for the provisions of the legal and normative framework affecting international migrants, especially the seven core UN human rights treaties. In the course of its consultations, the Commission observed that on too many

occasions, there is a significant gap between the legal commitments that states freely enter into when they ratify such treaties, and the extent to which they implement those commitments in practice. While this problem is related to the question of capacity, it is also often an issue of political will.

11. Third, the Commission underlines the paramount importance of interstate consultation and cooperation as a basis for the formulation and implementation of migration policies. Such policies have traditionally been regarded as the preserve of sovereign states, and the Commission is encouraged by the growing recognition that migration is an inherently transnational issue, requiring cooperation between states at the sub-regional, regional and global levels.

12. Finally, there is a need for enhanced cooperation and coordination between the different multilateral international organizations working in the field of migration. In meetings convened by the Commission, these organizations have acknowledged that they often work in a disconnected manner. While this situation derives in part from the competitive spirit that characterizes inter-agency relations, it is also a result of a lack of coherence at national level within those states that govern and fund these organizations. While steps have been taken to improve cooperation and coordination between the agencies concerned, more must be done to formulate and achieve shared objectives.

## Principles for action

13. The Commission concludes that if the benefits of international migration are to be maximized and its adverse consequences minimized, then migration policies should be based on shared objectives and have a common vision. At the same time, the Commission recognizes that there cannot be a single model for action by states and other stakeholders, and acknowledges that there is currently no consensus concerning the introduction of a formal global governance system for international migration, involving the establishment of new international legal instruments or agencies.

14. The Commission concludes that migration policies at the national, regional and global level should be guided by the set of principles for action that are presented below, and which are supported by the conclusions and recommendations set out in the six chapters that follow.

15. These principles have a number of uses. They can be employed by states and the international community as a guide to the formulation of comprehensive, coherent and effective migration policies. They can also be used to monitor and evaluate the impact of those policies. And they provide a framework for action that states and other stakeholders can use in their efforts to capitalize on the opportunities presented by international migration.

## Principles of Action

### I. Migrating out of choice: Migration and the global economy

Women, men and children should be able to realize their potential, meet their needs, exercise their human rights and fulfil their aspirations in their country of origin, and hence migrate out of choice, rather than necessity. Those women and men who migrate and enter the global labour market should be able to do so in a sound and authorized manner, and because they and their skills are valued and needed by the states and societies that receive them.

### II. Reinforcing economic and developmental impact

The role that migrants play in promoting development and poverty reduction in countries of origin, as well as the contribution they make towards the prosperity of destination countries, should be recognized and reinforced. International migration should become an integral part of national, regional and global strategies for economic growth, in both the developing and developed world.

### III. Addressing irregular migration

States, exercising their sovereign right to determine who enters and remains on their territory, should fulfil their responsibility and obligation to protect the rights of migrants and to admit those citizens who wish or who are obliged to return to their country of origin. In stemming irregular migration, states should actively cooperate with one another, ensuring that their efforts do not jeopardize human rights, including the right of refugees to seek asylum. Governments should consult with employers, trade unions and civil society on this issue.

### IV. Strengthening social cohesion through integration

Migrants and citizens of destination countries should respect their legal obligations and benefit from a mutual process of adaptation and integration that accommodates cultural diversity and fosters social cohesion. The integration process should be actively supported by local and national authorities, employers and members of civil society, and should be based on a commitment to non-discrimination and gender equity. It should also be defined by an objective public, political and media discourse on international migration.

### V. Protecting the rights of migrants

The legal and normative framework affecting international migrants should be strengthened, implemented more effectively and applied in a non-discriminatory manner, so as to protect the human rights and labour standards that should be enjoyed by all migrant women and men. Respecting the provisions of this legal and normative framework, states and other stakeholders must address migration issues in a more consistent and coherent manner.

### VI. Enhancing governance: Coherence, capacity and cooperation

The governance of international migration should be enhanced, improved coherence and strengthened capacity at the national level; greater consultation and cooperation between states at the regional level, and more effective dialogue and cooperation among governments and between international organizations at the global level. Such efforts must be based on a better appreciation of the close linkages that exist between international migration and development and other key policy issues, including trade, state security, human security and human rights.

## INTRODUCTION

# Dimensions and dynamics of international migration

1. Migration has been a constant and influential feature of human history. It has supported the process of global economic growth, contributed to the evolution of states and societies and enriched many cultures and civilizations. Migrants have often been amongst the most dynamic and entrepreneurial members of society, people who are prepared to venture beyond the confines of their own community and country in order to create new opportunities for themselves and their children.

2. In the contemporary world, international migration continues to play an important (if often unacknowledged) role in national, regional and global affairs. In many developing countries, the remittances received from migrants constitute a more important source of income than Official Development Assistance (ODA) or Foreign Direct Investment (FDI). Throughout much of the world, migrants are not only employed in jobs that nationals are reluctant to do, but are also engaged in high-value activities that local people lack the skills to do. In certain countries, whole sectors of the economy and many public services have become highly dependent on migrant labour, and would collapse overnight if those workers were no longer available.

3. Human mobility has become an integral component of the global economy, with countries and companies looking further afield for the personnel they need to improve their competitiveness. It is no coincidence that some of the largest concentrations of migrants are to be found in 'global cities', dynamic, innovative and highly cosmopolitan urban centres that are

enabling people, places and cultures in different parts of the world to become increasingly interconnected.

4. As these examples indicate, international migration has the potential to play a very positive role in the process of human development, bringing benefits to people in poorer and more prosperous countries alike. The Global Commission on International Migration underlines the need for the international community to maximize these benefits and to capitalize on the resourcefulness of people who seek to improve their lives by moving from one country to another. The following sections identify a number of important issues that must be taken into account if those objectives are to be achieved.

### Disparities and differentials

5. International migration is a dynamic and expanding phenomenon. As indicated already, the number of international migrants has doubled in the past 25 years, although as a proportion of the world's total population it remains rather modest, at around three per cent. International migration affects countries at every level of economic development and of every ideological and cultural persuasion. Migrants now depart from and arrive in almost every country in the world, making it increasingly difficult to sustain the distinction that has traditionally been made between countries of origin, transit and destination. Many states now fall into all three categories.

6. Over the past 30 years, the proportion of foreign-born residents living in developed



countries has generally increased, while in most developing countries it has either remained stable or diminished to some extent. Around 60 per cent of all recorded migrants are now to be found in the world's more prosperous countries, and the other 40 per cent in developing regions. Despite this trend, large numbers of people continue to engage in 'south-south' migration, moving from one developing country to another. According to the most recent UN statistics, Asia has some 49 million migrants, Africa 16 million and the Latin America and Caribbean region six million.

### **Development, democracy and human security**

7. As suggested earlier, the globalization process has created enormous wealth and has lifted millions of people out of poverty. But it has not yet narrowed the gap between rich and poor, and in some cases economic disparities are widening. Many developing countries are struggling to cope with high levels of demographic growth and are failing to create enough jobs for the millions of young people who are entering the labour market. And although more people than ever before are citizens of states with pluralistic political systems, too many people continue to live in countries characterized by poor governance, low levels of human security, corruption, authoritarianism, human rights violations and armed conflict.

8. Given these conditions, it is not surprising that many people are looking for a future beyond the borders of their own country, both within their own region and, if they have the means to get there, to more distant parts of the world. And for reasons that are self-evident, few people (other than short-term contract workers) seek to migrate from functional states with thriving economies and flourishing democracies to weak

or despotic states where human rights are violated and that are unable to meet the basic needs of their own citizens.

### **Demographic and economic factors**

9. While many of the industrialized states are cautious in acknowledging it, their continued prosperity will depend in part on international migration. Many of the world's most affluent societies have low and declining birth rates, and as a result their populations are becoming progressively smaller and older. As a result, they may find it difficult to maintain existing levels of economic productivity, to sustain their pensions and social security systems, and to find the caregivers required to meet the needs of an ageing population.

10. The growing competitiveness within the global economy has led to a process of economic restructuring that has limited the number of public and private sector jobs available in developing countries. This has simultaneously created demand for a flexible labour force in the industrialized states that is prepared to work for low wages and under difficult conditions. Migrants from developing countries are currently helping to fill that gap at the lower end of the labour market, and seem likely to do so for the foreseeable future. At the upper end of the labour market, migrants are also in growing demand to fill positions in high-value and knowledge-based sectors of the economy that are currently confronted with a global shortage of appropriate skills.

### **Culture, communications and curiosity**

11. The expanding scale of international migration can also be attributed to cultural factors. The human race has always been curious, and eager to visit different places, gain new experi-

ences and encounter unfamiliar cultures. As a result of the globalization process, much larger numbers of people can realize those ambitions. Global communications networks provide people with the information they need to move from one place to another. Global transportation networks have made it much faster and cheaper to cross the globe. And the growth of global social networks and diasporas (themselves a product of earlier migratory movements) have made it easier for people to move to another country and to adapt to a new society.

12. An Afghan citizen who decides to migrate, for example, can be guaranteed to find a supportive community of compatriots, whether she or he moves to Dubai, Karachi, London, New Delhi, Sydney or Washington DC. A number of countries, of which Afghanistan is just one, are now characterized by a culture of migration in which moving abroad on a temporary or long-term basis has become the norm rather than the exception.

### **The complexity of human mobility**

13. Human mobility is not only becoming larger in scope and scale, but is also becoming more complex in its nature. International migrants constitute a very diverse group of people. As the number of migrants has increased, so too has the number of legal and administrative categories into which they are placed by governments and international organizations.

14. People who move across international borders are variously described as having regular or irregular status and as being skilled or unskilled workers, permanent settlers or temporary migrants, not to mention additional categories such as student migrant, family reunion migrant, transit migrant, asylum seeker or refugee. In principle, a coherent and comprehensive migra-

tion policy should address the particular circumstances of each of these different groups.

15. In reality, however, an individual migrant may belong to one or more of these categories at the same time. She or he may move successively from one category to another in the course of a migratory movement, or may seek to be reclassified from one category to another, as when an economic migrant submits a claim to asylum in the hope of gaining the privileges associated with refugee status.

16. The traditional distinction between skilled and unskilled workers is in certain respects an unhelpful one, as it fails to do justice to the complexity of international migration. For example, many countries are currently eager to recruit migrants who are specialists in information technology and engineering, but they are equally eager to attract migrants who are able to provide high-quality care to elderly people and children. While they may have different levels of educational achievement, all of them could be legitimately described as essential workers.

### **Regional differences**

17. In the course of its consultations, the Commission has become acutely aware of the many regional and sub-regional differences that exist in relation to international migration, as well the constraints that such differences place on the formulation of international migration policies.

18. The predominant form of migration varies considerably from one part of the world to another. In Asia, for example, many migrants move on the basis of temporary labour contracts, while in parts of the Americas and Africa, irregular migration is far more prevalent. Traditional countries of immigration such as Australia, Canada, New Zealand and the USA continue to



accept migrants for permanent settlement and citizenship, while the countries of the Middle East usually admit international migrants for fixed periods and without any expectation of integration. In Europe, the major preoccupation of recent years has been the arrival of asylum seekers from other parts of the world, the majority of whom do not qualify for refugee status.

19. The states of the former Soviet Union have experienced a particularly complex pattern of human mobility during the past 15 years, involving migrations within, to and from the region; movements of a voluntary and involuntary nature, and situations in which people themselves did not move, but in which their nationality changed. Epitomizing this complexity, an intergovernmental initiative to address the issue of migration in the former Soviet Union has been obliged to develop its own vocabulary, establishing new categories of migrant such as ‘formerly deported peoples’ (communities that were forcibly relocated during the Stalin regime), ‘ecological migrants’ (people who have been forced to move by environmental disaster) and ‘involuntarily relocating persons’ (those who have been forced to relocate to the country of their citizenship as a result of circumstances endangering their lives).

20. Important variations are also to be found in the capacity of states to formulate and implement migration policies. Such variations generally reflect the relative prosperity and the historical experience of the countries concerned. One would evidently not expect countries with relatively little relative experience in the field of international migration to have the same capacity as states that have longstanding and large-scale immigration programmes.

21. The Commission’s mandate is to provide the framework for the formulation of a “coherent,

comprehensive and global response to the issue of international migration.” In accordance with its mandate, the conclusions and recommendations presented in this report are addressed to states and other stakeholders in all parts of the world, and do not focus on regional or sub-regional issues and situations.

### **Policy linkage Development, human rights and security**

22. A final dimension of the complexity of international migration is to be found in its inextricable linkage to a range of other global concerns, as well as the international community’s growing awareness of such linkages. For example, recent years have witnessed a growing appreciation of the need to maximize the contribution that migrants make to poverty reduction and sustainable development in their countries of origin. In addition, the Commission has recognized an increased awareness that the issues of development, human rights and good governance are inseparable, and that an integrated approach to these issues will be required if the international community is to address the pressures that induce people to leave their countries of origin.

23. The linkage between migration and security has become an issue of even greater international concern. Recent incidents involving violence committed by migrants and members of minority groups have led to a perception that there is a close connection between international migration and international terrorism. Irregular migration, which appears to be growing in scale in many parts of the world, is regarded by politicians and the public alike as a threat to the sovereignty and security of the state. In a number of destination countries, host societies have become increasingly fearful about the presence of migrant communities, especially those with

unfamiliar cultures and that come from parts of the world associated with extremism and violence.

24. These are real and legitimate concerns. However, the linkage between migration and security should also be viewed in more positive ways. In many parts of the world, labour migration has contributed towards security and political stability by reducing poverty levels, curbing unemployment and expanding the experiences and opportunities available to the population. Migration can be an empowering experience that enables people to enjoy a greater degree of human security. Returning migrants and exiles have assumed important leadership roles in many nascent democracies that are emerging from years of authoritarian rule.

25. The intricacy of the linkages that exist between international migration and other global issues presents further challenges to policy makers and has also raised some important issues in the preparation of this report. As an entity specifically established to consider the issue of international migration, the Commission has focused its conclusions and recommendations on policies that have a relatively direct bearing on the cross-border movement of people. Even so, the Commission is firmly convinced that migration policies have little chance of producing positive outcomes unless they are complemented by appropriate policies in the many other areas that have an impact on, and which are impacted by, international migration. In short, the issue of human mobility cannot be dealt with in isolation.

### **Conflicting interests and attitudes**

26. Another important challenge confronted by policy makers in the domain of international migration is to be found in the controversial and

contradictory nature of the issue. From the beginning of its work in January 2004, the Commission has been struck by the enormous amount of interest and controversy that exists in relation to international migration. States throughout the world are devoting an increasing amount of attention and resources to the movement of people across their borders. Questions related to international migration are being discussed in numerous national, regional and international fora. Migration issues are constantly in the headlines of many major media outlets. And while governments remain the principal actors in this discourse, many other influential stakeholders are striving to have their voice heard, not least the corporate sector.

### **Markets and states: the global and the local**

27. In recent years, an apparent tension has arisen regarding the interests of the state and the interests of markets and the corporate sector in relation to international migration. As indicated earlier, a principal manifestation of the globalization process is the increasing ease with which goods, capital, services, information and ideas flow across international borders. But the same cannot be said for people, who are still confronted with a wide range of official controls when moving from one country to another. While such controls impinge most directly upon unskilled migrant workers, even skilled professionals and the employees of multinational corporations often find that their relocation is obstructed or delayed by restrictive policies and cumbersome procedures.

28. The corporate sector is increasingly anxious to resolve such problems. Private enterprises that wish to boost their competitiveness and expand their markets feel that they must be able to recruit their employees much more freely and on a

global basis. And if they are unable to do so, they may move part or all of their enterprises to countries where they are able to find the people they need.

29. In contrast to the increasingly globalized approach of the corporate sector, the concerns of states are still predominantly embedded in local politics. Governments are often concerned that by facilitating the entry of foreigners to the national labour market they will reduce employment opportunities for citizens, offend public opinion and lose electoral support. While they may acknowledge the economic case for a more liberal approach to international migration, many governments are also worried that admitting additional numbers of foreign nationals, even on a temporary basis, will have negative consequences for the stability of society and ultimately the security of the state.

### **The public discourse**

30. The Commission considers that this tension between markets and the state, between the corporate sector and government, between the global and the local, between national interests and the globalization process, will be an increasingly important element of the discussion on international migration in years to come. While that tension may not be resolved, it must be approached on the basis of a calm, open and objective debate. In the current international context, this represents a serious challenge.

31. In every part of the world that the Commission has visited, international migration has been very high on the public, political and media agenda. While the precise issues at stake may have varied from place to place, the prominence of the discourse has been unmistakable.

32. In many societies, citizens are expressing concerns, both legitimate and unfounded, about the arrival of people from other countries and cultures. Media outlets across the world report a constant stream of stories related to migrants and migration, many of them focusing on the more sensational and negative aspects of the issue. Migration has proved to be a politically explosive issue in a significant number of countries, to the extent that it seems to have played an important role in determining the outcome of several elections. The discourse on migration has thus become a highly polarized one at national, regional and global levels, with limited common ground between the different constituencies that have an interest in the issue.

33. One should not be surprised or dismayed by this situation. International migration is an emotive issue because it raises complex questions about the identity and values of individuals, households and communities, as well as societies as a whole. International migration is a controversial matter because it highlights important questions about national identity, global equity, social justice and the universality of human rights. International migration policy is difficult to formulate and implement because it involves the movement of human beings, purposeful actors who are prepared to make sacrifices and to take risks in order to fulfil their aspirations. Its challenges are radically different from those that arise in managing the movement of inanimate objects such as capital, goods and information. Those challenges are examined in the chapters that follow.

## CHAPTER ONE

# A world of work: Migrants in a globalizing labour market

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**Women, men and children should be able to realize their potential, meet their needs, exercise their human rights and fulfil their aspirations in their country of origin, and hence migrate out of choice rather than necessity. Those women and men who migrate and enter the global labour market should be able to do so in a safe and authorized manner and because they and their skills are valued and needed by the states and societies that receive them.**

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1. Momentous changes are taking place in the global economy. Countries in different regions of the world are becoming increasingly integrated and interdependent, linked by rapid flows of capital, goods, services, information and ideas. Access to knowledge has become a key determinant of competitiveness and success. Private sector enterprises are becoming increasingly global and mobile. According to the International Monetary Fund (IMF), these developments will enable the global economy to expand at more than four per cent in 2005, generating trillions of dollars in new income.

2. But this record of economic achievement has not yet been reflected in the creation of new employment opportunities, especially in developing countries, where large numbers of young people are entering the labour market. International Labour Office (ILO) statistics indicate that in 2004, some 185 million people around the world were unemployed. Over the previous ten-year period, the industrialized states were the only ones to experience falling unemployment rates. In every other region they either remained stable or increased.

3. Being out of work is not the only dimension of the current employment crisis. According to the ILO, around 550 million of the people in work are living on less than a US dollar a day, while almost half the world's 2.8 billion workers earn less than two dollars a day. In some developing countries, the majority of people in the labour force are working in the informal sector of the economy, where wages and working conditions are unregulated. According to the US State Department, between 600,000 and 800,000 people are trafficked every year, joining the estimated 12 million people who are trapped in conditions of forced labour. In the words of the ILO's Director-General, "the global jobs crisis is putting security, development, open economies and open societies all at risk. This is not a sustainable course."

4. The global jobs crisis also has important implications for the sustainability of current approaches to international migration. Because they are unable to find adequately compensated livelihoods at home, increasing numbers of women and men in developing countries are looking for employment opportunities elsewhere. While many continue to move within the

developing regions, a growing proportion are moving to find work in the world's more prosperous states. According to UN statistics, between 1980 and 2000 the number of migrants in developed countries more than doubled, from 48 to 110 million, while the number of migrants in developing countries grew from 52 to 65 million.

5. A key issue in the years to come will be whether an appropriate balance can be found in the supply and demand for migrant workers. In terms of demand, to what extent and under what conditions will the world's more prosperous states be prepared to admit migrant workers from other parts of the world? And with regard to supply, what can be done to provide the citizens of developing countries with better jobs and higher levels of human security at home, so that they do not feel compelled to migrate? This chapter seeks to answer those questions.

## Differentials, disparities and migration

**The number of people seeking to migrate from one country and continent to another will increase in the years to come, due to developmental and demographic disparities, as well as differences in the quality of governance. States and other stakeholders must take due account of this trend in the formulation of migration policies.**

6. International migration is usually a response to differentials and disparities. When people decide to migrate, it is normally because they want to move away from the constraints and insecurities they faced in their country of origin, and because they consider that better conditions and opportunities exist elsewhere. In the contemporary world, the principal forces that are driving international migration are due to the '3Ds': differences in development, demography and

democracy. The Commission has concluded that because these differentials are widening, the number of people seeking to migrate will continue to increase in the future. Migration policies will have to take due account of this trend, ensuring that the increased scale of migration brings real benefits to countries of origin, countries of destination and to migrants themselves.

### **Developmental disparities**

7. According to the United Nations Development Programme (UNDP), the proportion of the world's population living in poverty has fallen faster in the past 50 years than in the previous 500 years. And yet the gap between living standards in richer and poorer parts of the globe is continuing to grow. In 1975, the per capita Gross Domestic Product (GDP) in high-income countries was 41 times greater than that in low-income countries and eight times greater than that in middle-income countries. Today, high-income countries have per capita GDPs that are 66 times those of low-income countries and 14 times those of middle-income countries.

8. These statistics help explain why so many people in low and middle-income countries wish to migrate to more prosperous states, and why high-income countries, which have less than 20 per cent of the global labour force, now accommodate over 60 per cent of the world's migrants. Migrants who move from lower to higher income economies are often able to gain an income that is 20 or 30 times higher than they would be able to gain at home. While living costs are usually much higher in countries of destination, most migrants can still earn enough to support themselves and send remittances home to members of their household and community.

9. The incentive to migrate appears to be getting stronger. In many developing countries,



market-oriented reforms have boosted the competitiveness of the national economy, but have failed to create sufficient jobs to absorb the growing number of people in the labour market, especially those without education and training. As a result, many young people are confronted with the prospect of long-term unemployment or underemployment.

10. Some 1.3 billion people, around half of the work force in developing countries, are employed in agriculture, usually as small farmers. These farmers are confronted with multiple disadvantages. They face competition from subsidized farmers in more prosperous parts of the world. Efforts to market their goods and improve productivity are often hampered by the poor physical and financial infrastructures that exist in many developing countries. A growing number of small farmers must also cope with the problem of environmental degradation, as well as the appropriation of agricultural land by the state and private enterprise.

11. Growing numbers of these people can be expected to migrate, initially from rural to urban areas and subsequently to other countries. In some countries, especially in Asia, this trend seems likely to be reinforced by government policies that are designed to facilitate the migration of their citizens, so as to reduce unemployment levels and to increase the volume of the remittances they send home.

12. The demand for migrant labour is strong. In many industrialized states, the increasing competitiveness of the global economy has placed new pressures on both private and public sector employers to minimize costs and to maximize the use of cheap and flexible labour – precisely the kind of labour that migrants, whether they have moved in a regular or irregular manner, are able to provide.

13. The growth of migration from poorer to richer countries is not and will not be confined to low-income workers. The industrialized states are currently confronted with shortages of personnel in high-value and knowledge-based sectors of the economy such as health, education and information technology. Unable to recruit, train and retain the necessary personnel at home, a growing number of governments and employers are turning to the global labour market in order to meet their human resource needs. Multinational corporations want to move their personnel from one country to another in order to make best use of the talent they have engaged, and are calling on states to make this process easier.

### **Demographic differentials**

14. The potential for growth in the scale of migration from poorer to richer countries is reinforced by demographic differentials. Many of the world's more prosperous states now have fertility levels that are below the replacement rate of 2.12 per woman. Their populations are becoming both smaller and older, a situation which threatens their ability to sustain current levels of economic growth and to maintain their existing pensions and social security systems. In contrast, virtually all of the world's population growth is taking place in developing countries. According to the United Nations Population Division, estimated fertility rates for the period 2000 to 2005 range from just 1.4 in Europe and 2.5 in Latin America and the Caribbean, to 3.8 in the Arab states and 5.4 in sub-Saharan Africa.

15. Statistics compiled by the World Bank indicate that the global labour force will rise from 3.0 to 3.4 billion in the period 2001 to 2010, an average increase of 40 million per year. Some 38 million of that annual growth will come from developing countries, and only two million from

high-income countries. On the basis of current trends, by the end of the decade, some 86 per cent of the global labour force will come from developing countries. If the industrialized states need workers to compensate for the diminishing size of their populations, to provide care to their growing number of elderly people and to support their pensions systems, it will not be difficult for them to fill those gaps through the recruitment of migrant labour.

### **African demographics**

Sub-Saharan Africa's population has grown faster than any other region over the past 40 years. Because of its relatively high fertility levels, the region seems certain to be the principal source of world population growth over the next 20 years, even with the HIV/AIDS pandemic reversing decades of gains in life expectancy. According to UN statistics, Africa's total population is expected to increase from 794 million in 2000 to 1.1 billion in 2025.

### **Democracy and governance**

16. While developmental and demographic variables seem likely to play an important role in determining the future supply and demand for migrant workers, disparities in the areas of democracy, governance, human rights and human security must also be taken into account. A good number of the states experiencing unemployment, low incomes and high rates of population growth are also countries where the democratic process is fragile, where the rule of law is weak, and where public administration is inefficient.

17. By migrating, people who are living in precarious economic and political circumstances are able to insure themselves and their families against market volatility, political crises, armed conflicts and other risks. In the worst cases, people who are confronted with such disasters may

feel obliged to seek asylum in another state, a form of migration that derives largely from necessity and which involves little or no choice.

18. The Commission has been impressed by the extent to which people, especially the younger generation, have been affected by the human rights and mass communications revolutions that have taken place in recent years. Today's citizens want to benefit from a good education and find a decent job, but they also expect to be able to express their opinions, to engage in political debate, to question conservative cultures and to break free from social constraints. If they are unable to meet those expectations in their own country, then they will seek to enter the labour market in societies where such opportunities are available.

### **Migration of women**

19. Women constituted just under half of all international migrants in 2000, and just over half of those lived in more developed regions. Women are entering the global labour market in greater numbers and increasingly migrate alone. Indeed, they are often primary breadwinners for the families they leave behind.

20. These trends will continue in the years to come, not least because of increased demand in the industrialized states for labour in sectors that are traditionally associated with women: domestic work, nursing and personal care services, cleaning, entertainment and the sex trade, as well as retailing and labour-intensive manufacturing. Negative attitudes in countries of origin towards divorced, widowed, childless and single women, coupled with the fact that many women now have better access to education and a greater awareness of their human rights, will provide further incentives for women at all levels of education to seek jobs and new experiences abroad.

### **Migrant women**

While there is a common perception that the majority of migrants are men, the most recent UN figures indicate that women now comprise almost half of the world's migrant and refugee population. In 2000, the number of migrant women exceeded the number of migrant men in Latin America and the Caribbean, North America, Oceania, Europe and the former Soviet Union. In Africa and Asia, however, migrant men were in the majority.

## **Liberalization of the global labour market?**

**States and other stakeholders should pursue more realistic and flexible approaches to international migration, based on a recognition of the potential for migrant workers to fill specific gaps in the global labour market.**

21. There would appear to be an emerging convergence of interests between richer and poorer countries. In simple terms, the former are running short of working-age people, while the latter have such people to spare. Logic suggests that one outcome of this situation should be a growth in the scale of authorized labour migration from developing to high-income countries. But that is not currently the case. Much of today's migration taking place between poorer and richer regions is irregular in nature.

22. The notion of a 'global labour market' is something of a misnomer. The process of globalization is characterized by the increasingly free movement of capital, goods, services and information across national borders. The same cannot be said of people. Specific groups of employees, such as information technology specialists, senior academics, health professionals and teachers, not to mention soccer players and other sports stars, may be able to seek employ-

ment on a global market. But for the majority of people and in most regions of the world, national labour markets prevail and the opportunities for them to seek work in other countries remain limited.

### **The employers' perspective**

23. There is growing frustration among employers about the restrictions that states place on the recruitment and relocation of foreign labour. In many parts of the private sector, such controls are regarded as a constraint on productivity and market expansion. Public sector representatives complain that they are unable to offer the services expected of them because they are prevented from filling labour market gaps with authorized migrant workers. Confronted with the rigidities that exist in the global labour market, some employers have sought alternative strategies, such as transferring all or part of their enterprises to countries that can provide an adequate supply of suitable labour at an attractive price, or subcontracting to smaller enterprises that are prepared to engage unauthorized migrant workers.

24. The strategies of 'outsourcing' and 'offshoring' promise to bring substantial benefits to the global economy and to countries able to provide such facilities. But they will not resolve labour and skills shortages in the industrialized countries. Given the costs involved in moving, they are unlikely to be viable options for family-owned and small-scale businesses. Nor do they provide a workable solution for the many private and public sector employers who need to have face-to-face contact with their customers and clients. For example, relatively few of the elderly people needing care in Europe or Japan will want to live in nursing homes in North Africa or Indochina. In fact, it seems likely that growing numbers of care-givers from developing countries



will migrate to the industrialized states in order to assist elderly people at home.

### **Alternatives to migration**

25. Responding to the circumstances described above, some stakeholders, including the private sector, have called for a more liberal approach to international labour migration – an approach that would enable workers to move with greater freedom from poorer to richer regions of the world. Such an approach, it has been suggested, would yield enormous benefits for developing countries in the form of increased remittances, diaspora investment and the transfer of knowledge. Simultaneously, it would help industrialized states to address the economic and social challenges presented by their ageing and diminishing populations, and thereby create a ‘win-win’ situation.

26. There are a number of reasons why this approach may not prove acceptable to all states. First, if undertaken at one point in time or on a short-term basis, importing labour would not constitute an effective solution to the demographic challenge confronting many states, because migrant workers eventually age and become economically inactive themselves. The continuous recruitment of migrant labour would be required to avert such a scenario.

27. Second, many of the countries that have ageing and diminishing populations also have substantial numbers of people (not least amongst existing migrant and minority populations) who have been unemployed for long periods of time, as well as many women who have withdrawn from or who for various reasons have never participated in the labour market. Increasing the labour force participation of such people represents an alternative or complementary policy to increased immigration, as does the introduction

of other measures, such as later retirement, lower pensions and the introduction of labour-saving technology. Migration is only one of the options available.

28. Third, migration policies will not be guided solely by the laws of economics or demography. Many states and societies remain uncomfortable with the notion of large-scale and continuous immigration, especially if the new arrivals have a different ethnic, cultural or religious background from the majority of citizens. Large-scale labour migration will not be promoted by governments if it is perceived as a threat to social cohesion or electoral success.

29. Finally, some of the industrialized states have met part of their need for additional labour (especially cheap and flexible labour that can be deployed to take up work that is shunned by nationals) by turning a blind eye to the employment of migrants with an irregular status. Indeed, the recent growth and partial tolerance of irregular migration by states, as well as the introduction of periodic regularization programmes for unauthorized workers, can, in some respects, be regarded as a *de facto* liberalization of the global labour market. The Commission underlines its concern about this situation, and reminds states that it is in their interest to ensure that their demand for foreign labour is met in an authorized and organized manner.

### **Permanent and temporary migration programmes**

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**States and the private sector should consider the option of introducing carefully designed temporary migration programmes as a means of addressing the economic needs of both countries of origin and destination.**

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30. The world would benefit substantially from a well regulated liberalization of the global labour market. Such an approach would contribute to the growth of the global economy and enable the international community to achieve a better match between the supply and demand for migrant labour. It would ensure that citizens of countries in the South have better access to the labour markets of the North and enable those people to contribute towards the development of their own countries. It would assist the industrialized states to meet their emerging demographic challenge, and enable employers to engage the workers they need. A well regulated liberalization of the global labour market would also be preferable to the current situation, in which labour market gaps are filled in part by means of irregular migration and unauthorized employment.

### **Traditional immigration countries**

31. There is, however, a need to consider the form that such regulated migration might take. Traditional countries of immigration such as Australia, Canada, New Zealand and the United States, for example, seem certain to continue with their tradition of granting permanent residence rights and speedy citizenship to people who apply for admission, whether on the grounds of skills, family reunion or humanitarian needs. The Commission commends such programmes, recognizing the contribution that they make to economic growth in destination countries and the role that they play in meeting the economic, social and protection needs of the migrants concerned. It also considers that such programmes provide a context that enhances the integration of migrants in society.

32. Permanent migration programmes also have their limitations. First, the public and political

mood in many of the industrialized states is currently hesitant about the prospect of increased immigration, and such hesitance is likely to be especially strong in relation to permanent migration programmes. Second, and as the following chapter explains in some detail, countries in the developing world stand to make more gains from the temporary and circular migration of their citizens than from their permanent departure.

### **Migration from the Philippines**

Overseas employment has become a vital part of the economy in the Philippines. At the end of 2003, more than 7.7 million of the country's citizens were temporarily or permanently living abroad. In 2004, these migrants sent at least \$8.5 billion home in remittances.

### **Designing effective temporary migration programmes**

33. It would be beneficial for countries of origin and destination to enter into a dialogue about the establishment of additional temporary labour migration programmes, thereby allowing individuals from the former states to work in the latter for a fixed period and under agreed conditions. In making this recommendation, the Commission is fully aware of the reservations that have been expressed in relation to such programmes, namely that they can create a second-class category of worker; the negative consequences of separating migrant workers from their families; the risk that temporary migrants will seek to remain in the country where they are working once they are due to return to their own country, and the possibility that employers will continue to hire unauthorized migrants who are prepared to accept inferior wages and conditions.

34. Rather than rejecting temporary migration programmes because of the difficulties involved

in their implementation, states, employers, trade unions and other stakeholders should focus their attention on the effective design of such initiatives. Special efforts must be made to draw upon the knowledge of countries such as the Philippines, which has a wealth of experience in providing large numbers of temporary migrants to the global labour market. More specifically, the following issues must be given careful consideration:

- informing temporary migrants about their rights and conditions of employment prior to their departure from their country of origin, including the requirement that they return to that country once their contract has expired;
- ensuring that migrants are treated in the same way as nationals with respect to their wages, working hours, health care and other entitlements;
- giving temporary migrants the right to transfer from one job to another during the period of their work permit, thereby enabling them to respond to changing labour market conditions and avoid a dependence on unscrupulous employers;
- providing women with equal access to temporary labour migration programmes;
- monitoring the implementation of the work permits and contracts provided to temporary migrants, with a view to blacklisting countries and employers that violate the provisions of such documents;
- prosecuting employers who engage migrant workers without valid work permits, and allowing for the removal of migrants who continue to work after their permit has expired;
- licensing and regulating the activities of agents involved in the recruitment of temporary migrant workers;

- granting visas to temporary migrants that will enable them to travel easily between the country where they are working and their country of origin, thereby assisting them to keep in contact with their family and community, and
- supporting the reintegration of temporary migrants when their period of employment has expired and they have returned to their country of origin.

### **Portable pensions and social security entitlements**

35. Another issue that must be considered in relation to temporary labour migration programmes is that of portable pensions and social security entitlements. According to research undertaken for the Commission, the majority of migrants are confronted with major obstacles to the portability of their pension and health care benefits. Less than 25 per cent of international migrants work in countries with bilateral or multilateral social security agreements, and such agreements do not necessarily provide the same portability for health care benefits.

36. This situation has a number of negative consequences. Temporary migrant workers who pay into pensions and social security schemes, but who are unable to benefit from such schemes once they have returned to their country of origin, have a strong incentive to work in the informal sector of the economy where their wages are not subject to such deductions. They also have a strong disincentive to go home once their period of employment has expired. Conversely, temporary migrants who are able to access such benefits in their country of origin are well placed to go home, enjoy a decent standard of living and invest in their own society.

37. Governments, employers and trade unions should explore this issue in more detail. In order to make rapid progress, countries of origin and destination should enter into bilateral discussions on the matter, ensuring that those discussions include health care provisions as well as pensions benefits. At the same time, there is a need to strengthen the information base on this issue, so as to gain a better understanding of the policy options available and the extent to which individual decisions relating to migration and return would be affected by those policies.

### **The movement of service providers**

**The GATS Mode 4 negotiations on the movement of service providers should be brought to a successful conclusion. Given the linkage between international trade and international migration, greater efforts should be made to foster a dialogue between officials and experts dealing with the two issues.**

38. The recent discourse on the future of labour migration has demonstrated considerable interest in the GATS Mode 4 negotiations. The General Agreement on Trade in Services (GATS) is a multilaterally agreed framework that applies to all members of the World Trade Organization (WTO). The agreement includes rules for countries to make commitments to open particular service sectors to foreign suppliers. Mode 4 of the GATS concerns the provision of services by the citizen of one WTO member state in the territory of another.

39. The GATS Mode 4 negotiations have generated a number of different expectations, one of which is that the agreement represents a first step towards labour market liberalization. According to proponents of this view, the agreement might eventually provide professionals and semi-skilled

workers from developing countries with access to employment opportunities in industrialized states. While developing countries sought to achieve such an outcome during the Doha round trade negotiations, industrialized states have focused their efforts on a liberalization of another element of the agreement (Mode 3 of the Trade in Services) so that their banks, insurance companies and other service providers could more easily establish subsidiaries and sell services to consumers in developing countries.

40. These negotiations may not have had an immediate impact on international migration policy. GATS Mode 4 specifically covers 'service providers', who represent only a very small percentage of the people who cross international boundaries for the purpose of work. The world's more prosperous states evidently do not want service provision to become associated with broader labour migration issues.

41. The Commission encourages the continuation of the GATS Mode 4 negotiations. Services now represent 70 per cent of GDP in the industrialized states, and the growth of the international trade in services promises to bring substantial benefits to the global economy. Arrangements that are made for the movement of service providers may help to establish principles or understandings that are pertinent to discussion on the broader issue of labour migration. In accordance with its concern to ensure that the international community recognizes the close linkages between migration and other global policy issues, the Commission also sees great value in recent efforts to promote a dialogue on GATS Mode 4, bringing together those working in the field of international migration and those who specialize in international trade. Expectations of this process must remain modest, however, given the continuing caution of many states in relation to the liberalization of the global labour market.

## The mobility of highly educated personnel

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**Governments and employers should jointly review current barriers to the mobility of highly educated personnel, with a view to removing those which are unnecessarily hindering economic competitiveness.**

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42. Private enterprises have long recognized the importance of developing and deploying talent from around the world. But policy makers in government have had to consider other and competing priorities, and have tended to adopt an ambiguous attitude towards the movement of highly educated personnel. Whether deliberately or unintentionally, significant barriers have been erected to the recruitment and relocation of foreign personnel.

43. This issue is of increasing importance. The ten largest corporations in the world now employ more than three million people, and such enterprises increasingly think in a global manner with respect to staffing, research, production and sales. In this context, an employee's nationality is relevant only insofar as it allows or prevents that person from being deployed in a country where her or his skills are needed.

44. Highly educated personnel make an important contribution to corporate competitiveness and the expansion of the global economy, and there is consequently a need to facilitate their mobility. States have a legitimate concern to defend their citizens against unfair competition from foreign nationals, and they will evidently continue to act on that basis. Even so, governments and the private sector should jointly review existing obstacles to professional mobility, with a view to removing those that are preventing enterprises from deploying the right people at the right place and time.

## Creating jobs and livelihoods in countries of origin

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**Greater efforts should be made to create jobs and sustainable livelihoods in developing countries, so that the citizens of such states do not feel compelled to migrate. Developing countries and the industrialized states should pursue economic policies and implement existing commitments that enable this objective to be achieved.**

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45. This chapter has suggested that permanent and temporary migration programmes will go some way towards creating a better balance in the supply and demand for migrant labour. But it is clear that such programmes do not constitute an effective response to the global jobs crisis. Under current conditions, the number of people seeking to migrate from poorer countries will continue to exceed the demand for their services in more prosperous states.

46. The Commission does not underestimate the challenge of creating decent jobs and sustainable livelihoods for people in poorer countries of the world. Nor does it consider this challenge to fall directly within the Commission's mandate. Nevertheless, it would be remiss to remain silent on this issue, given its enormous implications for the future of international migration. Effective policies are urgently required to provide jobs, education, training and investment opportunities for women and men in developing countries. Migration policies alone will not be able to address the pressures that will lead people to look for work beyond the borders of their own country.

### Steps to development

47. Creating jobs and livelihoods in low-income countries must be regarded as a shared responsibility, with countries of origin and destination acting as equal partners, sharing rights and re-



sponsibilities in a common effort to meet the challenge of development. One step in this process must be for countries of origin to assume responsibility for the welfare of their citizens, creating the conditions in which people are able to meet their needs, exercise their human rights, realize their potential and fulfil their aspirations at home. That is not currently the case. According to the World Bank, developing countries with a collective population of some two billion people are falling further behind in the quest for development and are at risk of becoming marginalized in the world economy, except as a source of migrants.

48. It would be misleading to suggest that all countries have the same potential for development. By virtue of their geographical location, their natural resources, their history and social traditions, some countries are better placed than others to establish dynamic and competitive economies. But another important determinant of success is the nature of the policies that states pursue. In that respect, the lesson to be learned from recent history is that countries that invest in the talents of their own people, that have open economies, sound financial systems, a favourable investment climate and honest administrations are more capable of seizing the opportunities presented by globalization than those countries lacking such attributes.

#### **Development in Morocco**

Morocco is an example of a country that has made significant recent progress in economic and social development. According to the World Bank, Morocco's gross national per capita income has more than doubled since the 1970s, from \$550 to \$1,190 a year. Average life expectancy increased from 55 in 1970 to 68 in 2001, while the average number of births per woman declined from 6.3 to 2.8 in the same period.

49. A second step must be for the world's more prosperous states – particularly those states that express concern about the number of people arriving on their territory in an irregular manner – to acknowledge the impact of their policies on the dynamics of international migration. There is, for example, a growing consensus that trade reform would have a greater impact on the welfare of people living in low-income states than any increase in the aid they receive.

50. The world's richer countries spend over \$300 billion a year in agricultural subsidies, more than six times the amount they spend on overseas aid. By depressing world prices for agricultural commodities, those subsidies make it more difficult for small farmers to stay on the land and thereby contribute to the migration of people within and from developing countries. Trade has an important role to play in promoting development, alleviating poverty and creating sustainable livelihoods, and participants in the Doha round of negotiations must seek to maximize the welfare gains generated by the multilateral trading system.

51. Third, it is essential for all members of the international community to implement the commitments that they have already made in relation to development and job creation in low-income countries. The Millennium Declaration of 2000, for example, affirms that states will “develop and implement strategies that give young people everywhere a real chance to find decent and productive work,” and that they will strive to attain the Millennium Development Goals, which include halving the proportion of people whose income is less than a dollar a day, eliminating gender disparity in primary and secondary education, and ensuring that developing countries are able to benefit from new information and communications technologies.

52. In adopting the Monterrey Consensus of 2002, states resolved to “eliminate poverty, improve social conditions and raise living standards,” and to pursue “active labour market policies in order to increase employment and improve working conditions.” More recently, the New Partnership for Africa’s Development (NEPAD), an initiative of African states supported by the European Union (EU) and the G8 countries, is committed to “build and retain within the continent critical human capacities for Africa’s development,” and to promote “economic growth, development and increased employment.” Closing the gap between these commitments and their implementation is essential for the formulation of coherent migration policies.

# Migration and development: Realizing the potential of human mobility

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**The role that migrants play in promoting development and poverty reduction in countries of origin, well as the contribution they make towards the prosperity of destination countries should be recognized and reinforced. International migration should become an integral part of national, regional and global strategies for economic growth, in both the developing and developed world.**

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1. The issues of international migration, economic growth and development are linked in a number of ways. First, as explained in the previous chapter, deficits in development, especially an absence of jobs and sustainable livelihoods, are amongst the most important reasons why people migrate from their own country. Second, international migration contributes to the development of countries of destination by filling gaps in the labour market, by providing essential skills and by bringing social, cultural and intellectual dynamism to the societies that migrants have joined. A third linkage, and the focus of this chapter, is the impact of migration on growth, development and poverty reduction in countries of origin.

2. Migrants make a valuable economic, political, social and cultural contribution to the societies they have left behind. The remittances that migrants send home play an important part in alleviating poverty in countries of origin, and can also support the development process if the governments of those countries provide a conducive environment for economic growth. Migration helps to limit the level of unemployment and underemployment in countries that have an

excess supply of labour. Individual migrants and diaspora associations make financial and other investments in their homeland, strengthening the economy, serving as conduits for new ideas and enriching understanding between countries of origin and destination. When migrants go back to their own country, whether on a temporary or long-term basis, they take new skills, experiences and contacts with them, vital assets in a global economy that is increasingly knowledge-based.

3. Migration can, however, also result in the departure of a country's brightest, best-educated and most entrepreneurial citizens. This deprives the state of revenue and prevents countries of origin from gaining an early return on the investment they have made in the education and training of those people. Most seriously, when it involves the departure of professionals in sectors such as health and education, migration can adversely affect the supply and quality of essential services.

4. Today's challenge is to formulate policies that maximize the positive impact of migration on countries of origin while limiting its negative consequences. To achieve this objective, migra-



tion must form part of national, regional and global development strategies. The Commission is concerned that migration has generally not been considered an integral component of the development agenda, and that recent development initiatives have not always taken due account of international migration. The Commission also observes that many developing countries lack the capacity to forge this linkage between migration and development. It is in the interest of all countries that a different approach be adopted. Developing countries have to adjust to the realities of a competitive global economy, and coherent migration policies are an integral part of this process.

### **The migration of professional personnel**

**Cooperative relationships between labour-rich and labour-poor countries are required to promote human capital formation and the development of a global pool of professionals. Providing appropriate pay, working conditions and career prospects in order to retain key personnel must be an integral component of such strategies.**

5. Responding to the opportunities presented by a globalizing labour market, a growing number of people with professional skills are moving to work abroad, both between developing countries and from poorer to richer parts of the world. For the individuals concerned, international migration represents a ‘race to the top’, an effort to realize their potential, increase their income, improve their standard of living and add to the knowledge they have already gained.

6. All countries should make substantial investments in the education and training of their citizens in order to increase the competitiveness of their economies. If those economies are unable

to absorb all of the people who have acquired professional skills, then such people can contribute to the development of their own homeland by migrating, sending remittances home and returning to their country of origin on a temporary or longer-term basis, bringing the knowledge they have gained while living and working abroad. As recommended in Chapter One, temporary labour migration programmes have a valuable role to play in realizing these positive outcomes of international mobility.

7. For many countries, however, the departure of essential workers with professional skills can have an adverse impact on society and the economy and represents a serious loss to states that have made major investments in the education and training of such personnel. In many countries in sub-Saharan Africa, for example, the departure of essential workers has seriously impeded the delivery of health services to local populations, especially those living in remote rural areas. If this trend continues unabated it is likely to undermine the progress that has to be made in achieving the health-related objectives of the Millennium Development Goals. The trend is less acute, but is also of concern, in the education sector.

#### **The migration of health personnel**

The migration of professional personnel has a major impact on the health sector in sub-Saharan Africa. Since 2000, for example, nearly 16,000 African nurses have registered to work in the UK alone. Only 50 out of 600 doctors trained since Independence are still practising in Zambia. And it is estimated that there are currently more Malawian doctors practising in the northern English city of Manchester than in the whole of Malawi.

8. Training and retaining an adequate number of skilled personnel has become a key challenge

in many developing countries, and one that must be addressed immediately if a downward human resource spiral is to be averted. For when some people with professional skills decide to migrate from their own country, the pressure on others to act in a similar manner can become intense.

### ***Train and retain***

9. Putting the strategy of ‘train and retain’ into practice is a complex undertaking, and the Commission has serious doubts about quick-fix solutions that would seek to bar professional personnel from leaving their own country and finding employment elsewhere. Such an approach would not be consistent with human rights principles, would run counter to the globalizing tendency of the labour market, and would in any case be very difficult to put into practice. Migrants would also be discouraged from going back to their own country if they left it without authorization and felt that they would be penalized on their return.

10. Calls for states that recruit foreign professionals to provide direct financial compensation to the countries from which those personnel come are not practicable. First, the professionals in question often work in more than one country, and so it is not clear which country would be responsible for paying compensation; second there is some debate about where compensation would be paid, and third there is no guarantee that compensation payments would necessarily be reinvested in training and retaining strategies. It is also doubtful that the codes of conduct some destination countries have formulated in an attempt to introduce a degree of self-regulation in the recruitment of foreign professionals are effective. The practical impact of such codes has not yet been demonstrated, and the evidence gathered by the Commission shows that em-

ployers can easily exploit loopholes in the way they function.

11. Other approaches are required if this issue is to be addressed in a coherent manner. First, it is essential for foreign aid and investment to be more carefully directed towards countries and sectors that have been particularly affected by the loss of their professionals. Co-investment programmes are one way to achieve this. Developing countries have a large pool of young people with the potential to acquire the skills required by their own and other countries. But they will only be able to acquire such skills if adequate resources are available to provide them with the education and training they need. Co-operative relationships between labour-rich and labour-poor countries are required to promote co-investment in the process of human capital formation and the development of a mobile and global pool of professionals. In this respect, the Commission welcomes efforts such as those of the United Kingdom’s Department for International Development to invest in the healthcare capacity of India and other developing countries.

12. Second, both private and public sector employers in developing countries must understand that professionals often seek employment abroad or move to alternative jobs at home because their pay, working conditions and career prospects are currently so poor. This is especially the case for women, who are concentrated in professions such as nursing and teaching that tend to be undervalued, and who may be subject to gender-based discrimination and harassment in the workplace. Developing country enterprises and institutions have an obligation to be good employers, to re-evaluate traditional approaches to social services professions, and to create a better environment for home-grown talent to flourish than many have done so far.

13. Third, countries that are currently recruiting skilled personnel from abroad must engage in better workforce planning and invest more resources in the training of their own citizens, so as to fill impending and projected gaps in the national labour market. It is irresponsible for the world's more prosperous states to ignore these responsibilities and then to look for a quick solution to their human resource problems through the active recruitment of professional personnel from developing regions.

### **Migrant remittances: facilitating the flow**

**Remittances are private money and should not be appropriated by states. Governments and financial institutions should make it easier and cheaper to transfer remittances and thus encourage migrants to remit through formal transfer systems.**

14. There has been a remarkable expansion in the volume of remittances sent home by international migrants. While accurate figures are hard to obtain, the World Bank estimates that the annual value of formally transferred remittances in 2004 was about \$150 billion, representing a 50 per cent increase in just five years. Almost half of these remittances are transferred between countries in the developing world. It is also noteworthy that migrant women and lower-paid migrants at times transfer a higher proportion of their income than others.

15. According to UN estimates the leading recipients of remittances in 2004 were Mexico (\$16 billion a year), India (\$9.9 billion) and the Philippines (\$8.5 billion), although remittances as a share of GDP are much higher in smaller countries such as Jordan (23 per cent), Lesotho (27 per cent) and Tonga (37 per cent). Compared with other developing regions, sub-Saharan Africa receives the low-

est level of remittances, amounting to just 1.5 per cent of total global remittances.

16. Remittances are now close to triple the value of the Official Development Assistance (ODA) provided to low-income countries and comprise the second-largest source of external funding for developing countries after Foreign Direct Investment (FDI). Significantly, remittances tend to be more predictable and stable than FDI or ODA. They continued to rise during the Asian financial crisis, for example, even as flows of FDI fell. This is not an isolated case. Evidence collected by the World Bank indicates that when a country encounters political or economic difficulties, citizens who are living and working abroad support their compatriots by increasing the amount of money they send home.

17. In many recipient countries, remittances now play an essential role in sustaining national and local economies. Remittances that are transferred formally can provide an important source of foreign exchange to recipient countries, boost the capacity of the financial sector, help to attract subsequent investment and provide some leverage for sovereign loans.

18. Remittances evidently provide the most direct and immediate benefits to the people who receive them, many of whom, the World Bank has established, are amongst the poorest members of society. Remittances help to lift recipients out of poverty, increase and diversify household incomes, provide an insurance against risk, enable family members to benefit from educational and training opportunities and provide a source of capital for the establishment of small businesses. When remittances are used to purchase goods and services, or when they are invested in community-based projects or in ventures that demand labour, they also benefit a broader range of people than those who receive them directly from relatives working abroad.

### **Remittances and household incomes**

Even though sub-Saharan Africa receives the lowest proportion of remittances of all developing regions, they have a very significant impact there. Household incomes in Somalia, for example, are doubled by remittances; while financial transfers provide 80 per cent of the income of rural households in Lesotho.

### **Transfer costs and systems**

19. A number of principles must be respected if the impact of remittances on development and poverty reduction is to be maximized. First, it is essential to recognize that remittances are a private resource, belonging to migrants and their families. They should therefore not be appropriated by the state, nor should they be subject to undue official regulation.

20. Second, the Commission strongly endorses the need to lower the cost of remittance transfers, which can be scandalously high – up to 25 per cent of the amount remitted in certain cases. The introduction of better technology is one way to reduce transfer costs, and electronic transfer systems can also help to increase the security of transfers.

21. Another means of reducing costs is to foster greater competition within the formal transfer system, given the propensity of monopoly service providers to maximize the charges they extract from their customers. In certain destination countries, the choice of service providers is restricted by the limited presence of branch outlets, particularly in areas outside the major cities. Banks and postal services that are already present in such areas could help to fill this gap, providing migrants with an alternative to both highly-priced commercial transfer services and to informal remittance transfer services.

22. Third, these initiatives must be combined with greater transparency in the financial services sector, so that migrants are able to make an easy comparison between the cost of transferring remittances with different service providers. Financial sector reform is the key to unlocking this potential. Migrant associations and civil society institutions also have an important role to play in this respect, by collecting, analyzing and disseminating relevant information on the different transfer services that are available to people who wish to remit.

23 Fourth, financial literacy training programmes should be established to help migrants increase their understanding of, and access to, formal banking systems in destination countries, while the development of credit unions and community-based micro-finance institutions represents another way of extending financial services to remote rural areas in countries of origin.

24 Such initiatives will not only generate a higher rate of remittance transfer at a lower cost, but will also provide an incentive for remittances to be transferred through formal systems. In some countries, only half of all remittances pass through official banking channels because migrants are discouraged from using them by cumbersome procedures, high fees and poor rates of exchange. Formal and recorded remittance transfers are preferable to informal flows because they reduce the risk that migrants and recipients will be exploited by clandestine money laundering networks.

### **Maximizing the developmental impact of remittances**

**Measures to encourage the transfer and investment of remittances must be combined with macro-economic policies in countries of origin that are conducive to economic growth and competitiveness.**

25. The Commission underlines the importance of maximizing the impact of remittances in countries of origin. It does not consider that a sharp distinction can be made between the impact of remittances on development and on poverty reduction. Whether remittances are used for the purposes of investment or consumption, they bring important benefits to the households, communities and countries that receive them. That being said, the volume of remittances received by many countries of origin is now so high, both in absolute terms and in relation to other sources of finance, that it is essential to harness their potential for the promotion of longer-term economic growth.

26. To achieve this objective, migrants and the recipients of remittances must be able to make informed decisions about the use of these resources. Households and communities in countries of origin should be assisted to make effective use of remittance receipts through the provision of appropriate training and access to micro-credit facilities. Some studies indicate that women make the most effective use of remittances, therefore special efforts should be made to target women in such initiatives. An additional option is to enable migrants to exercise greater control over the use of the money they remit, by offering them opportunities to purchase goods or services directly, rather than leaving such transactions in the hands of household members.

27. Home-town associations and diaspora organizations can play an important role in collecting and transferring collective remittances to their place of origin, which can be used for infrastructural and other projects that bring benefits to whole communities rather than to individual households. There is also scope for such collective remittances to be combined with matching funds provided from public sources or by development agencies. The record of such initiatives appears to

be mixed, however, and the Commission recommends that they be properly evaluated so that lessons can be learned from past experience.

28 The Commission acknowledges the efforts made by organizations such as the World Bank, the Inter-American Development Bank and other regional development banks to research, analyse and suggest principled policy frameworks for financial sector reform and the productive investment of migrant remittances. These bodies must continue with this work, supporting states in the formulation and implementation of policies that seek to promote the effective use of migrant remittances.

### **A conducive environment**

29. While every effort must be made to maximize the developmental impact of migrant remittances, this issue must be seen in its proper context. First, it is essential to recognize that the developmental impact of migrant remittances depends to a large extent on the quality of governance in countries of origin and the macro-economic policies pursued by those states. Without sound financial systems, stable currencies, a favourable investment climate and an honest administration, even large-scale and long-term remittance receipts are unlikely to contribute to sustainable growth.

30. Second, the growing volume of migrant remittances and the high level of visibility which they have enjoyed in recent years may give the impression that they can be an effective substitute for ODA. This is not a view supported by the Commission, which reiterates its earlier conclusion concerning the private nature of remittance receipts.

31. Third, remittances have their own constraints and limitations. The evidence suggests that migrants remit less to their country of origin



the longer they spend abroad. Second generation migrants are less likely to remit to the extent that their mothers and fathers did. In some countries that have sizeable numbers of their citizens working abroad, the receipt of large-scale remittances may actually be a disincentive to the introduction of reforms that would provide a more effective basis for long-term economic growth. Furthermore, the benefits of remittances are not shared equally, and may exacerbate the socio-economic disparities that exist between different households, communities and regions in countries of origin. The receipt of remittances can also create a 'culture of migration' in emigration countries, as a result of which young people can place excessive hopes on finding an opportunity to move abroad. Alternatively, relying on remittances may be a disincentive for some to work at all.

32. Finally, when calculating the economic benefits of remittances, there is a need to factor in a number of countervailing issues. First, the opportunity costs of migrants' incomes being largely being spent in destination countries deprive countries of origin of the demand stimulus to grow their economies. Second, high social costs can be incurred when migrants – husbands and wives, mothers and fathers, sons and daughters – decide to leave their own household and community in order to work abroad. There is also evidence to suggest that the pressure to remit can place a significant financial and psychological burden on migrants, especially those who have no alternative but to work in insecure and low-income jobs.

## **Diasporas and development**

**Diasporas should be encouraged to promote development by saving and investing in their countries of origin and participating in transnational knowledge networks.**

33. Countries of origin can gain considerable advantage by harnessing the talents and resources of diaspora populations, which have grown significantly in size and scope as a result of the recent expansion of international migration. Many countries now have a considerable proportion of their citizens living and working abroad, and those migrants often come together to form diaspora organizations.

34. Such organizations take a variety of forms. As indicated earlier, they include Home Town Associations (HTAs), which enable people from the same area in the country of origin to keep in touch with each other, as well as professional associations and organizations based on common interests such as sport, religion, gender, charitable work and development. Such organizations commonly collect donations from their members and send them back to the country of origin for specific purposes, such as: the refurbishment of a school, the purchase of a generator or the establishment of a day care centre for the children of working mothers, to give just three examples. In addition to such financial flows, diaspora organizations also usually participate in the political, social and cultural affairs of their own country and community.

### **Home Town Associations**

Mexican HTAs have a long history – the most prominent were established in the 1950s. There are currently over 600 Mexican HTAs in 30 cities in the USA. They support public works in their localities of origin, including funding the construction of public infrastructure (e.g. new roads and road repairs), donating equipment (e.g. ambulances and medical equipment) and promoting education (e.g. establishing scholarship programmes, constructing schools and providing school supplies).

35. The Commission commends the positive impact of diaspora and other migrant organizations that are constructively engaged in development initiatives in countries of origin, particularly through the targeted transfer of collective remittances. One way to enhance this process is for governmental and non-governmental organizations to provide matching funds for such remittances, on the condition that they are put to effective developmental use.

36. It is of equal importance for those who are providing matching funds to ensure that diaspora organizations do not represent narrow regional, political or personal interests. Despite their potential value, diaspora organizations can be exclusionary; pursuing divisive agendas in countries of origin and even contributing towards instability and the prolongation of armed conflict. If their developmental impact is to be maximized, it is essential for such organizations to respect the principles of human rights, good governance and gender equity.

### **Trade, investment and knowledge networks**

37. Individual migrants and diaspora organizations can also play an important role in promoting trade and investment in their countries of origin. Where feasible and appropriate, financial investment can best be promoted by providing migrants with foreign currency accounts or foreign currency denominated bonds in their country of origin, so that they are not at risk of currency devaluations if they keep their savings there.

#### **Diaspora investments**

There are some 30 to 40 million overseas Chinese living in about 130 countries. The OECD estimates that in 2004, investments made by overseas Chinese in the People's Republic of China comprised some 45 per cent of the country's total FDI.

38. Training programmes and business counselling can also help migrants to develop the entrepreneurial skills and business acumen needed to engage in successful trade and investment activities. In this respect, the Commission underlines its view that if the developmental impact of international migration is to be maximized, countries of origin must strive to create a healthy business environment, characterized by sound legal frameworks, effective banking systems, honest public administration and a functioning physical and financial infrastructure. The Commission also welcomes the proposal of the Africa Commission to establish an 'Investment Climate Facility' in Africa with the support of the G8. The ODA provided to countries of origin by the world's more prosperous states must evidently support the attainment of such objectives.

39. The Commission endorses the efforts being made to mobilize diaspora knowledge networks, including initiatives taken under NEPAD. An initial step in this process is to establish an inventory of the skills base within the diaspora, an objective which is most effectively achieved by supporting the establishment of professional migrant organizations and other civil society entities that incorporate migrants. A second step is to develop programmes that facilitate the transfer of skills and knowledge from the diaspora to their countries of origin. This might entail physical return, by means of short-term secondments or sabbatical visits, but can also involve 'virtual return', using the video-conferencing and internet facilities that are increasingly available in even the poorest of countries.

40. Finally, while welcoming the extent to which some countries of origin have recognized and realized the developmental potential of the diaspora, there are certain dangers in this strategy. Development must begin at home. Migrant

remittances and diaspora trade and investment can make an important contribution to growth, but should not become a substitute for an economic policy that develops and draws upon the talents of people who have remained in their country of origin.

41. In addition, migrants and members of diasporas must be left to make their own choices concerning the way and the extent to which they engage in the development of their countries of origin. In this respect, the Commission expresses its concern about the actions of governments that have sought to place undue demands on the financial and other resources of the diaspora.

## **Return and development**

### **States and international organizations should formulate policies and programmes that maximize the developmental impact of return and circular migration.**

42. The Commission concludes that the old paradigm of permanent migrant settlement is progressively giving way to temporary and circular migration. Each year, for example, some two million Asian workers leave their own countries to work under short-term employment contracts, both within and outside the region. The Commission underlines the need to grasp the developmental opportunities that this important shift in migration patterns provides for countries of origin.

43. As explained in Chapter One, continued efforts are needed to ensure the portability of pensions, so that migrants are able to return to their country of origin and have access to the resources they need for both consumption and investment. Portability demands the establishment of effective implementation arrangements between countries of origin and destination.

44. Given the changing pattern of international migration, the notion of ‘brain drain’ is a somewhat outmoded one, implying as it does that a migrant who leaves her or his own country will never go back there. In the current era, there is a need to capitalize upon the growth of human mobility by promoting the notion of ‘brain circulation’, in which migrants return to their own country on a regular or occasional basis, sharing the benefits of the skills and resources they have acquired while living and working abroad. As also recommended in the previous chapter, countries of destination can promote circular migration by providing mechanisms and channels that enable migrants to move relatively easily between their country of origin and destination.

45. Countries of origin also have important responsibilities in this respect. People will be less inclined to leave and more likely to return to countries that can offer their citizens sustained economic growth, a favourable business climate and decent working conditions. In creating such conditions and becoming more competitive, countries of origin will not only ensure that migration becomes a choice rather than a necessity, but will also encourage return and circular migration, maximize the impact of remittances and encourage diaspora populations to invest in their homeland.



## CHAPTER THREE

# The challenge of irregular migration: State sovereignty and human security

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**States, exercising their sovereign right to determine who enters and remains on their territory, should fulfil their responsibility and obligation to protect the rights of migrants and to admit those citizens who wish or who are obliged to return to their country of origin. In stemming irregular migration, states should actively cooperate with one another, ensuring that their efforts do not jeopardize human rights, including the right of refugees to seek asylum. Governments should consult with employers, trade unions and civil society on this issue**

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1. The term ‘irregular migration’ is commonly used to describe a variety of different phenomena involving people who enter or remain in a country of which they are not a citizen in breach of national laws. These include migrants who enter or remain in a country without authorization, those who are smuggled or trafficked across an international border, unsuccessful asylum seekers who fail to observe a deportation order and people who circumvent immigration controls through the arrangement of bogus marriages. These different forms of irregular migration are often clustered together under the alternative headings of unauthorized, undocumented or illegal migration. The Commission is aware of the controversy surrounding the adequacy of these concepts, and concurs with the assertion that an individual person cannot be ‘irregular’ or ‘illegal’. This chapter therefore refers to the people concerned as ‘migrants with irregular status’.

2. There are important regional differences in the way that the concept of irregular migration is applied. In Europe, for example, where the entry

of people from outside the European Union (EU) is closely controlled, it is relatively easy to define and identify migrants with irregular status. That is not the case in many parts of Africa, where borders are porous, ethnic and linguistic groups straddle state borders, some people belong to nomadic communities and many people do not have proof of their place of birth or citizenship.

3. The analysis of irregular migration is further hampered by a serious lack of accurate data, making it difficult to identify trends or to compare the scale of the phenomenon in different parts of the world. There is, however, a broad consensus that, as the number of international migrants has increased, so too has the global scale of irregular migration. It is estimated by the Organization for Economic Cooperation and Development (OECD) that between 10 and 15 per cent of Europe’s 56 million migrants have irregular status, and that each year around half a million undocumented migrants arrive in the EU. Irregular migration is by no means confined to developed countries. Asia is known to have

large numbers of migrants with irregular status: up to 20 million in India alone, according to some estimates. Such people are also thought to comprise the majority of all migrants in Africa and Latin America.

4. A growing proportion of international migrants undertake long-distance journeys that take them from one part of the globe to another, transiting through a number of countries on their way to their final destination. In the course of a single journey, it is quite possible for a migrant to slip in and out of irregularity, according to the visa requirements of the countries concerned.

#### **Irregular migration in the USA**

It is estimated that there are over 10 million migrants with irregular status in the USA, accounting for nearly one third of the foreign-born population. Over half the migrants with irregular status are Mexican. Despite increased efforts at border control, about 500,000 additional migrants enter the USA without authorization each year.

5. Seeking to defend their sovereignty and security, states have devoted enormous amounts of attention and resources to stem irregular migration, with limited success. Irregular migration is driven by powerful and complex forces, including a lack of jobs and other livelihood opportunities in countries of origin and the demand for cheap and flexible labour in destination countries. The growth of irregular migration is also linked to a lack of regular migration opportunities, and is facilitated by criminal networks that profit from migrant smuggling and from human trafficking. The growth of diaspora communities and transnational social networks has also made it easier for people to move from one country to another in an irregular manner.

6. In many parts of the world, states lack the capacity to control the movement of people across long land and sea borders. In some countries, community relations considerations limit the willingness of authorities to undertake rigorous and intrusive forms of action against migrants with irregular status and the people who employ them. More generally, states are reluctant to introduce measures that would lead to increased restrictions on the movement of their own citizens and on authorized non-citizens such as business travellers and tourists.

7. The issue of irregular migration is inextricably linked to that of human security. Many of the people who migrate in an irregular manner do so because their own countries are affected by armed conflict, political instability and economic decline. While they are in transit, migrants who move in an irregular manner often find themselves exposed to danger, or become stranded for long periods of time while *en route* to their final destination. Unless carefully implemented, efforts to prevent irregular migration can further jeopardize the welfare of such migrants. In this context, addressing the issue of irregular migration presents a major challenge. This chapter examines that challenge, while the two subsequent chapters examine the social situation and the human rights of migrants with irregular status.

#### **The negative consequences of irregular migration**

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**States and other stakeholders should engage in an objective debate about the negative consequences of irregular migration and its prevention.**

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8. Irregular migration has a number of negative consequences. When it takes place on a significant scale, and when it receives a great deal of

media attention, irregular migration can undermine public confidence in the integrity and effectiveness of a state's migration and asylum policies. Irregular migration challenges the exercise of state sovereignty and can even become a threat to public security, especially when it involves corruption and organized crime. When irregular migration results in competition for scarce jobs, irregular migration can also generate xenophobic sentiments that are directed not only at migrants with irregular status, but also at established migrants, refugees and ethnic minorities.

9. Irregular migration can also endanger the lives of the migrants concerned. A large but unknown number of people die each year trying to cross land and sea borders without being detected by the authorities. Smugglers may extract a high price from migrants, sometimes charging thousands of dollars to transport them from one place to another. Smugglers do not always inform migrants in advance of where they will be taken. The means of transport used by migrant smugglers are often unsafe, and migrants who are travelling in this way may find themselves abandoned by their smuggler and unable to complete the journey they have paid for. Using the services of smugglers, many migrants have drowned at sea, suffocated in sealed containers or have been raped and abused while in transit.

**The dangers of irregular migration**

The International Centre on Migration Policy Development estimates that some 2,000 migrants die each year trying to cross the Mediterranean from Africa to Europe. According to Mexican consulates, about 400 Mexicans die trying to cross the border into the USA each year.

10. Human traffickers ruthlessly exploit migrants. By definition, victims of human trafficking are not free to decide on the activities in which they engage. They are often forced into low-paid, insecure and degrading work from which they may find it impossible to escape and for which they receive trivial or no compensation. The US State Department estimates that every year, between 600–800,000 women, children and men are trafficked in every region of the world.

11. More generally, people who enter or remain in a country without authorization can be at risk of exploitation by employers and landlords. Because of their irregularity, migrants are often unable to make full use of their skills and experience once they have arrived in a country of destination.

12. Women constitute a substantial proportion of the many migrants with irregular status. Because they are confronted with gender-based discrimination, including restricted access to regular migration opportunities, female migrants with irregular status are often obliged to accept the most menial informal sector jobs. The majority of migrant domestic workers and migrants employed in the sex industry are women and are at particular risk of abuse. The latter in particular also face specific health-related risks, including exposure to HIV/AIDS.

13. While a great deal of recent attention has been given to the trafficking of women, it is important to note that this phenomenon also affects men and children. Migrant children with irregular migration status who are separated from their parents are a particularly vulnerable group, and may be trafficked into the sex industry. Such children are also at risk of becoming stateless.

14. Migrants with irregular status are often unwilling to seek redress from authorities because they fear arrest and deportation. As a result, they do not always make use of public services to which they are entitled, for example emergency health care. In most countries, they are also barred from using the full range of services available to citizens and migrants with a regular status. In such situations, NGOs, religious bodies and other civil society institutions are obliged to provide assistance to migrants with irregular status.

15. Irregular migration is a particularly emotive issue, and one that tends to polarize opinion. In discussions of the issue, those who are concerned by border control and national security are often opposed by those whose main concern is the human rights of the migrants concerned. States and other stakeholders should move away from these contradictory perspectives and engage in an objective debate on the causes and consequences of irregular migration and the ways in which it might be most effectively addressed.

### **The need for a comprehensive and long-term approach**

**Border control policies should form part of a long-term approach to the issue of irregular migration that addresses the socio-economic, governance and human rights deficits that prompt people to leave their own country. This approach must be based on interstate dialogue and cooperation.**

16. In recent years, many states, particularly the more prosperous ones, have devoted billions of dollars to a variety of border control techniques. These include the deployment of additional frontier guards and immigration officers, the construction of border fences and barriers, the interdiction and detention of migrants who are travelling in an unauthorized manner, the imposi-

tion of additional visa requirements; the introduction of machine-readable passports and, most recently, the use of biometric data. States have also invested substantially in the apprehension of migrant smugglers and human traffickers and have introduced a variety of legal and administrative measures to ensure the speedy rejection of asylum applications submitted by people who are deemed to have manifestly unfounded claims to refugee status.

17. While such initiatives have a role to play in stemming irregular migration, such border control policies must be implemented in a sensitive manner. The use of biometric data, for example, has the potential to facilitate the movement of people from one country to another, but also carries the risk of being used in a discriminatory manner and with inadequate regard for data protection, privacy and civil liberties. Strengthened border controls and visa restrictions have not always been effective in preventing irregular migration and can expose people to additional hazards when they seek to move in an irregular manner. When seeking to attain their legitimate objective of effective border control, states must respect their human rights obligations.

18. Border control policies must be combined with other relatively short-term approaches that are designed to stem irregular migration. While the record of such policies is somewhat mixed, there is scope for additional information programmes, notably by providing prospective migrants with a better understanding of the risks entailed in irregular migration, as well as guidance in finding regular migration opportunities. Capacity-building programmes, involving training, institutional development and the introduction of new legislation, policies and practice are also needed in many countries, especially those that have only recently been confronted with the issue of irregular migration.

## **Proactive approaches**

19. As noted in Chapter One, the number of people seeking to migrate seems likely to increase in the future as a result of the ‘3Ds’ – developmental and demographic disparities, as well as deficits in the quality of governance and protection of human rights. It is therefore essential to ensure that short-term policy responses to the issue of irregular migration are complemented with longer-term and proactive approaches. In formulating such approaches, states must develop a better understanding of irregular migration and the constraints they face in attempting to prevent it.

20. Dialogue and cooperation among states, at both a bilateral and regional level, is essential; the Commission therefore endorses the initiatives of regional consultative migration processes to include irregular migration in their agendas. States have a shared interest in this issue and must strive towards shared responsibility and joint action.

21. As suggested in preceding chapters, it is in the interest of both states and migrants to create a context in which people migrate out of choice and in a safe and legal manner, rather than irregularly and because they feel they have no other option. All states must strive to ensure that their citizens are able to benefit from peace, human rights and the opportunity to participate in a democratic political process, as well as a thriving economy and decent work. The world’s more prosperous countries must support such efforts by implementing the commitments they have made to the development process in countries of origin.

## **Addressing the demand for irregular migrant labour**

**States should address the conditions that promote irregular migration by providing additional opportunities for regular migration and by taking action against employers who engage migrants with irregular status.**

22. To a greater or lesser extent, dual labour markets have evolved in the majority of states: a formal labour market, in which wages, working hours and other conditions of service are regulated, and an informal labour market, dominated by casual workers who do not benefit from such protection. In some parts of the world, certain sectors of the economy, including agriculture, construction, hotel and catering services, as well as domestic and sex work, have come to rely to a significant extent on migrants with irregular status, who are prepared to work in difficult, dangerous and dirty jobs with little security and low wages. Employing migrants with irregular status can be viewed as a form of ‘insourcing’, a strategy used by some employers as an alternative to outsourcing or offshoring when confronted with a need to cut costs and to compensate for local labour shortages.

### **Irregular migrant labour in the Russian Federation**

According to the ILO, there are between 3.5 and 5 million migrants currently employed in the informal labour market in the Russian Federation, particularly in industry, construction and agriculture. These migrants mainly originate in countries of the Commonwealth of Independent States and South-East Asia.



23. The growth of such employment opportunities has provided an important incentive for people to migrate in an irregular manner. As the global economy becomes more competitive and companies seek to reduce costs further, it is likely that the market for irregular migrant labour will continue to expand, especially in countries where the formal labour market is highly regulated. The Commission calls on states to consider and address this issue. At the same time, tougher administrative, civil and even criminal sanctions are required against employers and contractors who knowingly engage irregular migrant labour, exploit these workers and expose them to danger.

24. The Commission also urges states to consider making more regular migration opportunities available when gaps in the labour market need to be filled, and to establish clear and transparent criteria for the recruitment of foreign workers. In this respect, the Commission reiterates the proposal made in Chapter One for the introduction of appropriately designed temporary migration programmes.

25. The Commission is fully aware of the argument that the establishment of regular migration programmes will not necessarily reduce the scale of irregular migration, as the supply of migrants is currently greater than the demand for their services, and also because regular migration creates transnational social networks that can be used to facilitate irregular migration. However, regular migration programmes could reinforce public confidence in the ability of states to admit migrants into their territory on the basis of labour market needs. Programmes of this kind would also help to create a more positive image of migrants and foster greater public acceptance of international migration.

## **Resolving the situation of migrants with irregular status**

### **States should resolve the situation of migrants with irregular status by means of return or regularization.**

26. In addition to adopting policies that seek to reduce the scale of international migration, steps must also be taken to resolve the situation of people who have already entered a country and who have an irregular status. A first challenge is to identify such people. As long as they remain invisible to the authorities, they cannot be made aware of, and guaranteed access to, the rights and services to which they are entitled, including protection against exploitation.

27. NGOs, migrant and diaspora organizations and other stakeholders should cooperate with the authorities in establishing contact with migrants with irregular status and finding solutions for them. The Commission recognizes that migrants attain an irregular status in a wide variety of ways and that certain solutions are more appropriate to some groups of migrants than others. States should consider the judicious application of two specific solutions – return and regularization – as ways of resolving the situation of migrants who lack legal authorization to be in their country of residence.

### **Return**

28. Effective return policies are required if national and international migration policies are to have any credibility and are to retain the support of the public. The Commission recognizes there are times when the mandatory repatriation of migrants with irregular status is appropriate, but stresses the importance of ensuring that such returns take place after due process of law and only to destinations where the life or liberty of the



migrants involved are not placed at risk. Countries of origin should provide consular services to attend to the needs of migrants with irregular status who are subject to removal. Every effort should be made to facilitate returns on a voluntary basis.

29. All returns should be undertaken in a manner that is safe, dignified and humane, with full respect for fundamental human rights. The migrants in question also have a responsibility to return, and an obligation to cooperate with the authorities, when they have legitimately been requested to leave a country.

30. It is an established principle that states have an obligation to re-admit their own nationals. The Commission calls upon all states to uphold this principle in its full scope and to apply it in situations where the migrants concerned have failed to cooperate with the authorities in the country they have been required to leave. Development assistance should be used to support the re-integration of returning migrants in countries of origin, focusing on the provision of community-based aid to the areas most seriously affected. While individual re-integration grants may also be used to promote and facilitate returns, such grants should not be set at a level which suggests that there is something to be gained from irregular migration and deportation.

31. There are certain situations in which it might not be feasible or appropriate to insist on the return of migrants with irregular status. Asylum seekers who have entered or remained in a country in an irregular manner, and whose claims have not yet been determined, are clearly one such group. They only become subject to removal once their claim to refugee status or some other form of protection has been rejected after a full and fair consideration of their case. Asylum seekers whose claims have been definitively re-

jected but who are unable to gain the documents required for them to re-enter their country of origin should also be helped to find an interim solution to their plight, pending the time when return becomes possible.

32. Special efforts must be made to identify victims of human trafficking. Many countries offer such people a 'reflection period', which ensures that they are not immediately repatriated and are granted access to legal services and rehabilitation assistance. The Commission urges all countries to introduce such reflection periods for the victims of human trafficking.

### **The regularization option**

33. A number of states in different parts of the world have established regularization programmes. Such programmes offer legal status to migrants with irregular status, who have been present in a country for significant periods of time, who have found employment and whose continued participation in the labour market is welcomed by the state and private sector. It is the Commission's view that the very need for such regularization programmes exposes a lack of coherence between national migration and labour market policies. The Commission also makes a distinction between such selective regularization programmes and amnesties, in which migrants with irregular status are given legal status in an across-the-board manner.

34. The Commission recognizes that regularization programmes can be complex undertakings and accepts that they can promote additional irregular migration, especially if states establish ongoing or rolling regularization programmes. It nevertheless calls on states to acknowledge the fact that many migrants with irregular status have found a place in their economies and societies.

35. The Commission recommends that regularization takes place on a case-by-case basis. A transparent decision-making process for regularization programmes is essential, with clearly defined criteria for migrants to qualify for regular status. These might include, for example, the applicant's employment record, language ability, absence of a criminal record and the presence of children who have grown up in the country; in other words, those who have already achieved a substantial degree of integration in society.

### **Migrant smuggling and human trafficking**

**States must strengthen their efforts to combat the distinct criminal phenomena of migrant smuggling and human trafficking. In both cases, perpetrators must be prosecuted, the demand for exploitative services eradicated and appropriate protection and assistance provided to victims.**

36. The Commission emphasizes the legal distinction that exists between migrant smuggling and human trafficking in the context of irregular migration. In international law, trafficking is defined as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion or deception, for the purpose of exploitation. According to this definition, human trafficking is independent of victim consent and is a human rights violation. In contrast, the concept of smuggling refers to consensual transactions where the smuggler and the migrant agree to circumvent immigration control for mutually advantageous reasons. Migrant smuggling constitutes a breach of national immigration laws and is considered to be a serious crime in a growing number of countries.

#### **The geography of human trafficking**

Although the scale of human trafficking between regions is increasing, most takes place within regions. According to the US State Department, about two thirds of global victims are trafficked intra-regionally in East Asia and the Pacific (260–280,000) and Europe and Eurasia (170–210,000).

37. The Commission recognizes that there can be convergences between migrant smuggling and human trafficking and that a clear distinction between the two phenomena cannot be made in every case. The legal status of a single migrant and the degree of exploitation she or he experiences may change in the course of a journey. The definitional issue is further complicated by the fact that some victims of trafficking and smuggled migrants may seek asylum and qualify for refugee status.

38. The Commission calls upon states to prosecute the perpetrators of migrant smuggling and human trafficking, and to bring their law into conformity with the two United Nations Protocols that have been introduced to address these issues. Some states, including parties to the smuggling and trafficking protocols, lack the resources, capacity and will to implement these protocols effectively. The Commission therefore underlines the importance of multilateral cooperation, including targeted funding and capacity-building, to ensure that these phenomena can be addressed on a worldwide basis.

#### **Protection of victims**

39. States must take three complementary forms of action if they are to address the problems of migrant smuggling and human trafficking in an effective manner. First, they must prosecute the perpetrators, including those who recruit and

harbour trafficked persons, and confiscate these perpetrators' assets. Second, they must reduce the demand for the services of smuggled and trafficked people, both by means of information campaigns and educational initiatives, and through the strengthening of national law. The reinforced regulation of marriage, tourist and adoption agencies is of particular importance in this respect. Third, action against those who are engaged in migrant smuggling and human trafficking must go hand-in-hand with effective protection for their victims.

40. The needs of trafficking victims may differ from those of smuggled migrants, but some common approaches are required. Awareness-raising is of particular importance in order to provide victims with information on the protection, assistance and other services that are available to them. Likewise, the training of prosecutors, judges, police officers, border guards, labour inspection units and social workers is also required, so as to strengthen the capacity of states to provide victims with adequate and appropriate protection. Given the number of women and children (including unaccompanied minors) who are smuggled and trafficked from one country to another, such services must evidently be provided in a gender and age-sensitive manner. They must also be fine-tuned to address the different levels of exploitation and abuse that are involved in the discrete, but often interconnected, crimes of migrant smuggling and human trafficking.

## **Irregular migration and asylum**

**In their efforts to stem irregular migration, states must respect their existing obligations under international law towards the human rights of migrants, the institution of asylum and the principles of refugee protection.**

41. During its consultations, the Commission's decision to discuss the issue of asylum in the context of irregular migration has been queried by stakeholders. They have pointed to the danger of confusing the two issues and jeopardizing the rights of people claiming refugee status. The Commission shares this concern but also considers that important linkages exist between irregular migration and asylum.

42. First, movements from a single country may include some people who qualify for refugee status and others who do not, especially when that country is simultaneously affected by human rights violations, armed conflict, political instability and economic collapse. Second, many asylum seekers move in an irregular manner, often making use of migrant smuggling networks, because they are unable to gain the documents they need to travel in an authorized manner. Indeed, a person who is being persecuted by her/his government may well find it impossible to obtain a passport, let alone a visa to enter another country. Third, some migrants who manifestly have no need of international protection nevertheless submit an asylum application once they have arrived in another country, so as to maximize the time that passes until they become liable to repatriation. Finally, migrants who move for economic reasons may become destitute and vulnerable to human rights abuses while they are in transit, and require protection and assistance, even if they do not have a valid claim to refugee status.

43. The Commission is committed to the principle enunciated in the 'Agenda for Protection' established by the Office of the UN High Commissioner for Refugees (UNHCR), that the institution of asylum should not be undermined by the efforts of states to stem irregular migration. As specified in Article 31 of the 1951 UN Refugee Convention, refugees must not be

penalized on account of their illegal entry or presence in a country, “provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.” If this principle is to be respected, police officers, border guards, immigration and asylum officials must be well versed in the fundamentals of international refugee law.

44. The Commission urges all states to establish fast, fair and efficient refugee status determination procedures, so that asylum seekers are quickly informed of the outcome of their case. In some countries significant backlogs remain, leaving asylum seekers in limbo for months or years on end. The Commission recommends immediate action to address this problem. In situations of mass influx, states should consider offering the new arrivals *prima facie* refugee status, a practice used to good effect for many years in Africa and developing countries in other regions.

### **Onward movements**

45. The Commission draws special attention to the issue of onward movements, in which asylum seekers and refugees move in an irregular manner from a country where they have already applied (or could have applied) for asylum or where they have already been granted refugee status. The Commission underlines the need to address this issue by ensuring that asylum seekers either have their claim to refugee status fairly and speedily examined in the country where they initially arrive, or that they be granted *prima facie* recognition.

46. Those granted refugee status, either on an individual or a *prima facie* basis, must subsequently be able to enjoy an adequate degree of protection, security, a reasonable standard of living and the prospect of finding a solution to their plight, whether by means of voluntary repatriation, local integration or resettlement. In the absence of such conditions, some refugees will inevitably seek to move further afield, usually in an irregular manner.

47. The Commission endorses the principle of improving refugee protection and assistance standards in regions of origin, but calls on states and other stakeholders to recognize that these efforts are unlikely to prevent all onward movements by refugees and asylum seekers. This is partly because differing standards of living and levels of human security across and between regions will continue to prompt such onward movements, and partly because migrant smugglers and transnational social networks will continue to have an interest in facilitating them.

48. Almost 75 per cent of the world’s 9.2 million refugees are to be found in developing countries, and the Commission is aware that improving protection and assistance in regions of origin may require the world’s poorest states to assume responsibility for an even greater proportion of the world’s refugees than is already the case. It is essential to put the principles of responsibility and burden-sharing into practical and immediate effect, through, for example, the provision of additional development assistance to refugee-populated areas and the expansion of refugee resettlement programmes.

## CHAPTER FOUR

# Diversity and cohesion: Migrants in society

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**Migrants and citizens of destination countries should respect their legal obligations and benefit from a mutual process of adaptation and integration that accommodates cultural diversity and fosters social cohesion. The integration process should be actively supported by local and national authorities, employers and members of civil society, and should be based on a commitment to non-discrimination and gender equity. It should also be informed by an objective public, political and media discourse on international migration.**

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1. International migration is increasing not only in scale and speed, but also in terms of the number of countries and the range of people involved. Throughout the world, people of different national origins, who speak different languages, and who have different customs, religions and patterns of behaviour are coming into unprecedented contact with each other. As a result, the notion of the socially or ethnically homogeneous nation state with a single culture has become increasingly outdated. Most societies are now characterized by a degree (and often a high degree) of diversity.

2. The intermingling of people from different countries and cultures presents both opportunities and challenges. In terms of opportunities, there is evidence to suggest that diverse societies and communities can be socially dynamic, culturally innovative and economically successful. This is particularly apparent in the emergence of 'global cities', highly cosmopolitan urban areas that accommodate large numbers of migrants, allowing them to be well placed to capitalize on the new trading, investment and business opportunities opened up by the process of globalization.

3. Many people, especially younger generations, consider such cities to be the most interesting and vibrant places to live in. While international migration may be driven to a significant extent by economic considerations, many people choose to move abroad in order to experience new places and cultures, to adopt a different lifestyle or to link up with members of their family or community who have migrated in the past.

### **Migration and social diversity**

In 1970, international migrants accounted for more than 10 per cent of the population in 48 countries. By 2000, this number of countries had risen to 70.

4. The diversity that has resulted from international migration has also created some important challenges, especially in the degree of social cohesion in host communities. All societies are characterized by conflicting value systems and competition for resources, and it would be wrong to suggest that migration brings tension to communities that would otherwise be per-



fectly harmonious. Even so, it is clear that migration can have powerful and emotional human consequences, both among migrants themselves and among members of the host society.

5. As stated in Chapter Three, migrants are often viewed with suspicion by other members of society, especially when those migrants arrive in substantial numbers, when their presence is not authorized and when they appear to compete with citizens for public goods and services. These challenges have been reinforced by developments in the international political environment. In parts of the world, certain politicians and media outlets have found it easy to mobilize support by means of populist and xenophobic campaigns that project systematically negative images of migrants.

6. As a result of violent events involving foreigners and members of ethnic minorities in cities such as New York, Madrid, Amsterdam and London, public concerns about international terrorism have cast further suspicion on migrants and have fuelled the growth of anti-Muslim prejudice. In some instances, migrants themselves have compounded these problems by failing to respect the rule of law or trying to understand the values of the countries to which they have moved. Governments have a particular responsibility to counter such trends, and must take active steps to ensure that all members of society, citizens and migrants alike, are active and equal participants in the life of the country in which they live.

## State policies and practices

**While recognizing the right of states to determine their own policies in relation to the situation of migrants in society, all migrants must be able to exercise their fundamental human rights and benefit from minimum labour standards.**

7. International migration often entails the movement of people whose social, cultural and ethnic backgrounds and characteristics are different from those of most people in the society they are joining. Destination countries have traditionally dealt with this situation in a number of different ways. One has been to exclude migrants (especially temporary contract workers and asylum seekers) from society, ensuring that they have no prospect of integration. Another has been to insist that migrants abandon their own culture and assimilate into the majority way of life. A third has been to pursue policies that enable all members of society, including migrants and nationals, to express their own culture and beliefs, on condition that they remain within the rule of law and subscribe to a set of common social values.

8. States have a right to determine their own policies with respect to the situation of migrants in society, but in doing so must ensure that such policies are consistent with international human rights principles to which most states have formally agreed. The Commission underlines the need for states to ensure that all migrants – including those who have no prospect of integration or long-term residence in their country of destination – are able to exercise all of their fundamental human rights. This includes, for example, freedom of peaceful assembly, of opinion and of religion. The Commission also considers it essential for all migrants to enjoy the minimum labour standards guaranteed under relevant ILO Conventions, while recognizing that this objective might be difficult to achieve in countries where many nationals are currently deprived of such rights.

9. Ensuring that migrants are able to live at ease in the society they have joined is not simply a question of human rights principles, but is also a question of mutual interest and benefit.



Migrants who are accepted and respected by other members of society are best placed to fulfil their potential and to contribute to their adopted country. Social cohesion provides migrants and citizens alike with a sense of security and common purpose, and is an important component of economic success.

## Integration and marginalization

**Authorized and long-term migrants should be fully integrated in society. The integration process should value social diversity, foster social cohesion and avert the marginalization of migrant communities.**

10. There has been a tendency in some countries for migration and integration policies to be formulated and implemented in isolation from each other, even though they are part of a continuum. Social cohesion is most effectively maintained by promoting a process of integration, especially in those situations where new immigrants are expected to become permanent or long-term residents of the country to which they have moved. The Commission considers integration to be a long-term and multi-dimensional process, requiring a commitment on the part of both migrants and non-migrant members of society to respect and adapt to each other, thereby enabling them to interact in a positive and peaceful manner. Integration recognizes and accommodates differences, but requires a sense of common belonging amongst nationals and migrants alike.

11. In a number of countries around the world, integration has been particularly successful, enabling migrants to make important contributions to the economic, social and cultural development of the societies in which they have settled. Indeed, historical evidence suggests that interna-

tional migration has been one of the most dynamic forces in the development of contemporary states and societies, including many of those with a record of economic success.

12. At the same time, the Commission notes that integration has proven to be a more problematic process in some of the countries that have significant migrant and minority populations. While it is difficult to generalize on this issue, evidence analysed by the Commission indicates that in many countries, first-generation migrants suffer disproportionately from physical, mental and reproductive health problems, that they have lower educational attainments than nationals and generally live in poorer quality accommodation. Migrants also tend to occupy low-wage and low-status jobs and are more likely to suffer from long-term unemployment than other members of society.

13. Such negative migration outcomes arise from a variety of different factors, including discrimination in the labour and housing markets, the inability of migrants to gain equitable access to education and health care, xenophobia and racism, as well as low educational levels, limited language skills and the irregular status of significant numbers of migrants. In general, the children and grandchildren of migrants fare much better than their predecessors in terms of their socio-economic status. Indeed, the upward mobility of many migrant children is one of the most positive aspects of international migration. At the same time, it has become clear that citizens who originate from migrant families can become deeply and violently alienated from the society in which they live, even if they have attained a good level of education and income.

### **Migrant marginalization**

14. In the absence of effective integration, destination countries will not be able to capitalize upon the contribution that migrants can make to society. The Commission underlines the need to ensure that migrants are able to achieve their potential and meet their aspirations, and points out the dangers associated with the exclusion and marginalization of migrants and the children of migrants. The growth of disadvantaged and segregated migrant communities is likely to have a high social and financial cost. It may furthermore have implications for public security and could also lead to other members of society feeling threatened by their presence.

15. The risk in such situations is that members of migrant and minority populations may retreat from society and look for militant ways of expressing their frustration and asserting their identity. Such scenarios not only represent a threat to public safety and the rule of law, but, by provoking negative attitudes towards migrant communities, also place new obstacles in the way of integration and social cohesion. All of the stakeholders concerned – migrant communities, civil society institutions, national and local government as well as the private sector – stand to gain by working together in an effort to avert such negative outcomes.

#### **Elements of integration**

A study prepared by the UN Population Division concluded that the integration of migrants in host societies depends primarily on their command of the national language, their ability to find reasonably paid work, their legal status, participation in civil and political life, as well as their access to social services.

### **A coherent approach to integration**

**Local and national authorities, employers and members of civil society should work in a ctive partnership with migrants and their associations to promote the integration proces. Migrants should be properly informed of t heir r ights a nd o bligations and encouraged to become active citizens in the country to which they have moved.**

16. There is no simple or single blueprint for the effective integration of migrants in society, although the best examples of integration seem to take place in countries where there is a broad degree of consensus on the issue of immigration amongst political parties. The process of integration occurs primarily at a local level, and the policies that are employed to promote that process must therefore be situation-specific, and take into account the precise circumstances and characteristics of both migrants and other social groups. Moreover, many states are unable to meet the needs and demands of their own citizens. It is therefore not easy for them to give a high priority to the situation of migrants. Indeed, nationals may react in a negative manner if they feel that scarce public resources are being used for such a purpose.

17. While a uniform approach may be inappropriate, the experience of societies where the process of integration has been relatively successful has led the Commission to conclude that a coherent approach to integration is required, incorporating the elements set out below.

#### **Transpaency and the rule of law**

18. Migration and refugee policies which are not fair, transparent, openly debated and consensually grounded are likely to generate suspicion and resentment amongst the citizens of destination countries, thereby impeding the integration

process. Governments must explain to the public why they are admitting migrants and refugees, how many are being admitted and what support they will receive from the state. More generally, states that admit long-term or permanent settlers to their territory must recognize that it is in the best interest of migrants and citizens alike to invest in the integration process.

19. A coherent integration policy must be based on respect for the cultural differences that migrants bring with them. Such respect is essential for a number of reasons: first, a dialogue between different cultures is a healthy phenomenon; second, new cultures bring new skills, sources of energy and forms of expression to a society; and third, migrants must be able to retain their self-respect so they do not feel besieged and threatened. This does not mean that the culture of migrants is above criticism. Indeed, cultural practices that conflict with international human rights instruments and the rights of other people can legitimately be prohibited.

20. States have a responsibility to provide authorized migrants with a secure legal status and appropriate documentation, and to ensure that they can exercise all of their human rights. States must uphold the rule of law and migrants who challenge the rule of law must expect states to take firm action against them. States must take equally firm action against any elements in society that seek to abuse, intimidate or exploit migrants. Unless these basic objectives are achieved, integration will be problematic.

### **Anti-discrimination activities**

21. State authorities at both the national and local level should support the objective of integration by publicly confirming their commitment to integration and by acknowledging the contributions that migrants make to society. States

should respect the International Convention on the Elimination of All Forms of Racial Discrimination, which has been ratified by more than 175 governments, promoting and practicing the principle of non-discrimination by setting a positive example to society in the way they conduct their affairs. In many countries, for example, governments are the largest employers, the largest service providers and purchasers of goods and services. It is consequently essential that they take a strong lead in terms practising and promoting progressive recruitment and diversity policies, as well as the extent to which they engage with migrant and ethnic enterprises in their procurement policies.

22. Private sector companies, especially those that are large, prestigious and influential, should act in a similar manner. Those employers who have made an explicit commitment to progressive goals such as non-discrimination, migrant integration and gender equity are to be commended. Other companies should replicate such practices and become members of the UN's Global Compact, which commits participating organizations to 10 basic principles, including the principle that "businesses should uphold the elimination of discrimination in respect of employment and occupation." Those enterprises which are able to draw on the talents of a diverse workforce are best placed to capitalize upon the opportunities created by an increasingly competitive and globalized economy.

#### **Celebrating Canadian diversity**

According to the most recent Canadian census, 37 per cent of Vancouver's population belongs to communities coming from countries in regions other than Europe. In July 2005 the city held its first Diversity Festival, enabling all ethnic and cultural groups to tell their stories through music, food, dance, poetry, art and sculpture.

23. Discrimination must be countered by establishing and implementing appropriate laws, especially in areas that have a direct impact on the potential of migrants to succeed in their new society, such as employment, housing and education. There is a particular need to ensure that representatives of the state, such as the police, judges, immigration officers, civil servants and medical personnel receive the training required for them to have an understanding of migrant cultures and to treat nationals in a non-discriminatory manner.

### **Active citizenship**

24. Effective integration requires migrant and minority populations to be properly involved in the political process. There is a particular value in giving local voting rights to authorized and longer-term migrants. The Commission underlines the importance of ensuring that migrants who are admitted for permanent settlement have speedy and affordable access to citizenship.

25. As a result of the globalization process and the growth of transnational communities, established notions such as citizenship and the nation state are being redefined. In future, it seems likely that a growing number of people will have more than one nationality, will identify with more than one culture and will divide their time between more than one country. This development presents some difficult challenges, but also some important opportunities for states and societies that admit migrants.

26. To promote active citizenship, migrants should ideally be provided with a clearly written statement of their rights and obligations when they are admitted to a country, thereby encouraging them to become active citizens from the earliest possible moment. Migrants who do not speak the official language or languages of their

adopted society will find it particularly difficult to become active citizens, and the acquisition of appropriate language skills must therefore be considered as a basic obligation of long-term and permanent migrants. Equally, states that admit migrants to their territory should invest in the integration process by assisting those who do not speak a local language to acquire such skills.

### **Support and dialogue**

27. Integration and social cohesion can also be promoted by providing targeted support and services to migrants, especially in the key areas of employment, skills training and language training. The Commission recognizes that many states lack the capacity to provide such services. It therefore suggests that capacity-building programmes and projects supported by international funding be established to support the integration process. States should also enter into agreements with regard to the mutual recognition of qualifications, so as to ensure that migrants are able to practice the skills they have gained in their own country.

28. Given the multidimensional nature of integration, there is a need for coherence and coordination between governmental bodies dealing with issues such as health, education, social welfare, employment and law enforcement. In each of these areas, steps can be taken to ensure that migrants have equitable access to public services by means of outreach and information programmes and the provision of translation services.

29. Integration is most effective in the workplace and the school. It is in these community-based contexts that migrants and other members of society can most readily develop a sense of mutual respect, establish friendships and pursue common objectives. Unless integration is

fostered at this level, one cannot expect more ambitious and centralized initiatives to have their intended effect.

30. The Commission also underlines the importance of promoting educational programmes, inter-cultural and inter-faith dialogues in diverse communities, so as to dispel the myths and misunderstandings that may exist between different social groups. Civil society institutions, including churches, mosques, temples and other faith-based bodies, have a leading role to play in such activities. The integration process should also be fostered by means of international and inter-faith dialogue; a good example is the Euro-Mediterranean Partnership Barcelona Process, which promotes “rapprochement between peoples through a social and human partnership, aimed at encouraging understanding between cultures and exchanges between civil societies.”

### **Participation and representation**

31. Most migrants are characterized by an entrepreneurial spirit and are motivated by a determination to succeed in life. It is essential to foster such vitality and to ensure that migrants themselves are full participants in the process of integration. The Commission consequently calls on national and local authorities to ensure that migrant associations and migrant women’s groups, as well as the religious bodies and civil society institutions which work most closely with migrants, are effectively involved in the formulation and evaluation of policies and programmes that are intended to promote integration.

32. At the same time, the Commission recognizes the difficulties associated with this approach. Migrant populations are themselves increasingly diverse and are often divided along national, ethnic, ideological, religious and generational lines. Migrants from the same country

and culture may also be divided into a relatively small number of highly-skilled and well-paid professionals, and a much larger number of people who are clustered at the bottom end of the labour market.

33. In this context, determining which individuals and organizations are sufficiently representative to speak on behalf of other migrants can be problematic. In many situations, moreover, the most powerful and articulate migrant representatives are men, who may have a vested interest in retaining cultural practices that preserve their own power and which disregard the interests and preferences of women and children.

### **Migrant obligations**

34. In some situations, the individuals and organizations that claim to represent a migrant or minority community are opposed to the very notion of integration because they have rejected the values and the culture of the society in which they are living. The Commission recognizes the danger of this scenario, and calls on all migrants to respect the obligations they assume when they are admitted to other states, especially the obligation to desist from any activity which poses a threat to public order, which is in violation of the law and which infringes upon the rights of other people.

35. States have a responsibility to ensure that migrants are familiar with the laws, customs and values of the society they are joining, while migrants have a responsibility to respect them. If migrants feel that they are unable to live within the law and constitution of their host country, they should consider leaving it or, once they have acquired citizenship, campaign for political change through peaceful and democratic means. Integration will be impeded if some migrants are fundamentally opposed to the values of the soci-



ety in which they live, and if some citizens refuse to acknowledge the legitimacy of the migrants' presence.

### **Migrant women and children**

**Particular attention should be given to the empowerment and protection of migrant women, as well as ensuring that they are actively involved in the formulation and implementation of integration policies and programmes. The rights, welfare and educational needs of migrant children should also be fully respected.**

36. The challenges experienced and presented by different groups of international migrants vary considerably, and the Commission consequently wishes to make some observations with respect to the social circumstances of some groups that are of particular concern, beginning with migrant women and children.

#### **Migrant women**

37. Migration can be an empowering experience for women. It can entail moving away from societies with traditional and patriarchal forms of authority. It can allow women to work, to earn their own money and to exercise greater decision-making power in their daily lives. Women who migrate may also have the opportunity to learn new skills and enjoy a higher socio-economic status when they eventually return to their own country.

38. Regrettably, however, migration can have the opposite effect. Women who migrate for the purpose of marriage, domestic labour, or to work in the entertainment and sex industries are particularly vulnerable to exploitation and social isolation, as are those who are trafficked. Such problems are reinforced when migrant women

do not know the language of the country they are living in or do not have access to supportive social networks.

39. In some countries, migrant women experience discrimination in the labour market and find themselves in a situation of 'brain waste', when they have to take jobs for which they are over-qualified. In others, migrant women may be subject to dismissal and deportation if they become pregnant or become socially stigmatized if they contract HIV/AIDS. Migrant women who have moved in an irregular manner may find that their children are stateless and thus deprived of basic rights both in their country of residence and in their country of origin.

40. Evidence collected by the Commission indicates that a significant number of migrant women are at risk of violence from their spouse or intimate partner, especially in communities that are characterized by poverty, marginalization and rapidly changing gender roles. Moreover, while work, education and language skills are generally considered to be the most important avenues of inclusion, migrant women are more likely than men to remain outside of the labour market and spend most of their time at home, making it more difficult for them to establish the language skills and social networks required to integrate in their new society.

41. The Commission recognizes that all societies are characterized by gender inequalities, and that such inequalities affect migrants and non-migrants alike. The Commission underlines the need for migration policies and programmes to be gender-sensitive, to give special attention to the social situation and inclusion of migrant women, and ensure that women are empowered by the migration experience. Every effort must be made to ensure that migrant women are actively involved in the formulation, implementation and evaluation of such policies and



programmes. The organization of migrant women in countries of destination is also of importance as diaspora populations influence the way that people in their country of origin think about issues such as gender equity. In this respect, migrants can act as a force for progressive change in countries where the rights of women are generally not respected.

42. Finally, and in accordance with the Commission's conviction that people should migrate out of choice rather than from necessity, continued efforts must be made to ensure that women can exercise all of their human rights and realize their full potential within their country of origin. In too many instances brought to the attention of the Commission, women have felt obliged to leave their own country and to look for work elsewhere because they are deprived of rights and opportunities at home.

### **Migrant children**

43. It is often assumed that migrant children adapt more quickly to their new surroundings than their parents and grandparents. While there is certainly evidence to support this assertion, it would be dangerous to conclude that the integration of migrant children is an issue that can take care of itself.

#### **Access to education**

A 2003 study conducted in Johannesburg, South Africa, a country that has social and economic rights enshrined in its constitution, found that 70 per cent of Somali refugee children were not registered at school, even though they were entitled to education. While some parents had chosen not to enrol their children, most had not done so because of their isolation from South African society. According to UNHCR, around 7,000 Somali refugees were living in South Africa at the beginning of 2005.

44. Children who are taken from one country and continent to another may be traumatized by the fact that they have left behind a familiar way of life and find themselves in a society where the language, culture and values are quite different. Migration can lead to gender and generational tensions within households, and such conflicts can impinge very directly on the health and welfare of the youngest family members. In the worst cases they can lead to violence and other forms of abusive treatment, particularly against girls and young women. As migrant and minority children grow up, they may also experience a sense of alienation and uncertainties with respect to their identity and allegiances, particularly if they encounter discrimination and xenophobia from other members of society. The children of migrants with irregular status are especially vulnerable, as they may find themselves effectively stateless and may not be able to exercise their right to education.

45. The Commission underlines the need to ensure that the rights, welfare and educational needs of migrant children are fully respected by all members of society. While integrating in a new society, migrant children should be given the opportunity to keep in touch with their country of origin and its culture. As suggested earlier, in the current era of globalization and human mobility, a growing number of migrant children will have more than one 'home' and will hold dual or even multiple citizenship, if permitted by the states concerned.

## Temporary migrants and migrants with irregular status

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**While temporary migrants and migrants with irregular status are not usually granted the right to integrate in the society where they are living, their rights should be fully respected and they should be protected against exploitation and abuse.**

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46. Two other groups that present particular challenges in relation to their social situation and integration are temporary migrants and migrants with irregular status. The reluctance of certain states to contemplate the introduction of temporary migration programmes – despite their need for additional labour – has been influenced by a concern that participants in such programmes, especially those at the lower end of the labour market, will not return to their homeland when their period of employment expires.

47. The Commission recognizes the reality of this concern and acknowledges that states have a legitimate interest in treating short-term and contractual migrant workers differently from those who are accepted for permanent settlement. At the same time, and in the interests of social cohesion and harmony, it is essential to ensure that migrants who have been admitted to another state on a temporary basis benefit from the process of inclusion, in the sense that their human rights are respected; that they are protected from exploitation or abuse, and that they are able to establish convivial relationships with other members of society. The recommendations presented in Chapter One provide some specific proposals on this issue.

### **Migrants with irregular status**

48. The Commission is aware that states are generally not prepared to consider the issues of social inclusion or integration in the context of

migrants who have entered or remained on their territory in an irregular manner. This issue may at first appear to be relatively clear-cut. For unless such migrants are able to regularize their situation in some way (in which case they can no longer be described as irregular), they are normally subject to removal from that country.

49. In practice, however, the social situation of migrants who have moved in an irregular manner cannot be dismissed so easily, because such migrants and their children have both needs that must be met and rights that must be respected. It can be argued that people who have been living in a country for long periods of time, especially if they have been working and contributing to the national economy, have some claim on the services of the state, irrespective of their legal status. The Commission is also concerned by those situations in which asylum seekers wait for years to receive a final decision on their application for refugee status, but are prevented from working during that time, even if they have skills that are of value to the national economy.

50. States must meet their obligation to provide essential services such as essential health care and the education of children to irregular migrants and their families. As proposed in Chapter Three of this report, states which tolerate and benefit from the presence of such migrants on their territory should also give serious consideration to measures that would regularize their status and thereby prevent them from becoming marginalized.

## The public discourse on international migration

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**Those individuals and organizations that have an influence on public opinion must address the issue of international migration in a non-objective and responsible manner.**

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51. In many countries around the world, the situation of migrants in society has been jeopardized by media stories that portray members of migrant and minority populations in the worst possible light: as criminals, terrorists, and more generally as people who represent a threat to the established way of life. In some situations, ignorance and careless reporting have obscured objective reality. In the worst cases, journalists have been responsible for propagating myths and supporting the agenda of populist politicians and pressure groups that seek to mobilize xenophobia as a means of attracting popular support. Refugees, asylum seekers and migrants who have arrived in a country in an irregular manner have often been singled out for attack.

52. The Commission places great value on the existence of a free press and recognizes the danger of seeking to regulate the public discourse on international migration. Migrants, like other members of society, can be involved in crimes and anti-social behaviour, and these offences should be reported. The Commission strongly advocates a responsible debate on migration, ensuring that the reputation of people originating from other countries is not tarnished on the basis of their national origin or legal status. The Commission also acknowledges the value of voluntary codes of conduct and other self-regulatory mechanisms for the media, as well as procedures that provide a right of reply to individuals and groups of people who have been unfairly maligned.

53. Such approaches must be complemented with measures to promote integration, foster social cohesion and encourage respect for the rights of migrants. In this respect, the Commission commends those broadcasters that have demonstrated a commitment to social diversity, both in the nature of their programmes and in the composition of their personnel. Schools, migrant associations, religious bodies, trade unions and other civil society institutions also have an important role to play in influencing the public discourse on migration and ensuring that it is conducted in an objective manner.

54. Integration is not a quick, simple or linear process. It usually takes time, is subject to setbacks and may proceed more smoothly in some areas of life and less in others. It is a process that places significant demands upon nationals and migrants alike, requiring them to adapt their attitudes and to make changes to their way of life. It is also a process that warrants a significant investment, not only because of its difficulties, but also because of its economic, social and cultural rewards. With the scale and scope of international migration growing, countries and communities must seize the opportunity to make the most of their diversity.

## CHAPTER FIVE

# A principled approach: Laws, norms and human rights

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**The legal and normative framework affecting international migrants should be strengthened, implemented more effectively and applied in a non-discriminatory manner so as to protect the human rights and labour standards that should be enjoyed by all migrant women and men. Respecting the provisions of this legal and normative framework, states and other stakeholders must address migration issues in a more consistent and coherent manner.**

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1. International migration policies have traditionally been regarded as the preserve of states, exercising their sovereign right to regulate the entry of non-citizens into their territory. However, in exercising their sovereignty, states have long recognized the need for a broader approach – one which is based upon an agreed set of laws and norms, and which is intended to ensure that migration issues are addressed in a principled and predictable manner. More specifically, these laws and norms have three related functions: to establish the powers and obligations of states in controlling the arrival, residence and departure of migrants; to identify areas of migration policy in which states have agreed to cooperate with each other; and to specify the rights and responsibilities of migrants themselves. This penultimate chapter focuses primarily on the issue of migrant rights, while the final chapter examines the issues of interstate cooperation and the governance of international migration.

2. The legal and normative framework affecting international migrants cannot be found in a single document, but is derived from accepted customary law and a variety of binding global and regional legal instruments, non-binding agreements and policy understandings reached

by states at the global and regional level. Many elements of the framework are not migration-specific, but address broader questions of individual rights, state responsibility and interstate relations.

3. Signatories to the UN Charter, for example, agree “to employ international machinery for the promotion of the economic and social advancement of all peoples, to achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.” While they may be of a general nature, such principles have an evident relevance to the way that states address the issue of international migration.

4. While the legal and normative framework has a long history, recent years have witnessed a new degree of interest in its development. This interest has been generated by a number of related factors: the growing interdependence of states, the increased scale and complexity of human mobility, and the advocacy efforts of the human rights community.

5. The Global Commission on International Migration welcomes this new focus on the protection of human rights of migrants. If the international community is to formulate a coherent response to the issue of international migration, then it must derive from laws, norms and policy understandings that have the full support of states and other stakeholders. And those laws and norms must be respected. The main obstacle to the protection of migrant rights is not the absence of law, but the failure of states to respect those conventions, agreements and declarations that they have freely accepted.

### **The human rights framework**

**States must 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**

6. In the current international context, there is a particular need to ensure that people who are moving from one country to another are able to exercise the rights to which they are entitled under international law. Many migrant workers are at risk of exploitation and abuse because they have little power to negotiate their conditions of service and because too many employers and governments fail to respect internationally-agreed labour standards. In addition, the legitimate concern of states to combat international terrorism and to protect their citizens has meant that migrants have come under a new degree of surveillance, a situation that has some important human rights implications.

### **Components of the framework**

7. As indicated earlier, the human rights framework has a variety of sources. In addition to the UN Charter, important provisions relating to migrant rights can be found in the Universal Declaration of Human Rights, in a number of UN human rights treaties and ILO labour conventions, as well as the 1951 UN Refugee Convention and its 1967 Protocol, the 1963 Vienna Convention on Consular Relations and the two protocols on human trafficking and migrant smuggling of the UN Convention against Transnational Organized Crime, that came into force in 2003 and 2004 respectively.

8. Likewise, several regional human rights conventions, implemented by courts and commissions that can consider and determine both individual and interstate cases, have come into existence in recent years. Important efforts are also being made to develop global understandings on the issue of migration, both between states and amongst civil society and the private sector. These initiatives are examined in more detail in the following chapter.

### **Treaties and treaty bodies**

9. The UN has established seven human rights instruments that are defined by the Office of the UN High Commissioner for Human Rights (OHCHR) as 'core human rights treaties'. These include two general covenants to protect civil, political, economic, social and cultural rights, and five conventions that provide more specific protection against racial discrimination and torture and which safeguard the rights of children, women and migrant workers. Implementation is overseen by committees of independent experts, collectively known as treaty bodies. Six of these treaties have been ratified by between 135 and 192 states, while the 1990 Migrant Workers



Convention has as yet only 30 parties. All states, therefore, are bound, through ratification, by at least one of the seven core human rights treaties. Further details of these ratifications can be found in Annex III.

### **Human rights treaties**

The most important basis for the legal and normative framework affecting migrants is to be found in the Universal Declaration of Human Rights and seven UN human rights treaties which give legal effect to the rights in the Declaration: the 1965 International Convention on the Elimination of All Forms of Racial Discrimination; the 1966 International Covenant on Civil and Political Rights; the 1966 International Covenant on Economic, Social and Cultural Rights; the 1979 Convention on the Elimination of All Forms of Discrimination against Women; the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the 1989 Convention on the Rights of the Child, and the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

10. These human rights instruments are universal in their application and apply generally to migrants as well as to citizens. The Commission underlines the importance of this international treaty framework as the fundamental basis of migrant rights. It urges states to strengthen this framework and to ensure that its provisions are applied in a non-discriminatory manner. The Commission has collected considerable evidence that states which have ratified international and regional human rights treaties do not always respect them in practice and do not apply them in an equitable manner to international migrants. For example, and as explained later in this chapter, migrant women engaged as domestic workers are not always adequately protected against abuse and sexual exploitation, and may

be obliged to give their passport to their employer, making it impossible for them to leave the country where they are working.

11. The Commission endorses the principle that entering a country in violation of its immigration laws does not deprive migrants of the fundamental human rights provided by the human rights instruments cited above, nor does it affect the obligation of states to protect migrants in an irregular situation. According to existing treaty and customary law, states have a minimum obligation to uphold the fundamental rights of all human beings, including the right to life and equality before the law, as well as protection against human rights violations such as slavery, prolonged arbitrary detention, racial discrimination and torture, as well as cruel, inhuman or degrading treatment. As a general rule, the provisions apply equally to citizens and non-nationals and to regular and other migrants, and therefore form an important component of the normative framework.

### **Articulating the legal and normative framework**

12. As outlined earlier, the legal and normative framework affecting international migrants is dispersed across a number of treaties, customary law provisions, non-binding agreements and policy understandings. As a result, the provisions relevant to the protection of migrants' rights are not articulated in a clear and accessible manner; this has added to the difficulties of consistent implementation of the provisions and thus respect for migrants' rights. The Commission sees the value of articulating the legal and normative framework in a single compilation of all treaty provisions and other norms that are relevant to international migration and the human rights of migrants. The International Organization for Migration (IOM), which has initiated a



project to review the current state of international migration law, is well placed, in cooperation with other relevant bodies, to contribute to such a process.

13. This articulation exercise may contribute to more systematic government training in international law, and may become an integral element of capacity-building activities, thereby strengthening the respect for the human rights of migrants. It will also help to identify gaps in the legal and normative framework. An initial analysis undertaken by the Commission indicates that the framework is relatively well developed in relation to the issues of refugee protection and the suppression of human trafficking and migrant smuggling. International law is also robust in placing an obligation on states to permit the departure of their nationals and to readmit them when they seek or are obliged to return to their country of citizenship.

14. In other areas, however, the framework is less developed and has lagged behind the changing migration realities that are to be found on the ground. Three examples are the movement of people for the purpose of family unity, the issue of dual nationality and the regulation of private agencies that are involved in the recruitment and placement of migrant workers. The Commission recommends that states, regional bodies and relevant international organizations examine the potential for the development of common understandings or agreements on issues that are not well covered by the current legal and normative framework.

### **The 1990 Convention**

15. The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families sets out in a single instrument the rights to which migrants are

entitled; most of these rights have already been accepted by states through their ratification of the six other core human rights treaties and ILO labour standards. The 1990 Convention, which came into force in 2003 and is at present ratified by 30 states, also includes important provisions relating to the prevention of irregular migration, the obligations of migrants and the role of inter-state cooperation in regulating the movement of people in a sound and equitable manner.

16. Although the Convention distinguishes between migrant workers with regular and irregular status, it protects the fundamental rights of all migrant workers. Most of the rights accorded to all migrant workers, including those without legal status, are fundamental civil and political rights, including freedom from torture and forced labour, the rights to life, due process, and security of the person, and freedom of opinion and religion. The Convention's provisions here mirror the language in the 1966 International Covenant on Civil and Political Rights.

17. Some economic, social and cultural rights are also afforded to all migrant workers, including emergency medical care, and access to education for children of migrant workers. But certain rights – such as family reunion – are given only to regular migrants, and the scope of trade union rights is made dependant on the legal status of the migrant worker. In a few instances, the Convention extends existing rights contained in other 'core' treaties; for example it grants migrant workers rights directly against their employers as well as against the state, and makes the unauthorized confiscation of passports and identity documents a criminal offence.

18. The Convention requires states to cooperate in measures for the orderly return of migrants with irregular status and other migrants, and in detecting, preventing and eradicating irregular

migration and the employment of migrants with irregular status. It states clearly that the Convention gives no right for workers with irregular status to regularize their status.

19. The UN Secretary-General has called on states to ratify the 1990 Convention. However, as indicated earlier, only 30 states – all of which are primarily countries of origin or transit – have at present ratified the treaty, ten of them after initial signing. Fifteen other states have signed, but as yet have not ratified the treaty. A number of reasons have been given for the decision by many states not to ratify, including the breadth and complexity of the 1990 Convention, the technical and financial obligations that it places on states that have ratified, as well as the view of certain states that it contradicts or adds no value to their own national migration legislation.

20. In addition, a number of countries have stated that they are unwilling to ratify the 1990 Convention because it provides migrants (especially those who have moved in an irregular manner) with rights that are not to be found in other human rights treaties, and because it generally disallows differentiation between migrants who have moved in a regular or irregular manner. Some states have also suggested that the non-discrimination provisions of the 1990 Convention would make it more difficult for them to introduce temporary migration programmes, in which participants are not granted the same rights as other workers.

21. States and civil society groups that support ratification claim that the arguments against ratification are based on a misunderstanding of the Convention. They argue that the Convention essentially brings together into a single text those rights which are contained in other core treaties, and which have already been ratified by a majority of states. They see the value of the

1990 Convention as deriving from its synthesis of existing rights, and its potential to give protection to a group of people who often find themselves in vulnerable situations, as well as from the role that it can play in strengthening the development of a rights-based approach to migration. While recognizing that the ratification process has been somewhat slow, proponents of this position also point out that few resources have been devoted to the promotion of the 1990 Convention and that the International Covenant on Civil and Political Rights, which is now widely ratified, took 10 years to enter into force. They further argue that the 1990 Convention may yet attract broader support in the years to come.

### **Complementary approaches**

22. Given the decision of many states not to ratify the 1990 Convention, the Commission considers that there is a particular need for complementary approaches to the issue of migrant rights. First, and as recommended in the previous section, states must fully implement all provisions of the human rights instruments that they have already ratified, ensuring that those rights are accorded without discrimination to both citizens and migrants. They must also ensure that they fulfil their reporting obligations to the treaty bodies associated with these legal instruments.

23. Second, states should implement the trafficking and smuggling protocols of the UN Convention Against Transnational Organized Crime, which came into force in 2003 and 2004 respectively and which protect the rights of trafficked and smuggled migrants. States may be more willing to recognize and respect the rights to which migrants are entitled if they feel that they are able to control the arrival of non-citizens into their territory.

24. Third, there is an urgent need to fill the gap that currently exists between the principles found in the legal and normative framework affecting international migrants and the way in which legislation, policies and practices are interpreted and implemented at the national level. That task is examined in the following section.

### **State sovereignty and responsibility**

**All states must ensure that the principle of state responsibility to protect those on their territory is put into practice, so as to reduce the pressures that induce people to migrate, protect migrants who are in transit and safeguard the human rights of those in destination countries.**

25. While the legal and normative framework of international migration may have evolved in recent years, many problems persist in the implementation of the principles to which states have formally agreed. To address this situation, the Commission calls upon states to heed the findings of the High-level Panel on Threats, Challenges and Change, which stated in its 2004 report to UN Secretary-General Kofi Annan that “in signing the Charter of the United Nations, States not only benefit from the privileges of sovereignty but also accept its responsibilities.” The Commission draws attention to some specific aspects of international migration in which states must make renewed efforts to discharge their responsibilities, and in which those states must be supported by means of capacity-building initiatives.

### **Countries of origin**

26. First, as stated in Chapter One, states must strive to ensure that their citizens migrate out of choice, and not because they are unable to ben-

efit from safety, security or sustainable livelihoods in their own country. In too many parts of the world, migration has become a survival strategy, employed by people who are seeking a way to escape armed conflict, human rights violations, authoritarian and corrupt governments, as well as unemployment and poverty. Disadvantaged groups in society, such as women, ethnic minorities, indigenous and stateless people, are often the most desperate to leave and are at most risk of finding themselves in the hands of traffickers and smugglers.

27. The Commission considers it essential for such abuses to be eradicated, and consequently calls upon states to respect human rights and the principles of good governance, to establish democratic processes and promote the empowerment of women. The Commission also urges states to uphold those provisions of the trafficking and smuggling protocols that emphasize the need to combat the root causes of these phenomena by alleviating poverty, underdevelopment and a lack of equal opportunities, and by paying special attention to economically and socially depressed areas.

28. The Commission urges countries of origin to take active responsibility for citizens who intend to migrate or who are already living abroad, including those who have migrated in an irregular manner. This objective can be assumed in a variety of different ways. Governments can provide prospective migrants, especially temporary contract workers, with orientation and training courses before their departure, so that they have a better understanding of their rights and obligations and are better equipped to cope with the experience of working in a foreign country.

29. Countries of origin should also license, regulate and, when necessary, prosecute unscrupulous recruitment agencies, so as to ensure that

migrants are not given misleading information or exposed to exploitation. They can also enter into bilateral agreements in order to establish clear understandings with destination countries on the working and living conditions granted to their own citizens.

30. The Commission commends those countries which have appointed consular staff and labour attachés to monitor the welfare of citizens working abroad, to ensure that they have access to legal representation and, when necessary, to intercede on their behalf with the authorities and employers. The Commission recommends that ILO assumes responsibility for preparing and disseminating a compilation of effective practices in this area, thereby encouraging their replication by other countries.

#### **Border control and international protection**

31. Second, while fully recognizing the right of states to control their borders and to protect the security of their citizens, the Commission calls upon governments to ensure that their efforts to attain these objectives are aligned with their responsibility to uphold the human rights of people who are moving across international borders. As stated in Chapter Three, there is a particular need to ensure that victims of persecution have access to the territory of other states and are able to enjoy international protection in those states.

32. In accordance with the binding principle of *non-refoulement* (which prevents states from returning people to countries where their life and liberty would be at risk) it is also essential to ensure that such individuals are not returned to countries where their life or liberty would be put at risk. In this respect, the Commission calls upon states to implement UNHCR's 'Agenda for Protection', especially the provisions of the

chapter entitled 'Protecting refugees within broader migration movements'.

#### **Transit countries**

33. Third, the Commission observes that relatively little attention has been given to the responsibility of states to safeguard the rights of people who are moving across their territory, on their way to another country or continent. In view of the increasingly long and complex routes taken by international migrants, as well as their increased reliance on smugglers and traffickers, there is a need to focus additional attention on this issue.

34. As a general principle, the Commission affirms that the obligation of a state towards the migrants (with both regular and irregular status) on its territory is in no way diminished by the fact that those migrants plan to move on to another country. In such cases, states have a duty to protect the fundamental rights of all transit migrants, including the principle of *non-refoulement*.

35. Protecting migrants in transit countries generates two specific problems. On one hand, such countries often have an interest in the departure of those migrants who are crossing their territory, and they may consequently have little interest in providing transit migrants with any facilities or services that would provide them with an incentive to stay. On the other hand, many of the world's most important transit countries are relatively poor and lack both the experience and capacity to deal with this form of migration.

36. Protecting transit migrants must be recognized as an international responsibility, and resources need to be mobilized on a multilateral basis in order to support capacity-building efforts in the countries concerned. Such efforts

should be directed towards improvements in border controls, combating smuggling and trafficking and, in appropriate cases, facilitating safe and dignified return to countries of origin.

37. At the same time, individual states must protect the rights and welfare of transit migrants. States should, for example, provide assistance to migrants who are stranded in a country of transit, ensure that migrants who intend to claim refugee status have access to effective asylum procedures, and find interim solutions for transit migrants who do not qualify for refugee status, but who nevertheless cannot be returned to their country of origin.

### **Destination countries**

38. Fourth, the Commission urges all states, including both developed and developing countries, to discharge their responsibility to protect migrant rights by means of national legislation, policies and practices, and by ensuring that those laws and policies are consistent with the international treaties they have ratified.

39. It would be highly misleading to give the impression that international migrants are invariably or inevitably mistreated once they arrive in their country of destination. The Commission has encountered numerous examples of good practice in this area, and urges states and international organizations to ensure that such examples are documented, disseminated and replicated in other countries.

40. Even so, the Commission has been concerned to hear of the extent to which migrants are at risk of discrimination and exploitation by: border guards, police officers, local authorities, landlords, recruitment agents, employers, members of the host society and more powerful individuals within their own community, as well as

smugglers and traffickers. Migrants who are unskilled, who are illiterate and who have moved in an irregular manner are especially vulnerable to human rights violations, partly because they are less likely to be aware of their rights and partly because they are unable or unwilling to bring abuses to the attention of the authorities.

41. As suggested in Chapter Four, when migrants arrive in a country, they should be provided with a comprehensive and written statement of their rights and obligations, so that they are fully informed of their entitlements. While some destination countries may wish to develop such a statement on a national basis, the Commission considers that the principal international organizations dealing with migrant rights could cooperate in the formulation of a standard text for the use of states that lack the capacity to develop such a document.

42. To prevent human rights violations from occurring, the Commission considers it essential for states to ensure that national labour laws and standards apply to migrants as well as citizens. Regrettably, this is not currently the case in many countries. The Commission also urges states to pass and implement legislation that specifically protects migrants from discriminatory behaviour and which gives them access to effective remedies when violations take place.

43. Relevant government officials should be provided with cultural, anti-racist and gender-sensitive training on migrant rights, while employers should be held to account for the conditions they offer to migrant workers and other employees by means of effective labour inspection systems and judicial processes. Appropriate legislation is also required to remove the incentive for employers to engage migrants with irregular status and for such migrants to accept unauthorized work. International organizations



and bilateral donors have an important role to play in building the capacity required for these objectives to be achieved.

44. The Commission commends those destination countries that provide migrants with confidential channels (such as telephone hotlines) to submit complaints about their employers, offer shelter and social services to migrants who have been abused and give assistance to migrants wishing to return home because their rights have been violated. All states should consider the introduction of such measures.

45. The Commission considers it essential to ensure that migration issues are addressed by a wide range of governmental and non-governmental stakeholders. There is a particular need to ensure that labour, social welfare and justice ministries, as well as national human rights bodies, are fully engaged in monitoring and promoting the human rights of migrants.

### **Human trafficking**

46. Finally, and as explained in greater detail in Chapter Three, the Commission is especially concerned by the plight of people who are trafficked within and across international borders and underlines the need for this crime to be eradicated. Given the frequently transnational nature of the phenomenon, there is a particular need for cooperation between countries of origin, transit and destination, in order to prosecute the perpetrators, protect their victims and eliminate the demand for their services.

### **The rights and labour standards of migrant workers**

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**Governments and employers must ensure that all migrants are able to benefit from decent work as defined by the ILO and are protected from exploitation and abuse. Special efforts must be made to safeguard the situation of migrant women domestic workers and migrant children.**

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47. As explained in Chapter One, recent years have witnessed a number of significant changes in the global economy: increased competition between different countries and enterprises; the deregulation of labour markets and the introduction of more flexible working practices, as well as the growth of sub-contracting and the expansion of the informal sector. These developments have important implications for the growing number of migrants looking for work outside their own country.

48. While states continue to play an important role in the establishment of labour migration programmes, migrant workers are increasingly engaged by private recruitment agents, brokers and gangmasters. While some agents maintain high professional standards and are closely regulated by the countries in which they operate, that is by no means always the case.

49. Once migrant workers arrive in their country of destination, many, especially those who have moved in an irregular manner, find themselves working in insecure and low-status jobs that nationals refuse to do for the wages on offer. In some situations, migrants may have to contend with an employer who exploits them and a state that is unable or unwilling to protect them. This is particularly likely to be the case in developing countries where large numbers of nationals are unable to find dignified and adequately paid work and where child labour is common.



50. In such situations, migrant children who are obliged to enter the labour market are likely to find themselves working in particularly difficult and dangerous conditions and for very low wages. The Commission urges states, almost all of which have ratified the Convention on the Rights of the Child, to eradicate such practices.

51. Another group of migrants requiring special attention are female domestic workers. Many of these women migrate alone and leave their children behind in their country of origin, which can be a traumatic experience for both the women and their families. According to the UN Special Rapporteur on Violence Against Women, once they have reached the home of their new employer, such migrant women are often engaged “in poorly remunerated labour that isolates them and places them in a subordinate position in a private realm, exposing them to the expropriation of their economic gain.”

52. According to evidence collected by the Commission, migrant women who are employed as domestic workers are sometimes hired without written contracts or with contracts in languages they cannot understand. Their passports may be retained by their employer or recruitment agent. In some situations they are denied any free time and are forbidden from leaving their place of work without the permission of the household that employs them. They may also be subjected to physical, psychological and sexual abuse.

53. The Commission urges governments to ensure that employers provide migrant workers with contracts that conform to international labour and human rights standards and which are written in their own language. Employers who fail to issue such contracts or who violate their provisions must be held to account for their actions.

54. Migrant associations, trade unions, other civil society institutions as well as local and international human rights organizations all have an important role to play in identifying situations involving the abuse of migrant workers, and bringing those situations to the attention of national authorities and the international community. Such organizations also have an important role to play in the empowerment of migrant women, by means of information, education and literacy programmes, as well as the establishment of migrant women’s associations.

### **Decent work**

55. Significantly, most of the countries where migrant rights are frequently violated are member states of the ILO and are bound by that organization’s 1998 Declaration on Fundamental Principles and Rights at Work, an important but somewhat neglected component of the normative framework.

56. The Commission fully endorses the 1998 Declaration and underlines the need for the international community to ensure that all employees, migrants and non-migrants alike, are able to enjoy what the ILO describes as ‘decent work’, which takes place “under conditions of freedom, equity, security and dignity, in which rights are protected and adequate remuneration and social coverage are provided.”

57. To ensure that this objective can be attained, the Commission calls upon all governments, employers and trade unions to support the implementation of the ILO’s 2004 Plan of Action for Migrant Workers, including the formulation of a “non-binding multilateral framework for a rights-based approach to labour migration, taking account of national labour market needs.”

## **The role of the United Nations**

### **The human rights component of the UN system should be used more effectively as a means of strengthening the legal and normative framework of international migration and ensuring the protection of migrant rights.**

58. Responsibility for the legal, normative and human rights dimensions of international migration is rather diffused within the UN system. The ILO focuses exclusively on the situation of migrant workers, and does not have the operational capacity to monitor the conditions of migrants at a local level. UNHCR's involvement in this area is largely confined to the protection of refugees and asylum seekers, while the Office of the UN High Commissioner for Human Rights supports the treaty bodies and the work of the UN Special Rapporteur on the Human Rights of Migrants, including the protection of smuggled and trafficked migrants, and promotes ratification of the 1990 Convention. UNESCO, UNFPA and the UN Office on Drugs and Crime also have specific interests and activities in the domain of international migration. The International Organization for Migration (IOM) is not a UN body, and while one of its aims is to ensure the pursuit of 'humane and orderly' migration policies, it does not have a formal protection mandate.

### **The human rights component of the UN system**

59. The Commission recommends that a number of steps be taken to strengthen the capacity of the UN and its member states in relation to the protection of migrant rights. First, the Commission welcomes the Secretary-General's proposals, in his report 'In Larger Freedom', to reform the Commission on Human

Rights and human rights treaty monitoring procedures, and to coordinate the reports of the different treaty monitoring bodies. It would be useful for the treaty monitoring bodies to have greater expertise in the area of international migration and to more consistently share the information they collect on the human rights of migrants. Also, the treaty monitoring bodies have themselves been chronically under-funded, and the Commission urges states to provide the resources needed for them to function effectively.

60. Second, the Commission calls upon states and other stakeholders to offer strong support to the work of the UN Special Rapporteur on the Human Rights of Migrants, a position created in 1999. The Commission commends the Special Rapporteur for paying attention to the rights of the most vulnerable migrants: women, children, and the victims of smuggling and trafficking, as well as for communicating and intervening with states with respect to the rights of migrant workers. The Commission encourages other UN Special Rapporteurs with relevant mandates to incorporate a focus on migrant rights in their work, thereby complementing and strengthening the activities of the Special Rapporteur on the Human Rights of Migrants.

61. Third, the Commission believes that the time has come to review the way in which states report on the implementation of the human rights instruments they have ratified. While the treaty bodies and the Special Rapporteur currently provide a service of this type, a more robust mechanism is required, not only requiring states to report on their performance, but also enabling them to request assistance from the UN and its operational agencies for capacity-building initiatives.

### **Capacity-building in UN Member States**

62. It has become clear to the Commission that in some situations, states wilfully violate the rights of international migrants, in flagrant breach of the undertakings they have freely assumed. As stated earlier, in many other situations migrant rights can be undermined because the legal and normative framework affecting international migrants is not well articulated, because representatives of the state are unfamiliar with the framework, do not understand its implications and do not know how to put it into practice or monitor its implementation. In this context, states that have ratified the 1990 Convention may also find that this treaty is a useful instrument to foster awareness of migrants' rights and to build national capacity for the formulation and implementation of migration policy.

63. A coordinated and integrated approach to capacity-building in UN Member States is now required, in order to ensure that those countries can fully implement the provisions of the legal and normative framework affecting international migrants. This approach must combine the legal, operational and protection expertise of UN bodies and other agencies, including IOM, and should be supported by regional bodies and regional consultative migration processes. The following chapter, which focuses on the governance of international migration, makes some specific proposals with respect to the issue of coordination.

## CHAPTER SIX

# Creating coherence: The governance of international migration

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**The governance of international migration should be enhanced by improved coherence and strengthened capacity at the national level; greater consultation and cooperation between states at the regional level, and more effective dialogue and cooperation among governments and between international organizations at the global level. Such efforts must be based on a better appreciation of the close links that exist between international migration and development and other key policy issues including trade aid, state security, human security and human rights.**

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1. As previous chapters have explained, international migration is a complex phenomenon. It is increasing in scale, affects almost every country in the world and takes place both within and between regions. International migration involves a diverse range of stakeholders that have different and sometimes conflicting interests, and is increasingly linked with other pressing global issues such as development, trade, human rights and security.

2. This complexity poses important challenges for the issue of governance, which the Commission on Global Governance (1995) has defined as “the sum of the many ways individuals and institutions, public and private, manage their common affairs. It is a continuing process through which conflicting or diverse interests may be accommodated and cooperative action taken.” In the domain of international migration, governance assumes a variety of forms, including the migration policies and programmes of individual countries, interstate discussions and agreements, multilateral fora and consultative processes, the activities of international

organizations, as well as the laws and norms examined in the previous chapter.

3. National governance of international migration faces four particular challenges. The first is a lack of coherence. This report has already recommended that migration should form an integral part of every country’s national economic and development plan – a recommendation that derives from the failure of many states to define clear objectives for their migration policies.

4. A second challenge is the coordination of policy-making and its implementation. In many states, responsibility for migration is divided between different ministries and coordination is often lacking. There is also often a lack of coordination between those ministries responsible for migration and those responsible for the related global issues mentioned at the beginning of this chapter. At the same time, inadequate consultation takes place between governments and other actors such as the corporate sector and civil society.

5. A third challenge is that of capacity. Most states recognize the importance of international

migration and seek to address it in a way that enables them to respect their international obligations and to maximize the benefits they and their citizens gain from human mobility. But many countries, especially the poorest, also lack the knowledge, information, institutions and resources needed to attain those objectives.

6. A fourth challenge is cooperation with other states. The very nature of transnational migration demands international cooperation and shared responsibility. Yet the reality is that most states have been unwilling to commit fully to the principle of international cooperation in the area of international migration, because migration policy is still mainly formulated at the national level. While there has been a growth in bilateral, regional and sometimes global contacts, networks and initiatives, more needs to be done. This chapter explains how good governance at the national level is a basis for more effective interstate cooperation at the bilateral, regional and global levels.

### **State sovereignty**

7. The reluctance of states to cooperate on the issue of international migration arises from a very real dilemma. Controlling who enters and remains on their territory is an integral part of the sovereignty of states. Immigration plays an important role in enhancing and maintaining national competitiveness. It is also a very sensitive public issue, and one that has, as a result of recent terrorist attacks, become increasingly associated with threats to public security. The challenge, especially for countries of destination, is to cooperate with other states without at the same time yielding control over an issue that is central to so many areas of national interest.

8. It is possible to meet this challenge. First, state sovereignty is the very basis for internation-

al cooperation. States regulate both the content and degree of formality of cooperative interstate mechanisms, and thus exercise – rather than relinquish – their sovereignty in the act of cooperating with each other.

9. Second, with sovereignty comes responsibility. As the International Commission on Intervention and State Sovereignty (2001) has observed, recent years have witnessed a reorientation “from sovereignty as control to sovereignty as responsibility in both internal functions and external duties.” Sovereignty as responsibility has become the minimum content of good international citizenship. Just as individuals have rights and responsibilities as citizens of states, so states have rights and responsibilities as members of the international community.

10. Third, in a rapidly changing global economy, national competitiveness is not threatened by international cooperation but rather relies on it. The most successful economies are those that have opened themselves to the opportunities of the global economy and cooperated in certain niches in order to maximize mutual benefits. The European Union (EU) can be viewed as an example of a group of states that have retained their sovereignty while at the same time cooperating on specific economic and political issues. And in doing so, they have enhanced the competitiveness of the region as a whole.

### **States and institutions**

11. The implications for state sovereignty are also complex in relation to the role and mandates of intergovernmental and other institutions. States establish international bodies when certain issues – or ‘common goods’ – warrant a more formal and collective form of governance. This can occur through intergovernmental institutional arrangements, or through the creation

of institutions with supranational mandates. States nevertheless retain ultimate authority over all such institutions.

12. As states are effectively the owners of international organizations, incoherence at the national level has tended to cascade upwards and to affect the work of these multilateral institutions. Coherence begins at home, and if states cannot define clear objectives for national migration policies, it should not come as a surprise that overlaps and contradictions sometimes occur at the multilateral and institutional level. A proposal for better coordination in this area is presented later in this chapter.

### **Governance at the national level**

**All states should establish coherent national migration policies that are based on agreed objectives, take account of related policy issues and are consistent with international treaty law, including human rights law. Governance at the national level should be effectively coordinated among all concerned ministries and should also involve consultation with non-state actors.**

13. The organizational structures employed to govern international migration at the national level vary widely, and have generally emerged in response to particular political, historical, economic and social circumstances. In some countries there is no clear responsibility for migration at the ministerial level, as a number of different ministries are engaged in the issue. In others, responsibility lies with a ministry that has a broader remit than migration alone. In a third group of states, migration ministries have been established and given full and exclusive responsibility for the issue.

14. Irrespective of their administrative structures, there is scope in most states to strengthen

the national capacity for coherent policy-making and implementation in relation to migration. The Commission has learned of many situations in which different government departments pursued conflicting objectives, in which information was not effectively shared amongst those departments, and in which the general public received mixed messages about migration policy. Similarly, the Commission heard many complaints that governments do not adequately consult with other stakeholders, especially the corporate sector and civil society, in formulating and implementing their migration policies. Coherence at the national level is essential for greater regional cooperation, which can in turn pave the way for more effective global approaches.

### **Towards a coherent national approach**

15. If states are to address the issue of international migration in a coherent manner, they must have agreed national objectives for their migration policies, as well as agreed criteria for the entry and residents of non-citizens that are consistent with international law. Although the exact nature of these objectives and criteria will vary according to national traditions, requirements and circumstances, they should at minimum address the following issues:

- the role of international migration in relation to economic growth and development;
- family reunion, asylum, refugee protection and resettlement;
- the prevention of irregular migration and the promotion of regular migration;
- integration, including the rights and obligations of migrants, citizens and the state, and
- the protection of migrant rights.



16. Some states, such as Australia and Canada, have established explicit criteria to guide their approach to international migration. In many others, these either remain implicit or have not been formulated at all. One of the reasons given for a lack of transparency is that governments are concerned about opposition from sections of the public. But not specifying such objectives and criteria also permits some states effectively to turn a blind eye to certain aspects of migration, such as the reliance of particular sectors of the economy on irregular migration. One of the reasons why irregular migration and labour is a relatively small problem in certain countries, for example, is explained by the fact that governments are obliged by law to uphold orderly and regulated migration.

17. All states should adopt a coherent approach to international migration that is consistent with international law and other relevant norms. This will usually require strong political leadership, transparent communication with the public and concerted efforts to generate widespread community support for the state's migration policy.

### ***Coordinated policy-making and implementation***

18. Establishing a coherent approach to international migration is a first step towards better national governance. The next step is to coordinate its implementation. There are at least three aspects of coordination that need to be addressed by many states. The first is coordination across government, sometimes referred to as 'joined-up government' or a 'whole of government' approach. Where the governance of migration is divided between ministries, mechanisms for coordination need to be established and maintained.

19. Second, coordination is required not only between the different ministries that have a migration competence, but also between migration-related and other ministries. As has been emphasized throughout this report, international migration is relevant to a broad number of policy issues, including foreign relations, development, trade, labour, human rights, gender equity, health, security and border control. Policy-making in the domain of international migration has an impact on these and other areas, and the policies pursued in relation to these issues all have an impact on migration.

20. Consultation is also required between government and other stakeholders at the national level. Policy-making is clearly the remit of government, but the Commission has concluded that the policy-making process is more likely to be effective when it is based on widespread consultation, especially with the private sector and the diverse components of civil society. This approach echoes the definition of governance developed by the Commission on Global Governance, that it involves individuals, institutions, the public and private sectors, and that it accommodates diverse interests to achieve common goals.

21. Given the dynamic nature of international migration, it is essential for policy-making in this area to be responsive and proactive. This in turn requires effective data collection, policy analysis, research, monitoring and evaluation. It is hard to formulate and implement effective policy when it is not clear who the targets of that policy are, how many they are, where they are and what their problems are. And it is simply bad practice not to assess the efficiency, effectiveness and impact of policy.

## Capacity-building

**The international community should support the efforts of states to formulate and implement national migration policies through the contribution of resources, appropriate expertise and training.**

22. There are a number of reasons why many states currently lack coherent migration policies and the ability to implement them in a consistent manner. In some countries (although their number is dwindling) international migration is not perceived as a pressing issue. In others, more important and urgent priorities have prevented migration from finding its proper place on the national agenda. Most commonly, however, government officials have informed the Commission that they lack the resources, infrastructure, expertise and experience required to address migration issues more effectively.

23. It is in the shared interest of the international community to support those countries that need to strengthen their capacity in the area of migration policy, whether through the provision of technical and financial resources, the sharing of appropriate expertise or the establishment of training initiatives. More specifically, such efforts should assist states to:

- define the objectives of their national migration policy;
- establish a functioning, effective and equitable legal system in relation to migration;
- create a well-trained, informed and honest cadre of migration officials, including civil servants, police officers, border guards and refugee status determination officers;
- develop an infrastructure that provides social, educational and legal assistance to migrants, and that helps the host society adapt to the presence of migrants;

- ensure that resident foreign nationals are effectively represented by migrant associations and organizations, and
- build up a capacity for data collection and analysis, research, monitoring and evaluation.

24. The Commission commends the efforts made by certain regional groupings of states to share their experiences and expertise in migration with partner regions. The Commission also underlines the important role to be played by international organizations, and calls on them to coordinate their activities in this area more effectively. At the same time, the Commission underlines its conclusion that capacity-building initiatives are unlikely to have their desired impact unless they take place in a context where human rights are respected, where the rule of law is maintained and where public administration is unaffected by corruption and the diversion of resources.

## Interstate cooperation at the bilateral level

**Bilateral agreements are a valuable means of addressing migration issues that affect two states. They must always respect the normative framework affecting international migrants and thereby safeguard migrant rights.**

25. Where states have cooperated on international migration, it has traditionally been at a bilateral level and has focused on specific issues requiring cooperation between countries of origin and destination, such as entry, residence, migrant rights, consular protection and the return of migrants with irregular status. As they can be signed both between countries in the same region and between countries in different parts of the world, bilateral agreements provide a valuable mechanism for responding to the grow-

ing complexity of international migration. It is essential, however, for bilateral agreements to uphold all the rights that are guaranteed in the normative framework affecting international migrants. Unfortunately, that is not always the case.

26. Bilateral agreements between states have to some extent given way to recruitment processes administered by private companies and agents, and which are monitored and regulated to varying degrees by the states concerned. It has become clear to the Commission that some of the individuals and enterprises involved in the recruitment process are guilty of misleading and cheating the migrants they engage, usually by providing them with false information, promises or expectations. It is essential for countries of origin, countries of destination and relevant international organizations to cooperate in the eradication of such practices.

### **Interstate cooperation at the regional level**

**Additional efforts are required to ensure that regional consultative processes on migration have worldwide coverage, engage civil society and the private sector, and are not focused solely on migration control. Greater interaction between the different processes is essential given the global nature of migration.**

27. In recent years, there has been a proliferation of initiatives known as ‘regional consultative processes’. Although they vary in several respects, all of these processes involve networks of states, coming together on a regular basis for the purposes of confidence-building and consensus-building, as well as the exchange of information, ideas, experiences and good practice in the domain of international migration. The key fea-

ture of these processes is their informal and non-binding nature.

28. Regional consultative processes have some very important achievements to their credit. By ensuring that member states come to the table on an equal basis, they have facilitated dialogue, helped governments to identify common interests and concerns, underlined the importance of establishing national migration policies and reinforced an awareness of the need for those policies to be the basis for regional cooperation. In addition, regional consultative processes have enabled governments to draw upon the expertise of international organizations, assisted in the development of migration legislation and permitted the sharing of intelligence, a function which appears to have led to the reduction of irregular migration in certain regions.

29. The Commission is fully supportive of regional consultative processes, and in that respect wishes to identify some areas in which they might be strengthened. First, the officials participating in these processes have generally represented ministries responsible for immigration, and it has therefore been difficult for such processes to engage in other important issues, such as the contribution of migration to development and the human rights of migrants. Second, very few regional consultative processes involve representatives of civil society, and even fewer have actively engaged with the private sector. Third, relatively few of the consultative processes established to date have engaged meaningfully with broader regional economic and political fora. Fourth, existing regional processes have not yet been subject to rigorous forms of assessment and evaluation.

30. Finally, the Commission observes that certain parts of the globe are not as yet covered by regional processes, including the Middle East, North Africa, East Africa, the Great Lakes region

of Africa, the Caribbean, and certain parts of Asia and South Asia. The Commission encourages relevant states, regional bodies and international organizations to consider these limitations and to determine how they might be most effectively addressed.

### **Inter-regional consultations**

31. Another concern in relation to regional consultative processes is to be found in the very fact that they have a regional focus, and that they have generally not engaged in inter-regional consultations. As indicated throughout this report, migratory movements have an increasingly intercontinental and global character, and regional consultative processes are not well placed to address this reality. At the same time, the limited contact that currently takes place between different regional processes acts as a constraint to the sharing of experience and good practice between states and other stakeholders located in different parts of the world.

32. The Commission concludes that it is appropriate to foster greater dialogue between the different regional consultative processes to address common migration concerns. This might be done on an informal and *ad hoc* basis in response to specific issues, such as combating migrant smuggling and human trafficking, promoting cooperation between countries with a labour surplus and those confronted with an impending labour shortage, and examining the linkages between migration and related issues. An informal annual meeting of all relevant regional processes would also provide a valuable means of facilitating dialogue between the states and organizations concerned and assist in the development of principles and policy understandings that are common to all regions.

33. The Commission also commends broader initiatives that have been established to promote inter-regional consultation, cooperation and partnership, and that have increasingly included placed migration on their core agendas. Significant examples include the Euro-Mediterranean Partnership Barcelona Process, the Organization for Security and Cooperation in Europe (OSCE) and the ongoing dialogue between the EU and African Union.

### **Regional integration**

34. The issue of migration is a key issue for certain regional bodies. In the EU, for example, citizens of member states can move with relative ease from one country to another, enjoying the benefits of a common labour market. Beyond the issue of internal borders and external border controls, the EU has harmonized refugee policies and is developing region-wide approaches to issues such as migrant integration, economic migration as well as migration and development. The dismantling of the EU's internal boundaries has, however, been accompanied by increasingly rigorous restrictions on people seeking entry from other parts of the world, especially asylum seekers and migrants who are moving in an irregular manner.

35. Efforts have also been made to establish various types of economic integration and related freedom of movement agreements in other regions of the world, including the North American Free Trade Agreement (NAFTA), within Central and South America, and in South-East Asia. The Commission commends in particular the New Partnership for Africa's Development (NEPAD), which aims to establish an integrated socio-economic development framework for Africa, and its sub-regional components, the Economic Community of West African States (ECOWAS) and the Southern African Development Community (SADC).

36. The Commission welcomes these initiatives to facilitate the intra-regional movement of people, but notes that it has not always been easy to gain agreement on them at the political level or to implement them effectively and consistently at the operational level. The Commission encourages states to ensure that migration issues are placed on the agenda of all regional bodies, and recommends that capacity-building efforts be undertaken at the regional as well as the national level.

### **Interstate cooperation at the global level**

**The new willingness of a range of states, institutions and non-governmental stakeholders to take global initiatives on international migration is welcome. The UN General Assembly High-Level Dialogue provides an opportunity for greater interaction and coherence between these initiatives, and to ensure that their momentum is maintained. The ongoing UN reform process provides a window of opportunity to realize this momentum through a revision of current institutional arrangements.**

37. In recent years a number of global initiatives have been taken in relation to international migration, sponsored by states, international institutions, civil society and the private sector. One is the Berne Initiative's International Agenda for Migration Management, the principal aim of which is to assist government migration officials to develop effective migration policy, legislation and appropriate administrative structures. The Commission has taken full consideration of the Berne Initiative and commends it, especially the priority it has placed on capacity-building. A second global initiative is the Declaration of the Hague on the Future of Refugee and Migration Policy. A follow-up process, the Hague Process

on Refugees and Migration, has emphasized the need for dialogue and cooperation with civil society, the private sector and academia. Its activities are therefore largely complementary to the Berne Initiative.

38. There has been a proliferation of other global initiatives at the institutional level. For example, a UN Special Rapporteur on the Human Rights of Migrants has been appointed; the Migrant Workers Convention came into force in July 2003, triggering the creation of a treaty monitoring body; the ILO made migration the theme of its 2004 International Labour Conference; IOM has initiated an 'International Dialogue on Migration' as a forum for states and international institutions; UNHCR has established its 'Convention Plus' initiative as well as an 'Agenda for Protection'; the UN Division for the Advancement of Women made migration the theme of its 10-year review of the Beijing World Conference on Women and Development; the Uruguay round of trade negotiations brought WTO into the sphere of international migration, and the UN General Assembly has agreed to hold a High-Level Dialogue on Migration and Development in 2006.

39. That such a broad range of states, organizations and non-governmental stakeholders have promulgated so many global initiatives indicates to the Commission that international migration, just like other global issues such as peace, trade, development and environmental protection, can no longer effectively be addressed on a unilateral basis. It also reflects a growing awareness of the need for multilateral cooperation on the issue of global security. Another additional manifestation of multilateralism is to be found in the growth of informal migration policy networks, involving increased interaction between government officials (civil servants, parliamentarians, legislators,



judges) who work in different countries but have similar functional portfolios.

40. The challenge now is to realize more fully the potential of these global initiatives by building on their momentum, bringing together their ideas, implementing their recommendations and avoiding the danger of wasteful overlap. The Commission has consulted with the UN Secretary-General, the UN secretariat and a number of member states to enhance understanding of the linkages between migration, development and related policy issues. The High-Level Dialogue provides an opportunity to respond to this challenge by strengthening consultation and cooperation between states at the global and regional levels. Furthermore, the ongoing UN reform process offers a unique opportunity to rise to this challenge through a revision of current institutional arrangements on migration.

### **Institutional arrangements**

**The Commission proposes to the UN Secretary-General the immediate establishment of a high-level inter-institutional group to define the functions and modalities of, and pave the way for, an Inter-agency Global Migration Facility. This Facility should ensure a more coherent and effective institutional response to the opportunities and challenges presented by international migration.**

41. The Commission has consulted widely with governments, UN and other agencies on the issue of institutional arrangements. In the course of these consultations, it has been impressed by the extent to which relevant organizations contribute to functions such as policy development, standard setting and protection, programme implementation, multilateral consultation, data collection, evaluation and research, and how

these activities add value to the efforts of individual states, regional bodies, regional and global consultative processes. At the same time, the Commission has identified overlaps within the current institutional architecture that at times undermine an integrated, coherent and effective response to the opportunities and challenges presented by international migration. Rather than being complementary, different institutional approaches to the same issue can diverge and even conflict, and there is also frequent competition for limited funds to achieve the same goals.

### **The institutional architecture**

42. This lack of inter-agency cooperation and coordination has arisen for a number of different reasons. First, and as explained in the previous chapter, the UN does not have a specialized migration agency, and responsibilities in this area are spread across different institutions such as ILO, OHCHR, UNDESA, UNFPA and UNHCR, the mandates of which have evolved in specific historical, geographical and thematic contexts. IOM, which is the largest intergovernmental institution dealing with migration and whose mandate and activities have evolved significantly in recent years, operates outside the UN system.

43. Second, organizations that were not traditionally involved in the issue, especially development and trade-related bodies such as the World Bank, UNCTAD, UNDP and WTO, have in recent years assumed a greater role in this policy area because of growing awareness of the linkages between migration and their specific mandates.



44. Third, in institutional and operational terms, migration has become closely linked to the issue of refugee movements and internal population displacements, phenomena that are often grouped together under the rubric of ‘forced migration’. Forced migration constitutes a subset of the humanitarian affairs domain, an area which involves a range of additional organizations (such as OCHA and WFP) and which has also been characterized by some longstanding questions concerning inter-agency cooperation and coordination. Certain organizations, most notably IOM and UNHCR, straddle the somewhat indistinct line between ‘migration’ and ‘humanitarian action’, and it is therefore not surprising that the relationship between these two organizations has to some extent come to symbolize the challenge of managing inter-agency relationships.

45. Fourth, and as indicated earlier in this chapter, there is a linkage between the problem of incoherence at the national level and the issue of coordination at the multilateral and institutional level. States are the effective owners of international organizations, establishing their statutes and constitutions, comprising their governing bodies and providing the bulk of their resources. And yet states do not always approach these organizations in a coherent manner. A government official attending a meeting of the ILO, for example, is likely to come from a different ministry than that represented at a meeting of IOM or UNHCR. And the concerns and interests of those different ministries may not be the same.

### ***The benefits of improved coordination***

46. Several distinct advantages can be gained by promoting better cooperation and coordination between the various organizations involved in the area of international migration.

47. The first is that of efficiency. In the current environment, different agencies find themselves working on the same issue, undertaking similar activities and establishing parallel contacts with the same government bodies and regional processes. IOM, ILO, OHCHR, UNHCR and the UN Office for Crime and Drug Prevention (UNODC), for example, all have an interest in the issues of human trafficking and migrant smuggling. Similarly, the World Bank, as well as IOM, ILO and UNDP, are all concerned with migrant remittances and their impact on development. While such overlaps are not necessarily negative, and may not be entirely avoidable, the Commission has concluded that they often give rise to competition between the agencies concerned and that they do not represent the most efficient use of the limited resources available.

48. A second advantage of coordination is that of policy consistency. Partly in response to their specific mandates, and partly in response to their institutional cultures, different institutions, including those that are within the UN system, are prone to develop their own and sometimes quite distinct policy approaches to the same issue. This is not just a problem at the level of policy formulation, but can also hamper programme implementation.

49. A third advantage to be gained from enhanced coordination is the pooling and exchange of expertise. While migration is a complex and multidimensional phenomenon, the expertise to be found within different organizations continues to be somewhat limited. A UNHCR staff member may have a great deal of competence in the area of refugee protection but may know little about labour migration. Similarly, a World Bank official may be an expert on migrant remittances but have little understanding of migration for the purpose of family reunification.

50. It is in the interest of all these organizations to share expertise, ideas and information in a more systematic manner, not only in the specific area of human mobility but also in associated areas such as development, trade, aid, human rights and security. There is also considerable scope for increased cooperation and coordination amongst agencies in areas such as research, data collection, analysis and exchange, evaluation, public information, advocacy and policy formulation.

### ***A longer term approach***

51. The Commission takes the view that in the longer term a more fundamental overhaul of the current institutional architecture relating to international migration will be required, both to bring together the disparate migration-related functions of existing UN and other agencies within a single organization and to respond to the new and complex realities of international migration.

52. A number of options for change have been analysed in the past. These include: creating a new agency, possibly by merging IOM and UNHCR; designating a 'lead agency' from among existing agencies, such as UNHCR or ILO; or bringing IOM into the UN system to take a lead on the issues of voluntary migration.

53. There is some logic in proposing a single organization to deal with both voluntary and forced migration through a merger of IOM and UNHCR. The geopolitical realities of the post-World War Two era shaped the current institutional architecture by separating responsibility for refugees and other migrants.

54. These historical mandates do not, however, reflect contemporary realities. First, the distinction between voluntary and forced migrants has

become increasingly blurred. It can often be difficult to discern precisely why an individual migrant moves; for many people there are mixed motivations. There is also an increasing overlap in the migration routes taken by both refugees and economic migrants, and both may use the same smuggling networks. Second, individual migrants can shift between migration categories as they move from one country to another, and may even belong to more than one category at the same time. Third, certain migrants, such as transit migrants, asylum seekers and refugees who move on from the country where they have been granted asylum, may be of concern to the institutions responsible for both voluntary and forced migration. A merger could be an effective response to these 'grey zones' of international migration.

55. At least three issues would, however, need to be considered in relation to such proposals. A principal concern would be the possible dilution of UNHCR's supranational mandate for refugee protection, and the risk of jeopardizing the universal refugee protection regime that has been collectively developed between states and UNHCR over the last 55 years. A second concern arises from the notion of combining two agencies with very different cultures and approaches: IOM is a service-providing intergovernmental body while UNHCR is an agency with an accepted supranational protection mandate. It is likely that there would need to be two defined and separate tracks even within a single agency, in order to deal respectively with economic and forced migration. Third, redefining the governing structure of a merged agency would require considerable negotiation among governments and the UN.

56. Another model is a global agency for economic migration, functioning within the UN system. This agency could fulfill all of the multi-lateral functions relevant to economic migration,

including: an operational and technical cooperation function incorporating capacity-building; research, policy analysis and policy development; collating and analyzing migration-related data and information; a mandate for the protection of migrants' rights, and a forum for interstate dialogue and possibly negotiations. This agency should also assume a leading role in developing the linkages between migration and related issues such as development, trade, security and human rights, and cooperating with relevant institutions. A formal understanding would have to be reached between such a new agency and UNHCR so as to ensure an effective response to the gaps and overlaps described above.

57. IOM would appear to be the most suited body to become this global agency for economic migration. It already assumes a number of the broadly-defined required functions: operations and logistics, technical cooperation and capacity-building, policy development and research, as well some data collection. As mentioned earlier, it has launched a policy dialogue with governments and other stakeholders on key migration issues. IOM's structure has also expanded significantly in recent years. IOM does not currently have a formal mandate for the protection of migrant rights, which some might regard as an essential function. The growth of IOM is also reflected in its increased membership, which at present includes 109 member states and a further 24 with observer status.

58. Under its current constitution, IOM operates essentially as a service organization on behalf of its member states, which is only part of the remit that would be required of a global lead agency for economic migration. To maintain coherence and consistency within the multilateral system, it would also seem logical for IOM to become part of the UN system. In this respect, the Commission notes the current debate within IOM's gov-

erning bodies concerning the institution's evolution, formal status and relationship with the UN system. Finally, under such a scenario, the impact on the responsibilities of other key agencies would have to be carefully considered, especially ILO's labour migration mandate.

59. Both these models are long-term options. The Commission recommends that they are considered and taken forward at an appropriate moment in the context of the ongoing process of reforming the UN, to make it a more efficient and effective organization.

### **A more immediate response** **The Inter-agency Global Migration Facility**

60. A more immediate response is required to coordinate, and ensure coherence and consistency within, the current institutional architecture. In this regard, the Commission has also consulted with the Geneva Migration Group (GMG), established in 2002 to bring together the heads of IOM, ILO, UNHCR, UNCTAD and UNODC. The Commission commends this initiative, but notes that GMG is not intended as a formal coordination mechanism. Furthermore, it does not include all the key institutional actors either inside or outside the UN system; the meetings of agency heads in the GMG are not replicated at the working level, and the group does not have a permanent secretariat.

61. The Commission therefore proposes to the UN Secretary-General the immediate establishment of a high-level inter-institutional group, to pave the way for the creation of an Inter-agency Global Migration Facility in 2006. This inter-institutional group can be established quickly, on the direct initiative of the Secretary-General, and should have two principal functions. The first is to bring together the heads, or delegated

senior representatives, from all agencies currently involved in international migration and associated areas, so as to identify existing overlaps and gaps, to explore the potential for pooling institutional expertise and to develop complementarities. The second is to develop a detailed proposal on the functions and terms of reference for an Inter-agency Global Migration Facility. The group should report in time for the Secretary-General to present its outcome at the 2006 General Assembly on International Migration and Development. This group should comprise the current membership of GMG as well as other relevant institutions including, but not only, the World Bank, UNDESA, UNDP and UNFPA. It may also include several non-institutional, independent experts.

62. The overall objective of the Inter-agency Global Migration Facility would be to establish a comprehensive and coherent approach in the overall institutional response to international migration. More specifically, it could facilitate the exchange of experience and expertise, and help deliver greater efficiency and policy consistency. The format and function of the Inter-agency Global Migration Facility would be decided by the Secretary-General. There are eight areas where the Inter-agency Global Migration Facility could add value to the current institutional response.

### **Policy planning**

63. The Facility could facilitate coordinated and integrated policy planning in areas that cross the mandates of several institutions, for example human trafficking, the migration-asylum nexus and the developmental implications of international migration, including remittances.

### **Capacity-building**

64. The Facility could assume responsibility for coordinating an integrated approach to capacity-building, as specified earlier in this chapter. This function would necessitate the inclusion of UNDP, which has strong capacity-building expertise even though it is not directly involved in migration. The World Bank would also be included, both for its expertise in advising on national development policies as well as its funding function. The Facility could usefully pool the experience and expertise required for technical assistance and training and the provision of other advisory services.

### **Migration and development**

65. The Facility could integrate current efforts to enhance the developmental impact of migration. These initiatives include not only facilitating the transfer of remittances and addressing the range of other issues examined in Chapter Two, but would also promote investment and financial sector reform and thereby create an enabling environment in which to realize the developmental opportunities presented by international migration.

### **Data collection and exchange**

66. The Facility could coordinate data collection, dissemination, analysis and exchange on international migration, and on the basis of that data, monitor migration trends. To fulfill this function the Facility would have to include UNDESA, which already has a well-established reputation in the area of data collection and analysis on migration and related issues.

### **Policy analysis and evaluation**

67. The Facility could promote greater coordination and cooperation amongst agencies in the areas of policy analysis, evaluation and research, and could also play a role in the establishment of common evaluation standards. The Facility would also ensure that relevant research on migration-related issues is brought to the attention of all agencies concerned.

### **Annual report**

68. The Facility could produce an annual inter-agency report on key issues, trends, challenges and policy developments in the area of international migration and on related issues. Such a report would enable policymakers to be informed of global and regional migration trends, and would also be a valuable capacity-building tool.

### **Facilitating consultations**

69. The Facility could facilitate consultations, not only between the agencies involved, but also with regional bodies, the private sector, NGOs, human rights organizations, and members of civil society, including migrant organizations.

### **Funding framework**

70. A final function of the Facility could be to provide a funding framework for specific inter-agency activities, including capacity-building, and to manage shared resources for coordinated functions.

71. The members of the Inter-agency Global Migration Facility would be existing institutions, both within and outside the UN system, that have an interest and involvement in migration. These would include, *inter alia* and in alphabetical order, ILO, IOM, OHCHR, UNCTAD, UNDESA, UNDP, UNESCO, UNFPA, UNHCR, UNIFEM, UNODC, the World Bank and WTO. The Inter-agency Global Migration Facility would be supported by a permanent Secretariat, with staff seconded by institutions. The chair of the Facility would be rotated between agencies.

72. The opportunities and challenges of international migration need a response now. The Commission commends to the UN Secretary-General, concerned institutions and the international community its proposal for the establishment of an Inter-agency Global Migration Facility.



# Principles for Action and Recommendations

## I. A world of work: Migrants in a globalizing labour market

### *Principle – Migrant out of choice Migration and the global economy*

**Women, men and children should be able to realize their potential, meet their needs, exercise their human rights and fulfil their aspirations in their country of origin, and hence migrate out of choice, rather than necessity. Those women and men who migrate and enter the global labour market should be able to do so in a safe and authorized manner, and because they and their skills are valued and needed by the states and societies that receive them.**

### **Recommendations**

1. The number of people seeking to migrate from one country and continent to another will increase in the years to come, due to developmental and demographic disparities, as well as differences in the quality of governance. States and other stakeholders must take due account of this trend in the formulation of migration policies.
2. States and other stakeholders should pursue more realistic and flexible approaches to international migration, based on a recognition of the potential for migrant workers to fill specific gaps in the global labour market.
3. States and the private sector should consider the option of introducing carefully designed temporary migration programmes as a means of addressing the economic needs of both countries of origin and destination.

4. The GATS Mode 4 negotiations on the movement of service providers should be brought to a successful conclusion. Given the linkage between international trade and international migration, greater efforts should be made to foster a dialogue between officials and experts dealing with the two issues.

5. Governments and employers should jointly review current barriers to the mobility of highly educated professionals, with a view to removing those which are unnecessarily hindering economic competitiveness.

6. Greater efforts should be made to create jobs and sustainable livelihoods in developing countries, so that the citizens of such states do not feel compelled to migrate. Developing countries and the industrialized states should pursue economic policies and implement existing commitments that enable this objective to be achieved.

## II. Migration and development: Realizing the potential of human mobility

### *Principle – Reinforcing economic and developmental impact*

**The role that migrants play in promoting development and poverty reduction in countries of origin, as well as the contribution they make towards the prosperity of destination countries, should be recognized and reinforced. International migration should become an integral part of national, regional and global strategies for economic growth, in both the developing and developed world.**



## **Recommendations**

7. Cooperative relationships between labour-rich and labour-poor countries are required to promote human capital formation and the development of a global pool of professionals. Providing appropriate pay, working conditions and career prospects in order to retain key personnel must be an integral component of such strategies.
8. Remittances are private money and should not be appropriated by states. Governments and financial institutions should make it easier and cheaper to transfer remittances and thus encourage migrants to remit through formal transfer systems.
9. Measures to encourage the transfer and investment of remittances must be combined with macro-economic policies in countries of origin that are conducive to economic growth and competitiveness.
10. Diasporas should be encouraged to promote development by saving and investing in their countries of origin and participating in transnational knowledge networks.
11. States and international organizations should formulate policies and programmes that maximize the developmental impact of return and circular migration.

### **III. The challenge of irregular migration State sovereignty and human security**

#### **Principle Addressing irregular migration**

**States, exercising their sovereign right to determine who enters and remains on their territory, should fulfil their responsibility and obligation to protect the rights of migrants and to re-admit those citizens who wish or who are obliged to return to their country of**

**origin. In stemming irregular migration, states should actively cooperate with one another, ensuring that their efforts do not jeopardize human rights, including the right of refugees to seek asylum. Governments should consult with employers, trade unions and civil society on this issue.**

## **Recommendations**

12. States and other stakeholders should engage in an objective debate about the negative consequences of irregular migration and its prevention.
13. Border control policies should form part of a long-term approach to the issue of irregular migration that addresses the socio-economic, governance and human rights deficits that prompt people to leave their own country. This approach must be based on interstate dialogue and cooperation.
14. States should address the conditions that promote irregular migration by providing additional opportunities for regular migration and by taking action against employers who engage migrants with irregular status.
15. States should resolve the situation of migrants with irregular status by means of return or regularization.
16. States must strengthen their efforts to combat the distinct criminal phenomena of migrant smuggling and human trafficking. In both cases, perpetrators must be prosecuted, the demand for exploitative services eradicated and appropriate protection and assistance provided to victims.
17. In their efforts to stem irregular migration, states must respect their existing obligations under international law towards the human rights of migrants, the institution of asylum and the principles of refugee protection.

#### **IV. Diversity and cohesion: Migrants in society**

##### **Principle – Strengthening social cohesion through integration**

**Migrants and citizens of destination countries should respect their legal obligations and benefit from a mutual process of adaptation and integration that accommodates cultural diversity and fosters social cohesion. The integration process should be actively supported by local and national authorities, employers and members of civil society, and should be based on a commitment to non-discrimination and gender equity. It should also be informed by an objective public, political and media discourse on international migration.**

##### **Recommendations**

18. While recognizing the right of states to determine their own policies in relation to the situation of migrants in society, all migrants must be able to exercise their fundamental human rights and benefit from minimum labour standards.
19. Authorized and long-term migrants should be fully integrated in society. The integration process should value social diversity, foster social cohesion and avert the marginalization of migrant communities.
20. Local and national authorities, employers and members of civil society should work in active partnership with migrants and their associations to promote the integration process. Migrants should be properly informed of their rights and obligations and encouraged to become active citizens in the country to which they have moved.
21. Particular attention should be given to the empowerment and protection of migrant women, as well as ensuring that they are actively involved in the formulation and implementa-

tion of integration policies and programmes. The rights, welfare and educational needs of migrant children should also be fully respected.

22. While temporary migrants and migrants with irregular status are not usually granted the right to integrate in the society where they are living, their rights should be fully respected and they should be protected against exploitation and abuse.

23. Those individuals and organizations that have an influence on public opinion must address the issue of international migration in an objective and responsible manner.

#### **V. A principled approach: Laws, norms and human rights**

##### **Principle – Protecting the rights of migrants**

**The legal and normative framework affecting international migrants should be strengthened, implemented more effectively and applied in a non-discriminatory manner, so as to protect the human rights and labour standards that should be enjoyed by all migrant women and men. Respecting the provisions of this legal and normative framework, states and other stakeholders must address migration issues in a more consistent and coherent manner.**

##### **Recommendations**

24. States must 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.
25. All states must ensure that the principle of state responsibility to protect those on their territory is put into practice, so as to reduce the pressures that induce people to migrate, protect migrants who are in transit and safeguard the human rights of those in destination countries.

26. Governments and employers must ensure that all migrants are able to benefit from decent work as defined by the ILO and are protected from exploitation and abuse. Special efforts must be made to safeguard the situation of migrant women domestic workers and migrant children.

27. The human rights component of the UN system should be used more effectively as a means of strengthening the legal and normative framework of international migration and ensuring the protection of migrant rights.

## **VI. Creating coherence: The governance of international migration**

### **Principle -Enhancing governance: Coherence, capacity and cooperation**

**The governance of international migration should be enhanced by improved coherence and strengthened capacity at the national level; greater consultation and cooperation between states at the regional level, and more effective dialogue and cooperation among governments and between international organizations at the global level. Such efforts must be based on a better appreciation of the close linkages that exist between international migration and development and other key policy issues, including trade, aid, state security, human security and human rights.**

### **Recommendations**

28. All states should establish coherent national migration policies that are based on agreed objectives, take account of related policy issues and are consistent with international treaty law, including human rights law. Governance at the national level should be effectively coordinated among all concerned ministries and should also involve consultation with non-state actors.

29. The international community should support the efforts of states to formulate and implement national migration policies through the contribution of resources, appropriate expertise and training.

30. Bilateral agreements are a valuable means of addressing migration issues that affect two states. They must always respect the normative framework affecting international migrants and thereby safeguard migrant rights.

31. Additional efforts are required to ensure that regional consultative processes on migration have worldwide coverage, engage civil society and the private sector, and are not focused solely on migration control. Greater interaction between the different processes is essential given the global nature of migration.

32. The new willingness of a range of states, institutions and non-governmental stakeholders to take global initiatives on international migration is welcome. The UN General Assembly High-Level Dialogue provides an opportunity for greater interaction and coherence between these initiatives, and to ensure that their momentum is maintained. The ongoing UN reform process provides a window of opportunity to realize this momentum through a revision of current institutional arrangements.

33. The Commission proposes to the UN Secretary-General the immediate establishment of a high-level inter-institutional group to define the functions and modalities of, and pave the way for, an Inter-agency Global Migration Facility. This Facility should ensure a more coherent and effective institutional response to the opportunities and challenges presented by international migration.

## ANNEX II

# Migration at a glance

This annex highlights some of the key facts and figures relating to numbers, patterns, causes and consequences of international migration today. It relies on the latest available data from: UNDESA, World Bank, IOM, ILO and UNHCR.

### **How many international migrants are there?**

- There are nearly 200 million international migrants in 2005, counting only those who have lived outside their country for more than one year and including 9.2 million refugees
- This is equivalent to the population of the 5th largest country – Brazil
- 1 in 35 people is an international migrant; or 3% of the world's population
- Numbers are increasing rapidly: from 82 million international migrants in 1970 through 175 million in 2000 to nearly 200 million today

### **Migrant women**

- Almost half the world's international migrants are women (48.6%)
- Some 51% of migrant women live in the developed world, compared with 49% in the developing world
- There are more female than male international migrants in Latin America and the Caribbean, North America, Oceania, Europe and the former USSR

### **Where are the migrants? (Year 2000)**

- 56.1 million in Europe (including the European part of the former USSR), accounting for 7.7% of Europe's population
- 49.9 million in Asia, accounting for 1.4% of Asia's population
- 40.8 million in North America, accounting for 12.9% of North America's population
- 16.3 million in Africa, accounting for 2% of Africa's population
- 5.9 million in Latin America, accounting for 1.1% of Latin America's population
- 5.8 million in Australia, accounting for 18.7% of Australia's population

### **Which are the most important host countries? (Year 2000)**

- USA has some 35 million: 20% of the world's migrants
- The Russian Federation has some 13.3 million: 7.6% of the world's migrants
- Germany has some 7.3 million: 4.2% of the world's migrants
- Ukraine has some 6.9 million: 4.0% of the world's migrants
- India has some 6.3 million: 3.6% of the world's migrants
- Migrants comprise more than 60% of the total population in Andorra, Macao Special Administrative Region of China, Guam, the Holy See, Monaco, Qatar and the United Arab Emirates

### **Which are the most important origin countries?**

- The Chinese diaspora has an estimated 35 million people
- The Indian diaspora has some 20 million
- The Filipino diaspora has some 7 million

### **How has the distribution of migrants changed?**

- From 1980 to 2000, the number of migrants living in the developed world increased from 48 million to 110 million; compared with an increase from 52 million to 65 million in the developing world
- Today, some 60% of the world's migrants live in the developed world
- In 1970, migrants comprised 10% of the population in 48 countries; this had increased to 70 countries by 2000
- From 1970 to 2000, the proportion of the world's migrants living in North America rose from 15.9% to 22.3%, and in the former USSR from 3.8% to 16.8%
- From 1970 to 2000, the proportion of the world's migrants living in other parts of the world decreased from: 34.5% to 25% in Asia; 12% to 9% in Africa; 7.1% to 3.4% in Latin America and the Caribbean; 22.9% to 18.7% in Europe, and 3.7% to 3.1% in Oceania

### **Why do migrants move?**

- *Wage disparities:* 45.7% of people earn less than \$1 per day in Sub-Saharan Africa; 14.4% in South Asia, and 10.4% in Latin America and the Caribbean
- *Unemployment rates:* 12.2% in the Middle East and North Africa; 10.9% in Sub-Saharan Africa, and 6.6% in industrialized economies

- *Differentials in life expectancy:* 58 years in low income countries; 78 years in high income countries
- *Education gaps:* 58% women and 68% men literate in low income countries, almost full literacy in high income countries; 76% primary school enrolment in low income countries, almost full enrolment in high income countries
- *Demographic gradients:* on average 5.4 children born to each woman in Sub-Saharan Africa, compared with: 3.8 in the Arab World; 2.5 in Latin America and the Caribbean, and 1.4 in Europe

### **What are migrants' economic contributions to host countries?**

- In 2000, some 86 million of the world's migrants were economically active – over 50% of all migrants
- Foreign workers comprise over 5% of the labour force in 8 European countries
- From 1975 to 2001, the number of foreign workers in Japan increased from 750,000 to 1.8 million
- Skilled immigrants and family members constitute over 50% of migrants entering Australia, Canada and New Zealand

### **What is the demographic impact of migration in host countries?**

- From 1990 to 2000, international migration accounted for 56% of the population growth in the developed world, compared with 3% in the developing world
- From 1990 to 2000, immigration accounted for 89% of population growth in Europe
- From 1995 to 2000, Europe's population would have declined by 4.4 million without immigration



- From 1995 to 2000 immigration accounted for 75% of population growth in USA

#### **How much money do migrants send home?**

- Formal transfers of remittances were worth about \$150 billion in 2004
- Perhaps \$300 billion are additionally transferred informally
- Formal remittance transfers are almost triple the value of Official Development Assistance
- Formal remittance transfers are the second largest source of external funding for Developing Countries after Foreign Direct Investment
- The top 3 remittance-receiving countries in 2004 were: Mexico (\$16 billion per year), India (\$9.9 billion), the Philippines (\$8.5 billion)
- The top 3 remittance-sending countries in 2001 were: USA (\$28 billion per year), Saudi Arabia (\$15 billion), Belgium, Germany and Switzerland (\$8 billion)

#### **How important is irregular migration?**

- An estimated 2.5 to 4 million migrants cross international borders without authorization each year
- At least 5 million of Europe's 56.1 million migrants in 2000 had irregular status (10%)
- Some 500,000 undocumented migrants are estimated to arrive in Europe each year
- An estimated 10 million migrants live in the USA with irregular status
- An estimated 50% of the Mexican-born population in USA in 2000 had irregular status (4.8 million)

- Some 20 million migrants with irregular status live in India

- An estimated 600-800,000 people are trafficked each year
- Migrant smugglers and human traffickers make an estimated \$10 billion profit each year

#### **What is the number of refugees and asylum seekers?**

- 6.5 million of the world's 9.2 million refugees live in developing countries
- From 2000 to 2004, the global refugee population decreased by 24%
- Refugees represent 23% of international migrants in Asia; 22% in Africa, and 5% in Europe
- Pakistan hosts the largest number of refugees; just over 1 million (11% of the global total)
- From 1994 to 2003 some 5 million people applied for asylum in the industrialized countries; refugee or equivalent status was granted to 1.4 million of them (28%)
- In 2004, 676,000 applications for asylum were submitted in 143 countries; representing a 19% decrease from 830,300 in 2003
- In 2004, 83,000 refugees were resettled, mainly in the USA (53,000), Australia (16,000) and Canada (10,000)

## ANNEX III

# States parties to universal legal instruments affecting international migrants

Instrument	Entry into force	States parties through ratification, accession or succession	As of
1948 Universal Declaration of Human Rights	Adopted by General Assembly resolution 217 A (III), 10 December 1948		
1965 International Convention on the Elimination of All Forms of Racial Discrimination	4 January 1969	170	29 June 2005
1966 International Covenant on Civil and Political Rights	23 March 1976	154	29 June 2005
1966 International Covenant on Economic, Social and Cultural Rights	3 January 1976	151	29 June 2005
1979 Convention on the Elimination of All Forms of Discrimination against Women	3 September 1981	180	29 June 2005
1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	26 June 1987	139	29 June 2005
1989 Convention on the Rights of the Child	2 September 1990	192	29 June 2005
1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	1 July 2003	30	29 June 2005
ILO Convention 97 on Migration for Employment Convention	22 January 1952	43	July 2005
ILO Convention 143 on Migrant Workers	9 December 1978	18	July 2005

Instrument	Entry into force	States parties through ratification, accession or succession	As of
1951 Convention relating to the Status of Refugees and 1967 Protocol relating to the Status of Refugees	22 April 1954 (Convention), 4 October 1967 (Protocol)	142 (Convention) 142 (Protocol) States Parties to both the Convention and Protocol: 139 States Parties to one or both of these instruments: 145	1 May 2005
1954 Convention relating to the Status of Stateless Persons	6 June 1960	57	1 May 2005
1961 Convention on the Reduction of Statelessness	13 December 1975	29	1 May 2005
1957 Convention on the Nationality of Married Women	11 August 1958	70	5 February 2002
1963 Vienna Convention on Consular Relations	19 March 1967	163	
2000 UN Convention against Transnational Organized Crime	29 September 2003	107	29 July 2005
2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime	25 December 2003	61	14 June 2004
2000 Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime	28 January 2004	55	14 June 2004
1950 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others	25 July 1951	75	24 March 2003

# Acknowledgements

The Global Commission on International Migration would like to thank the many individuals and organizations that have contributed to the work of the Commission.

## **Secretariat**

The Commission's final report was drafted by Jeff Crisp, Director of Policy and Research, and Khalid Koser, Senior Policy Analyst, under the direction of Executive Director Rolf K. Jenny.

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## **Experts**

The following experts were commissioned to prepare papers for the Secretariat's Policy Analysis Programme:

Aderanti Adepoju, Martin Baldwin-Edwards, Robert Barnidge, Leah Bassel, Christina Boswell, Manuel Carballo, Taras Chernetsky, Johnathan Crush, Stefanie Grant, Colin Harvey, Robert Holzmann, Graeme Hugo, Binod Khadria,

Johannes Koettl, Cathy Lloyd, Phillip Martin, Susan Martin, Rainer Munz, Kathleen Newland, Kevin O'Neill, John Parker, Nicola Piper, Martin Ruus, Danny Sriskandrajah, Galina Vitkovskaya, Zhanna Zayinchkovskaya.

In addition, the Commission wishes to thank the authors of some 50 research papers published in the series 'Global Migration Perspectives', which can be accessed on the Commission's website, [www.gcim.org](http://www.gcim.org).

## **Advisors**

The following individuals provided valuable advice to the Secretariat:

Manolo Abella, Alex Aleinikoff, Gervais Appave, Robert Bach, Alice Bloch, Roger Bohning, Peter Bosch, Frans Bouwen, Meyer Burstein, Jorgen Carling, Stephen Castles, Jo Chamie, Lincoln Chen, Ryszard Cholewinski, Robin Cohen, Catherine Dauvergne, Paul de Guchteneire, Michael Doyle, Delanyo Dovlo, Jean-Francois Durieux, Solvig Ekblad, Bimal Ghosh, Sandy Gifford, Mariette Grange, Danielle Grondin, Friedrich Heckmann, Ulf Hedetoft, James Hollifield, Mireille Kingman, Will Kymlicka, Frank Lazcko, Richard Lewis, Ninna Nyberg-Sorensen, John Oucho, Robert Paiva, Rinus Penninx, Douglas Pearce, Richard Perruchoud, David Petrasek, Dilip Ratha, Patrick Taran, Gary Troeller, Nicholas Van Hear, Gerry Van Kessel, Ellie Vasta, Steven Vertovec, Jonas Widgren, Monette Zard.

