



## **AN INFORMAL CONVERSATION ON INTERNATIONAL MIGRATION, HUMAN RIGHTS AND GOVERNANCE**

**Office of the High Commissioner for Human Rights and the Global Migration Policy Associates**

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### **BACKGROUND PAPER<sup>1</sup>**

#### **Migration and human rights**

Approximately 214 million people, or around 3% of the world's population, currently live outside their countries of origin or citizenship. There is no reliable count of the many millions more temporary, short term or seasonal migrants worldwide. Contemporary migration is a multifaceted and complex phenomenon. It can be temporary or permanent, forced or voluntary. While most movement may take place by regular means, it has been estimated that 10 to 20% of migrants are in irregular situations in destination countries. Migration<sup>2</sup> affects all regions of the world; migrants move between countries of the global South as well as from developing to developed regions and vice-versa. Migration has important impacts on the economy, society and culture of countries of origin, transit and destination. At the heart of this phenomenon are individual human beings in search of safety and security, all of whom have human rights.

While around the world many migrants are able to move, live and work in safety and dignity, today's reality is that an often complex mixture of absence of decent work or means to survival at home, persistent and growing economic disparities, a lack of legal opportunities for migration, discrimination, rising intolerance and xenophobia, conflict and environmental degradation are compelling millions of migrants to move and stay in insecure and vulnerable conditions.

All migrants, by virtue of their human dignity and without discrimination, are protected by international human rights law.<sup>3</sup> In addition, migrants are also protected by other normative standards,

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<sup>1</sup> Drafted by Pia Oberoi, OHCHR and Patrick Taran, GMPA for the informal conversation on international migration, human rights and governance. The views expressed here are solely those of the authors.

<sup>2</sup> The term "migration" in this paper refers exclusively to the phenomenon of international migration, as opposed to internal migration or internal displacement. There is no universally accepted definition of an "international migrant"; included within this broad term are *inter alia* migrant workers, migrants in an irregular situation, asylum-seekers and refugees, stateless persons, victims of human trafficking and smuggled migrants, while recognising that many of these categories of persons come under the protection of particular international legal frameworks. See GMG, *International Migration and Human Rights* (2008), pp. 7-12.

<sup>3</sup> This includes the nine core international instruments, notably the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention

including international labour law<sup>4</sup>, humanitarian law and refugee law<sup>5</sup>, and international criminal law in particular with regard to the protection of victims of human trafficking and of smuggled migrants.<sup>6</sup> There remain, however, significant gaps in policy and practice, including in relation to the protection and promotion of the human rights of migrants in an irregular situation, and the protection of labour rights of migrant workers. Such gaps are not only a critical human rights issue; protection of migrants' rights and combating discrimination, arbitrary action and xenophobia against migrants are also relevant to a range of other issue-areas.

The human rights standards contained in the Universal Declaration of Human Rights, the two international human rights covenants, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and other international human rights instruments as well as related normative standards of other branches of law, particularly refugee law and international labour law, provide a solid framework for policy-making on migration.<sup>7</sup> This normative framework can also serve as a robust and authoritative basis for enhancing cooperation and coherence in the area of migration.

The human rights framework (along with related standards) is broadly recognised as a fundamental basis for a coherent, comprehensive, and sustainable governance of migration, and for global dialogue on migration. It is also increasingly recognised that the human rights-based approach constitutes a framework for action and cooperation, as well as a set of guidelines and tools for migration policy-makers. Each human right has a specific content and claim – they are not just abstract slogans. In line with the human rights based approach, the pursuit of migration as an inclusive, equitable and sustainable process can only take place when human beings become the central concern of migration policy-making.

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against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC), the Convention on the Rights of Persons with Disabilities (CRPD), the International Convention for the Protection of All Persons from Enforced Disappearance, and the International Convention for the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW); as well as the eight fundamental ILO Conventions (Forced Labour Convention, 1930 (No. 29), the Abolition of Forced Labour Convention, 1957 (No. 105), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Minimum Age Convention, 1973 (No. 138), the Worst Forms of Child Labour Convention, 1999 (No. 182), the Equal Remuneration Convention, 1951 (No. 100) and Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

<sup>4</sup> This includes, among others, the Migration for Employment Convention (Revised), 1949 (No. 97), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), and other pertinent instruments such as the Private Employment Agencies Convention, 1997 (No. 181) and the Domestic Workers Convention, 2011 (No. 189), as well as the accompanying Recommendation No. 201, and the HIV and AIDS recommendation, 2010 (No. 200).

<sup>5</sup> See the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.

<sup>6</sup> Including the Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children as well as the Protocol against the Smuggling of Migrants by Land, Sea and Air.

<sup>7</sup> The application of these standards in relation to migration has been further developed by competent bodies, including the UN treaty bodies and special procedures as well as the ILO supervisory bodies. The Human Rights Council and the General Assembly (Third Committee) adopt resolutions each year which consider respectively the human rights of migrants, and the protection of migrants and of women migrant workers. The General Assembly (Second Committee) also considers the issue of “international migration and development” in a separate process.

## Migration, human rights and the global governance framework<sup>8</sup>

The development experience of industrialized countries showed that reducing exploitation and ensuring equality of treatment across societies were essential for building prosperity, social cohesion and democratic governance. The need for protection of workers outside their own countries was explicitly raised in the Treaty of Versailles of 1919 that ended World War I; the first international treaties on legal and social protection for migrant workers were drawn up in the 1930s. Consequently, a comprehensive set of international standards, institutions and dialogue spaces for governance of migration were built up over the last century.

Processes of international consensus building complemented and sometimes preceded development of global and regional legal instruments; the first international conference on migration took place in 1923. Evolution of the legal framework was accompanied by elaboration of international declarations, commitments and programmes of action to realize legal norms and enhance the rule of law.

Indeed, migration has been a significant component of discussion and action outcomes of nearly all of the major world conferences held over the last 20 years, including the 4<sup>th</sup> World Conference on Human Rights in Vienna in 1992, the International Conference on Population and Development in Cairo in 1994, the World Summit on Social Development in Copenhagen in 1995, the World Conference on Women in Beijing in 1996, the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban in 2001, and most recently the Rio+20 United Nations Conference on Sustainable Development in 2012. Migration has been a topic of General Discussion at the International Labour Conferences at least once every decade since the 1920s. Migration has also been regularly discussed within the General Assembly, the Human Rights Council, and other relevant fora at the international level.

The resulting global migration regime comprises a complex and dispersed legal and institutional architecture related to international cooperation and dialogue on migration issues. It has been noted that international migration, unlike other trans-boundary issues such as trade, health, the environment or finance, lacks a single, unified institutional framework at the international level.

International governance on migration reflects, builds on and is shaped by needs, conditions and constraints of national governance. International standards are usually 'domesticated' according to national legal, political and economic factors in the respective countries, while the global governance system essentially mirrors even in the respective agency identities and mandates the common, mainstream architecture of governance at national level. At national as well as regional and often local levels, governance of migration must address labour market demand for both skilled and unskilled migrants in formal and/or informal sectors; domestic unemployment; population dynamics; cooperation with other States under regional migration/circulation regimes; impact and use of remittances; loss/gain of skills ("brain drain/brain gain"); humanitarian and human rights aspects; refugee policies; family reunification; public health; schooling and vocation training; social security, social protection; housing; public transportation; public utilities services (electricity, water supply, sanitation, etc.); environment and land use issues; public safety; national security; foreign relations

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<sup>8</sup> For this discussion, *governance* refers to the ensemble of legal standards, institutions, dialogue spaces and practical measures that regulate relations across society and/or internationally. Global governance refers specifically to the political interaction of transnational actors around issues that affect more than one state or region or, more simply, the management of global processes. Weiss notes that "Global governance"—which can be good, bad, or indifferent—refers to concrete cooperative problem-solving arrangements [such as laws and formal institutions, as well as informal practices, guidelines or coalitions], many of which increasingly involve not only the United Nations of states but also 'other UNs,' namely international secretariats and other non-state actors." Thomas J. Weiss and Ramesh Thakur, *Global Governance and the UN: An Unfinished Journey*, 2010.

and policy; development aid policies (often linked to cooperation with specific countries); capital investment policies; international trade; cooperation with non-governmental and international institutions; et al as well as design and administration of: immigration systems, migrant reception and integration systems, visa policies, etc. Indeed, most institutional branches of national governance are obliged to address aspects or consequences of migration, including ministries of Foreign Affairs, Labour/Employment, Interior/Home Affairs, Justice, Health, Education, Housing, Welfare/Social Protection, Gender/Women, as well as departments of Immigration, Refugee Services, International Cooperation, Human Rights, Armed Forces, Public Security/Police, Intelligence, among others. Many of these in fact correspond to specialized entities in the United Nations or other international bodies and most relate to and are influenced by specific international normative instruments.<sup>9</sup>

Given the breadth of concerns ranging from health to human rights to labour to refugees to trade to the environment among others, the legal and normative framework affecting international migrants could not be built as nor unified into a single instrument, treaty or mechanism. Similarly, the centrality of pertinent aspects of migration/migrants in mandates and on agendas of most government ministries and of most UN departments and specialized agencies makes difficult obtaining comprehensive national or global systems or mechanisms for coordination and cooperation. That there continues to be little global consensus on how to address the complex dynamics of international migration is also a reflection of many national situations.

The governance context outlined above as well as the multi-causal nature of and the necessarily multi-disciplinary responses to contemporary migration make a compelling argument for creating a holistic and comprehensive space to debate migration, in order to ensure effective protection of the rights and decent treatment of all migrants, regardless of legal status and categorisation, as well as to encourage coordination and cooperation.

At the same time there is renewed expression of consensus that bilateral, regional and international cooperation is an essential element in addressing contemporary migration, and in ensuring the protection of migrants' rights. In *The Future We Want* (the outcome document of the Rio+20 United Nations Conference on Sustainable Development), accordingly, States agreed recently to "address international migration through international, regional or bilateral cooperation and dialogue, and a comprehensive and balanced approach, recognizing the roles and responsibilities of countries of origin, transit and destination in promoting and protecting the human rights of all migrants, and avoiding approaches that might aggravate their vulnerability."<sup>10</sup>

At the bilateral and regional levels, a network of agreements and institutions currently govern action and discussion on migration, ranging from bilateral agreements on labour and skills movement to readmission and return or mobility partnerships to informal and non-binding dialogue and information exchange on migration-related issues of common interest. While some such agreements and discussions have a strong normative element, others lack transparency and due regard to the rights of migrants.

As governments are increasingly prepared to discuss migration at the bilateral and regional level, there is also a growing momentum to discuss migration at the international level in multilateral fora. The Charter-based role of the United Nations as a forum for international cooperation on such issues is beyond question.

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<sup>9</sup> Paragraph adapted from: International Migration Policy Program, *The IMP Reference Manual*, edited by Patrick Taran. Geneva and Bishkek/Issykul, May 2000. Section 9: "National Migration Policies and Structures"

<sup>10</sup> *The Future We Want*, A/66/L.56, para. 157.

The UN has produced a rich legacy of human rights and related norms and standards in the past sixty years, which all UN actors are duty-bound to uphold and promote. The Secretary General has recently affirmed that “[h]uman rights are at the heart of the UN System”<sup>11</sup> The High Commissioner for Human Rights has the overall mandate to coordinate the human rights promotion and protection activities throughout the United Nations system. Human rights mainstreaming means that all parts of the UN system should integrate human rights into their work and contribute towards the realization of human rights.

Specialized agencies of the UN, namely the ILO and UNHCR, have been involved in migration with protection mandates since their respective inception. The UN System as a whole has become increasingly involved in issues of migration and human rights over the last decade. The GMG was established by the United Nations Secretary-General in early 2006 in response to a recommendation of the Global Commission on International Migration for the establishment of a high-level inter-institutional group of agencies involved in migration-related activities. The GMG was created by building on an existing inter-agency group with a more limited membership, the Geneva Migration Group, which was established in April 2003. At present, the Group is comprised of 16 entities.

In his report on the ‘Strengthening of the United Nations: an agenda for further change’ (A/57/387), then UN Secretary-General, Mr. Kofi Annan, identified migration, and specific attention to its “various dimensions”, as a priority issue for the international community. In 2003, the Global Commission on International Migration was launched, and presented its report *Migration in an interconnected world: New directions for action* in 2005 which called for action on irregular migration, integration, protecting the human rights of migrants and enhancing governance, in addition to action on the economic impact of migration.

The first High-Level Dialogue on international migration and development in 2006<sup>12</sup> focused one thematic session on the theme of “Measures to ensure respect for and protection of the human rights of all migrants, and to prevent and combat smuggling of migrants and trafficking in persons.” The summary report of the High Level Dialogue highlighted the need to ensure respect for the fundamental rights and freedoms of migrants, to ratify the core human rights conventions and other relevant international instruments, and to combat xenophobia and discrimination against migrants.<sup>13</sup>

Since 2006, human rights issues have also increasingly been raised within the agenda of the government Global Forum on Migration and Development (GFMD), including GFMD meetings in the Philippines (2008) and Mexico (2010). These meetings demonstrated that migrants’ rights, including the rights of irregular migrants, can still be discussed in a multilateral intergovernmental setting. Yet concerns also continue to be expressed that there is resistance within that inter-governmental process to discuss the framework of duties and obligations imposed by international human rights law and related standards.

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<sup>11</sup> Available at <http://www.un.org/sg/statements/index.asp?nid=5967>

<sup>12</sup> In its resolution 58/208 of 23 December 2003, the General Assembly decided to devote a high-level dialogue to the issue of “international migration and development” during its sixty-first session in 2006. The purpose of the high-level dialogue, which took place on 14-15 September 2006, was to discuss the multidimensional aspects of international migration and development in order to identify appropriate ways and means to maximize its development benefits and minimize its negative impacts. Following the High Level Dialogue, Member States established the Global Forum on Migration and Development as a voluntary, non-binding and informal consultative process led by States, which aims to address the migration and development interconnections in practical and action-oriented ways.

<sup>13</sup> UN Doc. A/61/515, para. 10.

## The case for new thinking on global governance of migration

While the specific agenda of “migration and development” has developed into a rich discussion on a number of important issues related to the links between migration and development, it is a reality that pertinent facets of migration are excluded from this agenda from a conceptual and practical perspective. The migration and human rights agenda is in some key ways different from an agenda that has a primary focus on the contribution to or negative impact of migration on development. Human rights are intrinsic to all human beings, regardless of their instrumental value as units of labour or agents of development. The agenda of human rights is a cornerstone issue in relation to migration, not least due to the simple fact that it is people who move. While such an analysis should in no way diminish the importance or value of the migration and development agenda, it does call for dedicated international space for discussion of the rights of all migrants, and measures to ensure respect, protection and fulfilment of these rights.

At its 66<sup>th</sup> session, the General Assembly requested “Member States, the UN System, international organisations, civil society and all relevant stakeholders, especially the United Nations High Commissioner for Human Rights and the Special Rapporteur of the Human Rights Council on the human rights of migrants, to ensure that the perspective of the human rights of migrants is included among the priority issues in the on-going discussions of migration and development within the United Nations System [...]”<sup>14</sup>

The 2013 High Level Dialogue and other relevant discussions, including in the context of the post-2015 development agenda, could be an opportunity for a consolidated reflection on the current global regime of governance migration from a normative perspective. The UN System and its members could reflect on whether the current modalities of the debate adequately allow it to provide coordinated and coherent policy advice and technical assistance to governments in order to assist them in responding adequately to migration from a rights-based perspective, and in implementing the international obligations that States have voluntarily assumed.<sup>15</sup> Addressing the varied and complex protection challenges raised by migration requires the joint efforts of all stakeholders, including in the UN system.

### QUESTIONS FOR THE DISCUSSION:

- From a rights-based perspective, what steps can be taken to obtain “more” or “better” governance of migration?
- Can examples of other global governance regimes be useful for thinking about global governance of migration?
- Migration is currently governed by a complex (and dispersed) array of legal standards, institutions and initiatives at the bilateral, regional and international levels. What are the options to obtain more coherent, coordinated governance of migration?
- What are the advantages of creating a unified international institutional governance regime/mechanism? What are the disadvantages?
- Global governance of migration is not only States’ responsibility. What are the roles of non-governmental actors and civil society in the governance of migration? What are the challenges?

<sup>14</sup> UN Doc. A/RES/66/172

<sup>15</sup> The Doyle Report spoke to the keenly-felt absence of a United Nations “voice” on migration. See Migration Working Group (Chaired by Michael W. Doyle), Report to the Secretary General on Migration, (2002)

