## Migration and human rights

# IMPROVING HUMAN RIGHTS-BASED GOVERNANCE OF INTERNATIONAL MIGRATION

UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

Note

The designations employed and the presentation of the material in this publication do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area, or of its authorities, or concerning the delimitation of its frontiers or boundaries.

Cover images credit:

**A Mexican migrant worker in the restaurant sector**
© Fotolia / M. Hayward

**Jordan Camps Host to Thousands of Syrian Cross-Border Refugees**
December 2012, Mafraq, Jordan
© UN Photo / Mark Garten

**South Sudanese Returnees Arrive in Juba by Thousands**
November 2011, Juba, South Sudan
© UN Photo / Isaac Billy

## Migration and human rights

# IMPROVING HUMAN RIGHTS-BASED GOVERNANCE OF INTERNATIONAL MIGRATION

*In order to promote a strong focus on the human rights of migrants in the lead-up to the 2013 High-Level Dialogue and beyond, the Secretary General tasked the United Nations Office of the High Commissioner for Human Rights (OHCHR), in consultation with the Global Migration Group (GMG) and other UN System partners, to prepare a concise analytical report on migration and human rights. This report has been prepared in accordance with that mandate. OHCHR would like to thank Paul de Guchteneire for his assistance in the drafting of this report, as well as all experts from the GMG agencies and beyond for their valuable comments. For a description of the mandates and work of 28 UN organizations and related international entities engaged with international migration issues, see* International Migration and Development: Contributions and Recommendations of the International System, *A publication of the United Nations System Chief Executives Board coordinated by UNFPA and IOM, Geneva 2013. See also the Report of the Special Rapporteur on the human rights of migrants to the General Assembly, A/68/283, 5 August 2013 which provides an overview of global migration governance and explores the need for a strengthened institutional framework based on human rights.*

*General Assembly High Level Dialogue on International Migration and Development September 2006, United Nations, New York © UN Photo / Marco Castro*

# TABLE OF CONTENTS

Page


**1. Introduction** ..... **7**
Migration and human rights ..... 8
Human rights-based governance of migration ..... 9

**2. Governance of migration and human rights within the United Nations: the legal and normative framework** ..... **14**

**3. Governance of migration and human rights within the United Nations: the institutional framework** ..... **22**
Human rights and migration within the United Nations System ..... 26
Global Migration Group ..... 28

**4. International migration governance: towards a human rights-based approach** ..... **32**
A) Standard setting and normative oversight ..... 32
B) Platform for dialogue and cooperation ..... 33
C) Facilitating migration: service provision and technical assistance ..... 35
D) Developing the knowledge base on migration and human rights: data collection and indicators ..... 36
Gaps and challenges ..... 36

**5. Conclusions and Recommendations** ..... **42**

**Annex 1**
Declarations, guidelines and principles relevant to the human rights of migrants ..... **44**

**Annex 2**
Map of the institutional framework for migration within the UN System and the primary governance spaces on migration and human rights ..... **45**

**Annex 3**
Key messages of the United Nations System on migration ..... **46**

# Migration and human rights

# IMPROVING HUMAN RIGHTS-BASED GOVERNANCE OF INTERNATIONAL MIGRATION

*With famine crisis thousands of Somalis flee to Ethiopia refugee camps August 2011, Dollo Ado, Ethiopia*

*© UN Photo / Eskinder Debebe*

# 1. Introduction

The 2013 United Nations (UN) General Assembly High-Level Dialogue (HLD) on International Migration and Development represents a key opportunity to address in a comprehensive manner the human rights dimensions of migration at the international level and to foster more effective cooperation and coherence between States, international organisations, civil society actors and other stakeholders. Further, it comes at an important moment in the preparation process of the post-2015 United Nations development agenda, and presents a critical opportunity to firmly anchor the debate on international migration and development within the three fundamental principles of the post-2015 development agenda; *human rights, equality and sustainability.*[1]

In 2012, the General Assembly requested Member States, the United Nations system, international organizations, civil society and all relevant stakeholders, especially the High Commissioner for Human Rights and the Special Rapporteur on the human rights of migrants and the Global Migration Group to ensure that the 2013 HLD "analyses the linkage between migration and development in a balanced and comprehensive manner that includes, among others, a human rights perspective" (A/RES/67/172).

This brief report will attempt to explore why it is important to embed the human rights framework and a human rights-based approach within the global institutional architecture on migration. The report will map existing governance spaces of migration and human rights and explore possible future directions in this regard. While recognising that there are important governance spaces at the regional as well as local, national and bilateral levels, this analysis will concentrate on the governance spaces at the international level within the UN System.

The international movement of people is an integral part of a globalizing world; with more than 215 million international migrants currently living outside their country of origin, migration is also a response to growing global inequalities.[2] As the scale, scope and complexity of international migration has grown, states and other stakeholders have become increasingly aware of the need to engage in international dialogue to address migration, and to enhance the international governance of migration.

The mobility of people across international borders dates back to the creation of borders themselves, and the vulnerability of non-nationals is not a new phenomenon. While many migrants move to take advantage of increased opportunities out of genuine, free and informed choice, many others are compelled to move as a result of poverty, lack of decent work, social exclusion, generalized violence, persecution, human rights violations, armed conflict, xenophobia and environmental degradation. In the absence of sufficient regular migration opportunities, migrants can be forced to resort to irregular migration channels including seeking out the services of smugglers or even falling prey to traffickers. Access to territory and procedures can be denied to those seeking asylum. Migrants can be stranded in transit, unable to move onwards, often subject to prolonged detention. At destination, while many migrants are able to live and work in safety and dignity, many others face violence, abuse, discrimination, xenophobia and exploitation in the work place and in their private, social, cultural and public life.

1 *UN System Task Team on the Post-2015 UN Development Agenda, Realising the Future We Want For All: Report to the Secretary General, New York, June 2012, p. 23.*

2 *The term "migration" in this report 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 specific international legal frameworks. See further below and also GMG, International Migration and Human Rights, 2008, pp. 7-12.*

## MIGRATION AND HUMAN RIGHTS

Migration in the context of globalization brings opportunities but also important challenges of vulnerability and discrimination. If migrants lack access to human rights their ability to benefit from migration is compromised, as is their potential contribution to the development of the societies in which they live or with which they are connected. Protecting human rights is important in order to promote the social inclusion and integration of migrants, thus enabling them to lead economically productive as well as culturally and socially enriching lives. As the Global Migration Group (GMG) has pointed out; "Protecting [human] rights is not only a legal obligation; it is also a matter of public interest and intrinsically linked to human development."[3]

Migration is an important economic and social phenomenon, a "mega-trend", as well as a fundamentally human process involving the often precarious movement of people. The interplay between these two aspects of migration can present challenges in the context of global migration governance. Only when conceived in terms of human rights will migration be able to fulfil its potential as an enabler of development; for migrants and for states alike.

While the "migration and development" lens is thus important, and has over the years moved forward one aspect of the multilateral dialogue on migration, the importance and centrality of the human rights perspective should not be overlooked. The migration and human rights agenda is an important lens, crucial in its own right as well as in the context of the "migration and development" arena, because human rights are intrinsic to all human beings, regardless of their instrumental value as units of labour or agents of development. It is important to

3 *Global Migration Group, Statement of the Global Migration Group on the Human Rights of Migrants in Irregular Situation, 30 September 2010, available at: http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10396&LangID=E. For more information on the GMG, see chapter 3.*

*Farming for development: cotton harvest in Sudan. Migrant farm workers picking cotton in the Sudan January 1976, Sudan.*

*© UN Photo / J Mohr*

remember in this context the central challenge that has been articulated within the post-2015 development agenda, which is "to ensure that globalization becomes a positive force for *all the worlds' peoples* of present and future generations" (emphasis added).[4]

## HUMAN RIGHTS-BASED GOVERNANCE OF MIGRATION

International governance of migration can be understood as a process in which the combined framework of legal norms and organizational structures regulate and shape how states act in response to international migration, addressing rights and responsibilities and promoting international cooperation.[5] The Global Commission on International Migration noted that "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."[6] Governance is an important concept in relation to migration and human rights, not least because migration is a phenomenon involving a wide range of actors including, but not limited to, states. It presents an important counter-balance to the concept of "management", which could be seen as more concerned with control or even containment of migration.

Indeed, at its heart migration is fundamentally about migrants and their families, a significant proportion of whom are in a precarious and vulnerable condition.[7] Other important stakeholders include the national authorities of the States from which they originate, through which they travel and to which they move, local authorities, international organisations, regional organisations and processes, non-governmental organisations, migrants' associations, national human rights institutions, trade unions, employers' organizations, and the business sector.

Migration governance is paradoxical: on the one hand this global phenomenon continues to be considered in many intergovernmental fora as an issue which is solely defined by a restrictive conception of national sovereignty, and more often than not as an issue of national security. On the other hand, there is now a relatively strong track record of international cooperation on a range of issues closely related to the human rights of migrants. These include the global refugee regime, labour migration, and counter-trafficking initiatives.

***International governance of migration can be understood as a process in which the combined framework of legal norms and organizational structures regulate and shape how states act in response to international migration, addressing rights and responsibilities and promoting international cooperation.***

Addressing the challenges to human rights protection raised by international migration requires the comprehensive effort of all stakeholders, including relevant agencies and entities of the United Nations system and the International Organisation for Migration (IOM). The contemporary reality of migration compels such a coordinated and comprehensive approach.

4 *UN Task Team report Realizing the future we want for all, Report to the Secretary-General, New York, 2012, available at: www.un.org/millenniumgoals/pdf/Post_2015_UNTTreport.pdf*

5 *Adapted from Alexander Betts (ed.), Global Migration Governance, Oxford University Press, 2011.*

6 *Global Commission on International Migration, Migration in an interconnected world: New directions for action, October 2005, p. 65. The Global Commission on International Migration was launched by the United Nations Secretary-General and a number of governments on December 9, 2003 in Geneva. It was comprised of 19 Commissioners, was independent and was given the mandate to provide the framework for the formulation of a coherent, comprehensive and global response to the issue of international migration. The Global Commission on International Migration closed on 31 December 2005. Website: www.gcim.org/en/*

7 *United Nations Development Programme, Human Development Report 2009 — Overcoming Barriers: Human Mobility and Development, New York, 2009.*

*Fleeing violence in Libya, hundreds cross border to Tunisia*
*February, 2011, Ras Djir, Tunisia*

*© UN Photo/ UNHCR/ A. Duclos*

*Two children of a Cambodian migrant family benefit from educational activities at a child development centre, set up by the Thai Foundation for Child Development (FCD), on the outskirts of Bangkok.*

*© ITCILO / V. Morra*

The United Nations system, by virtue of its capacity to represent and support its Member States, has already played an important role, albeit one which could be enhanced, in demystifying migration and presenting a more accurate picture of contemporary mobility, elaborating and assisting in the implementation of a human rights-based approach to migration, and offering a space for dialogue and cooperation between states on migration issues. Universal human rights principles form a common ground between all states, and the United Nations in accordance with its' Charter, has a key role to play as a forum for international cooperation, including on migration-related issues.[8]

8 *As the High-Level Panel of Eminent Persons on the post-2015 development agenda has pointed out; "the United Nations has a central normative and convening role." The Report of the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda, A new global partnership: eradicate poverty and transform economies through sustainable development, 2013, p. 11.*

*A Romanian migrant worker earns a living as a nurse in Italy.*

*© ITCILO / V. Morra*

# 2. Governance of migration and human rights within the United Nations: the legal and normative framework

**All human beings are born free and equal in dignity and rights.**

*Article 1, Universal Declaration of Human Rights, 1948*

An internationally-recognised framework of human rights has been elaborated over the past decades by the Member States of the UN, bringing together a comprehensive set of binding human rights and related instruments together with non-binding standards of best practices and principles. As the overview in Box 1 makes clear, the legal and normative framework affecting international migrants cannot be found in a single treaty or mechanism, but is instead diffused through a rich set of instruments and related principles and standards.[9]

The Preamble of the Universal Declaration of Human Rights (UDHR) asserts the "inherent dignity and the equal and inalienable rights of all members of the human family [which] is the foundation of freedom, justice and peace in the world".[10] The UDHR goes on to affirm that "Everyone is entitled to all the rights and freedoms set forth in this Declaration" (Article 2). The two human rights Covenants similarly grant to "all" and to "everyone" all the rights contained within those instruments, with very narrow exceptions.[11]

There is no hierarchy between human rights; all rights are universal, inalienable, indivisible, interdependent and of equal importance.[12] The international human rights framework is similarly clear that every person without discrimination is entitled to consideration of his or her unique circumstances as a matter of human rights principles. Simply put, all human beings have all human rights. Beyond this, certain legal protection regimes have been created for groups of non-nationals, including refugees, trafficked persons and migrant workers, to address particular situations and specific vulnerabilities. In applying such regimes, however, care must be taken to avoid creating hierarchies of vulnerability based on categorisation.

Human rights law thus provides that every person, without discrimination, must have access to his or her human rights. States are obliged to ensure that any differences of treatment between national

9 *A more detailed description of the legal and normative framework of international migration can be found in Global Migration Group, International Migration and Human Rights: Challenges and Opportunities on the Threshold of the 60th Anniversary of the Universal Declaration of Human Rights, October 2008, ISBN: 9780897149006.*

10 *Art. 1 of the Universal Declaration of Human Rights states that: "All human beings are born free and equal in dignity and rights." Both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) contain an guarantees against discrimination in the enjoyment of the rights enshrined in the Covenant in their Article 2.*

11 *The International Covenant on Civil and Political Rights (ICCPR) reserves to citizens the right to vote and take part in public affairs (article 25), and grants the right of freedom of movement to foreigners provided they are lawfully present in a country (article 12). This said, the Human Rights Committee has made clear in General Comment No. 15 that all foreigners may enjoy the protection of the Covenant, including in relation to entry and residence, when issues of discrimination, inhuman treatment, or respect for family life arise. CCPR, General Comment No. 15: The position of aliens under the Covenant, 1986, para. 2.*
*It is also important to note that the ICCPR guarantees to everyone without discrimination the right to leave any country, including their own, and to enter their own country. ICCPR, article 12(2) and 12(4). Article 2(3) of the ICESCR also identifies an exception to the general rule of equal and universal access stating that "Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals." However, it is important to note that article 2(3) must be narrowly construed, may be relied upon only by developing countries, and refers only to economic rights. Under the ICESCR, States may not discriminate between nationals and non-nationals with respect to social and cultural rights. Finally, Art. 13 of the Universal Declaration of Human Rights states that: (1) Everyone has the right to freedom of movement and residence within the borders of each state and (2) Everyone has the right to leave any country, including his own, and to return to his country.*

12 *Vienna Declaration and Programme of Action, Adopted by the World Conference on Human Rights in Vienna on 25 June 1993, I (5). Available at: http://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx*

## Box 1 Overview of international legal instruments relevant to migration and human rights

Universal Declaration of Human Rights (1948)

*Core international human rights treaties*

- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Rights of the Child (1989)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- Convention on the Rights of Persons with Disabilities (2006)
- International Convention for the Protection of All Persons from Enforced Disappearance (2006)

*Relevant ILO conventions*

- Forced Labour Convention, 1930 (No. 29)
- Labour Inspection Convention, 1947 (No. 81)
- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
- Equal Remuneration Convention, 1951 (No. 100)
- Abolition of Forced Labour Convention, 1957 (No. 105)
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
- Minimum Age Convention, 1973 (No. 138)
- Private Employment Agencies Convention, 1997 (No. 181)
- Worst Forms of Child Labour Convention, 1999 (No. 182)
- Domestic Workers Convention, 2011 (No. 189)
- Migration for Employment Convention (Revised), 1949 (No. 97)
- Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, 1975 (No. 143)

Convention relating to the Status of Refugees (1951) and the Protocol relating to the Status of Refugees (1967)

Convention relating to the Status of Stateless Persons (1954)

Convention on the Reduction of Statelessness (1961)

Convention against Transnational Organized Crime (2000); Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children; Protocol against the Smuggling of Migrants by Land, Sea and Air

*Instruments of general relevance to migration*

- International humanitarian law: Geneva Conventions (1949)
- Convention on Consular Relations (1963)
- International Convention for the Safety of Life at Sea (1974); International Convention on Maritime Search and Rescue (1979)
- Convention on the Law of the Sea (1982)
- Rome Statute of the International Criminal Court (1998)

and non-nationals or between different groups of non-nationals are enshrined in national legislation, serve a legitimate objective, and that any course of action taken to achieve such an objective must itself be proportionate and reasonable.[13] States, committed by legal obligations, have the duty to respect, protect and fulfil the human rights of all migrants (see Box 2).

States are therefore obliged inter alia to dismantle discrimination, to prohibit torture and cruel and inhuman treatment as well as arbitrary detention, to ensure the availability, accessibility, affordability, acceptability, adaptability and quality of services and guarantee the right to health, education, an adequate standard of living, protect the right of all migrants to decent work and to ensure access to justice, the right to a fair trial, the right to an effective remedy, personal security, as well as free expression, association and assembly. While States have the sovereign right to determine their migration policies, it is important to remember that this right is constrained by the obligations voluntarily assumed by States under international human rights law, as well as customary law including the obligation of non-refoulement (namely the removal or return of anyone to a country where they would be at risk of persecution, torture or other serious human rights violations).[14]

In today's reality, motivations for movement are increasingly complex as the search for protection is often entwined with the search for opportunity, and as journeys become increasingly longer and more complicated. In 2009, the UNDP Human Development Report noted that "there is growing recognition that proliferation (of migration categories) obscures rather than illuminates the processes underlying the decision to move, with potentially harmful effects on policy-making".[15] While human mobility has become more global and frequent, traditional distinctions between voluntary, forced, regular or irregular, temporary, seasonal or long-term and permanent migration have become less clear-cut. This leads to an increasingly compelling argument to address the rights of all migrants in a holistic way, regardless of their motives for migrating and their legal status, while at the same time reinforcing the protections that have been built up in relation to specific groups.

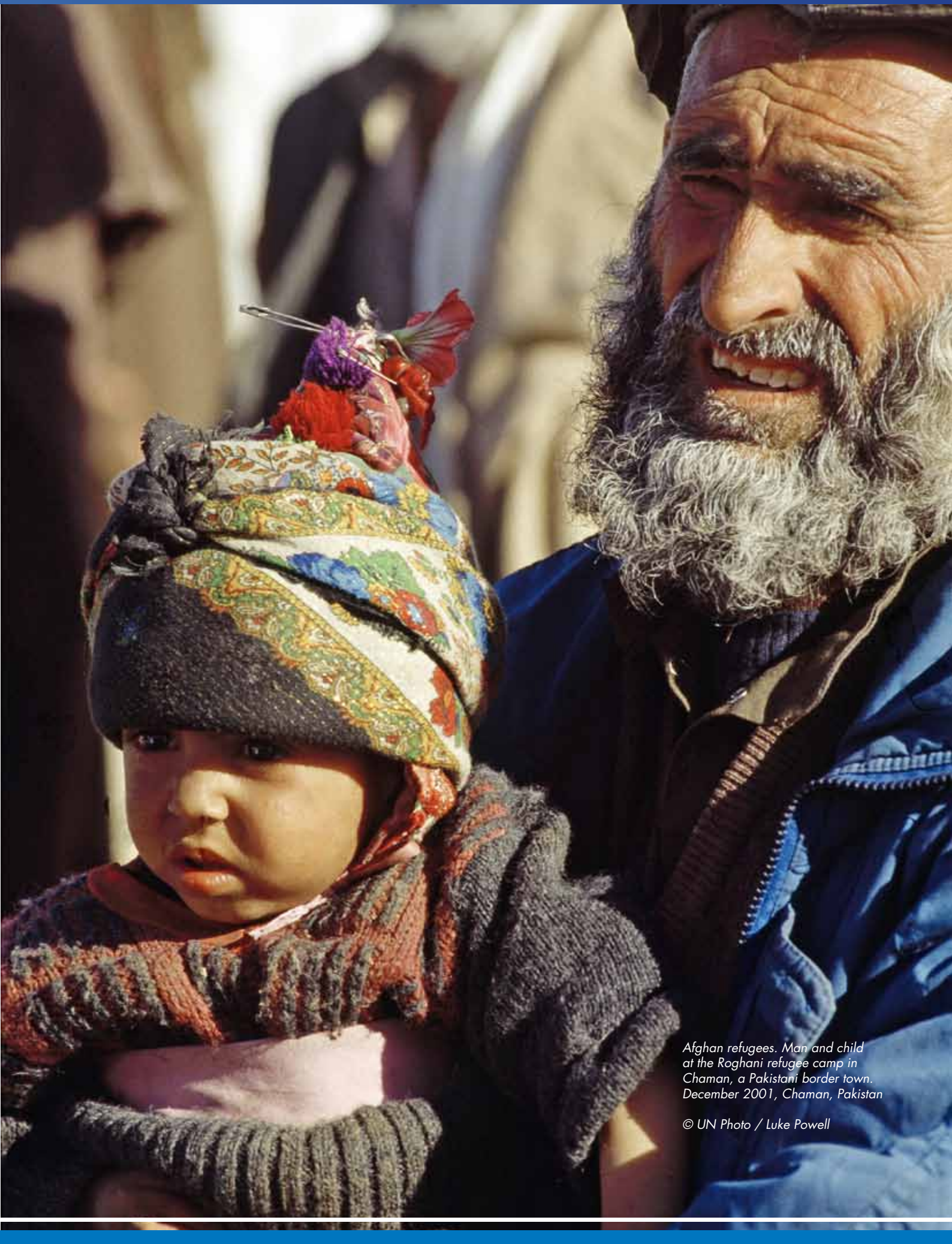
Over the years, the international community has identified a number of non-national groups that are particularly vulnerable to human rights violations in the context of migration, and created specific legal standards to protect these groups. Following the end of the Second World War, a robust international protection regime was created for asylum seekers and refugees, providing specific measures for people forced by persecution to seek refuge in other countries.[16] Trafficked persons have also been recognised as necessitating

13 *The Committee on the Elimination of Racial Discrimination has provided that differences of treatment based on citizenship or immigration status will constitute discrimination if the criteria for different treatment, judged in the light of the objectives and purposes of the Convention, are not applied in pursuit of a legitimate aim or are not proportional to its achievement. CERD, General Recommendation No. 30: Discrimination against Non-Citizens, October 2004, para. 4.*

14 *See Convention against Torture, art. 3, and (in the case of refugees) 1951 Convention relating to the Status of Refugees, art. 33.*

15 *UNDP, Human Development Report, Overcoming barriers: Human mobility and development, New York, 2009, p. 12.*

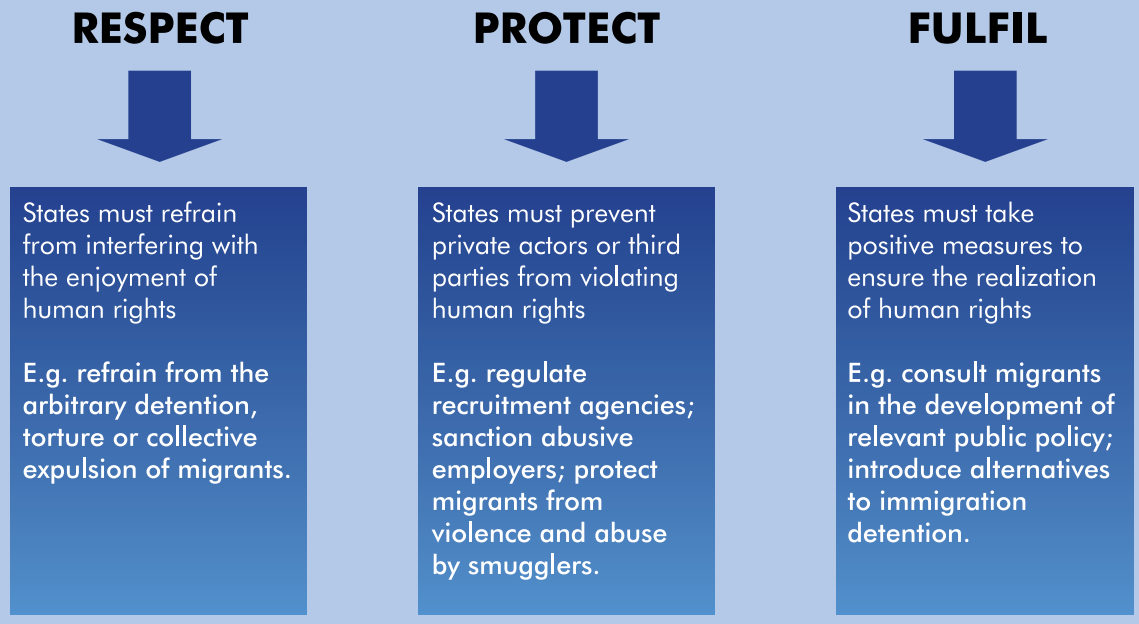
16 *The refugee protection regime is primarily based in the 1951 Convention relating to the Status of Refugees and its 1967 Protocol and has also developed in several regional instruments including the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa and the Cartagena Declaration on Refugees. The Convention and the Protocol have 144 and 145 States Parties respectively.*



*Afghan refugees. Man and child at the Roghani refugee camp in Chaman, a Pakistani border town. December 2001, Chaman, Pakistan*

*© UN Photo / Luke Powell*

**Box 2 Respect, protect, fulfil: the scope of human rights obligations**




specific protection measures.[17]

In 1990, the UN Member States adopted the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), which entered into force in 2003. The ICRMW had been preceded by ILO Conventions No. 97 and No. 143 which also provided specific protections for migrant workers.[18] The Convention on the Rights of the Child identifies particular vulnerabilities of children in the context of international migration.[19]

***In today's reality, motivations for movement are increasingly complex as the search for protection is often entwined with the search for opportunity.***

The creation of specific standards has strengthened the protection of such groups, and it is vital that the refugee protection regime, the protection of victims of trafficking, the rights of migrant workers and other such regimes are secured and strengthened, in light of the particular situation of these groups of people. However it is also important to

17 *The United Nations Convention against Transnational Organized Crime is supplemented by the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children which currently has 155 States Parties. In addition, the UNTOC is also supplemented by the Protocol against the Smuggling of Migrants by Land, Sea and Air which has 136 States Parties.*

18 *46 States have ratified the ICRMW to date while 18 States have signed the Convention but not yet ratified. ILO Conventions No. 97 and No. 143, adopted in 1949 and 1975, have 49 and 23 ratifications respectively.*

19 *See Committee on the Rights of the Child, General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin (CRC/GC/2005/6). Also see Committee on the Rights of the Child, Report of the 2012 Day of General Discussion: the rights of all children in the context of international migration, 28 September 2012, available at: http://www2.ohchr.org/english/bodies/crc/docs/discussion2012/2012CRC_DGD-Childrens_Rights_InternationalMigration.pdf. The Convention on the Rights of the Child is the most widely ratified international human rights instrument, with 193 States Parties.*

keep in mind that, if applied in an uncoordinated manner and without consideration of international human rights law which applies to everyone, such fragmentation or compartmentalization of different categories of migrants may be counterproductive to the purpose of ensuring the human rights of all migrants. For example, a complex issue regarding the rights of people crossing borders stems from the increasingly blurred distinctions between forced and voluntary movement. While in principle they are normatively located in distinct legal categories, in practice refugees, asylum seekers and migrants (including irregular migrants) often move and live in similar physical spaces and are likely to have similar human rights needs, such as in relation to their right to health or to freedom from arbitrary or prolonged detention. The principle of non-refoulement protects equally migrants who fear torture or ill treatment upon their return, including at the hands of smugglers from whom the state will not protect them or because they will not have access to life-saving medical treatment, and refugees who fear persecution in their countries of origin.

Furthermore, a strict "categorisation" approach to the human rights of migrants is complicated by the cross-cutting nature of these categories; migrant workers, refugees, trafficked persons and smuggled migrants can also be migrants with disability, children, pregnant women and women who have suffered sexual and other forms of gender based violence, migrants, stateless persons, minorities and indigenous migrants, persons with HIV/AIDS, lesbian, gay, bisexual and transgender migrants, and victims of torture. Many migrants will be or may become vulnerable on more than one ground, and may have suffered abuse of more than one type. Those who are victims of violence and trauma, in an irregular as well as in a situation of poverty, are more likely to be vulnerable to discrimination and exclusion. Migrants will pass through varying legal categories during their journey, particularly when migratory journeys are long and hazardous.

**All human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.**

*General Conference of the International Labour Organization, Declaration of Philadelphia, 1944*

In the reality of contemporary mobility it can be difficult to neatly separate out distinct categories of people. Accordingly, while the international legal obligations of States to guarantee universal human rights to all human beings subject to their jurisdiction may be clearly provided in law, the reality for many migrants may be very different. An important challenge is thus effective implementation and monitoring of the complex jigsaw of normative standards relevant to migration in order to ensure complementarity and coherence.

For this reason, a more holistic approach is currently being advocated by OHCHR, other relevant agencies and entities within the UN System, IOM and civil society actors, which affirms the human rights of all migrants while at the same time recognising more specific protection needs as these arise. Recognition of the universality and indivisibility of human rights, in tandem with an appreciation of the growing complexity of international migration, could help forge a new consensus on the issue of migration and human rights. The basis of such a consensus lies in a human rights-based approach to migration; while the human rights framework asserts fundamental normative principles and requires States to contemplate a range of measures in order to fulfil their obligations, a human rights-based approach provides practical guidance and concrete tools to this end.

*Uzbeks fleeing violence in Kyrgyzstan hope to cross border*
*June 2010, Nariman, Kyrgyzstan*

*© UN Photo / AFP*

SIEMENS
mobile

# 3. Governance of migration and human rights within the United Nations: the institutional framework

**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.**

*Report of the Global Commission on International Migration, 2005*

Although many countries now recognize that they have an interest in international dialogue and cooperation in the field of migration, and while international migration is increasingly recognized as an intrinsic feature of globalization, there is less clarity on what that means in terms of the framework of legal norms and organizational structures; in other words, in terms of governance.

The global migration regime to date comprises a complex, and often fragmented, institutional and legal architecture related to international cooperation and dialogue on migration issues, and there is no single, unified global body or institutional framework with a comprehensive mandate on international migration. In many ways this is not surprising, given the multi-dimensional nature of migration and the reality that migration cuts across many different aspects of society, including health, education, justice, gender roles, welfare, social protection, labour and skills, population politics, social and economic development, security, cultural identity and cultural life. As a fundamentally human phenomenon, virtually everything to do with migration is a human rights issue. This multidimensionality is reflected in the institutional structures of a range of government ministries as well as many entities of the UN System, other international organisations, regional organisations, the business sector and civil society.

***As a fundamentally human phenomenon, virtually everything to do with migration is a human rights issue.***

A more political explanation for the lack of consensus in relation to institutionalised governance of migration at the international level rests in the view that the control of migration - i.e. determining who crosses a state's borders and who is allowed membership of that state's society - is a quintessential feature of national sovereignty and therefore that multilateral engagement on migration would inevitably diminish sovereignty.[20]

This notwithstanding, a discussion has emerged in recent years on the need for more coherent and robust international migration governance, including in relation to the human rights elements of migration.

Migration governance exists at various levels. At the national and local level, policies primarily focus on regulating incoming migration and dealing with the economic and social consequences of migration including the integration of migrants, their treatment in the workplace and in society. States also develop policies to deal with significant outgoing migration, to address the impact of people leaving the country and to harness the economic and social benefits of remittances and diaspora contributions. In order to deal effectively with the multidimensional aspects of migration, many states institute mechanisms to coordinate between relevant ministries and other stakeholders.

Further, a range of governance arrangements on migration have been developed at bilateral and

20 *The Special Rapporteur on the human rights of migrants has argued on the other hand that national sovereignty could in fact be more limited by insufficient global migration governance and a highly unregulated system with multiple often competing actors. He has noted that global migration governance should thus be seen as reclaiming sovereignty, not ceding it. Report of the Special Rapporteur on the human rights of migrants, A/68/283, 5 August 2013, para. 90.*

*After days lost at sea, Tunisian migrant boat reaches Lampedusa*
*March 2010, Lampedusa, Italy*

*© UN Photo / UNHCR/ Phil Behan*

regional levels. At the bilateral level, States typically conclude agreements such as on labour recruitment into particular sectors. At the regional level, concrete policies have been developed to facilitate the freer movement of people within the region through some degree of concession of sovereignty to a higher level of authority, such as is the case with the regional political and economic communities of the European Union (EU), the Commonwealth of Independent States (CIS), the Association of South-East Asian Nations (ASEAN), the Southern Common Market (MERCOSUR), the Caribbean Community (CARICOM), and the Economic Community of West African States (ECOWAS).

Such discussions of migration at the regional level have been gaining importance over recent years, as have calls to ensure concomitant human rights oversight of their activities. Existing regional economic communities have witnessed a renewed interest in implementing provisions for the free movement of labour and started to focus on the development impacts of migration. The European Union, for instance, has not only introduced free movements of its citizens but also developed standards of portability of healthcare and pensions for intra-EU migrants. MERCOSUR and CARICOM have also introduced measures to promote the free circulation of their citizens. Since the late 1980s, an array of informal regional consultative processes (RCPs) on migration has complemented regional economic integration mechanisms. RCPs have created a space in which states can exchange information and build common understandings, but have faced challenges in regard to the full integration of human rights issues in their agenda, as well as in relation to inclusive participation and transparency.

It is important to consider the linkages between migration governance processes at the national, regional and global levels, as also to note that normative principles flow down from the global level in order to ensure a level-playing field internationally and to avoid fragmentation of rights at the regional level.

Until recently, there has been a significant lack of discussion of the normative dimensions of international migration in a comprehensive and holistic way within the formal context of the United Nations. Significant exceptions include the ICPD Programme of Action (1994, in its Chapter X

**The promotion and protection of all human rights and fundamental freedoms must be considered as a priority objective of the United Nations in accordance with its purposes and principles, in particular the purpose of international cooperation. In the framework of these purposes and principles, the promotion and protection of all human rights is a legitimate concern of the international community.**

*Vienna Declaration and Programme of Action, I (4), 1993*

which was devoted to international migration) and the Durban Declaration and Programme of Action. The Durban Declaration (2001) called on states to "recognize that xenophobia against non-nationals, particularly migrants, refugees and asylum-seekers, constitutes one of the main sources of contemporary racism and that human rights violations against members of such groups occur widely in the context of discriminatory, xenophobic and racist practices (para 16)." Also important is the discussion on labour migration that took place in the context of the 92nd session of the International Labour Conference in 2004 concerning a fair deal for migrant workers in a global economy.

In 2005 the Global Commission on International Migration (GCIM) was established and recommended that the international community should formulate a more consistent and coherent approach to international migration governance in respect of the legal and normative framework affecting international migrants, and embed it more visibly in the existing international architecture of the UN System.[21] The GCIM called for new directions 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, held in September 2006, provided an opportunity for countries to address these multi-dimensional aspects of international migration, and devoted one round table session to an examination 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 Chairperson's summary of the Dialogue recognised the "intrinsic interconnections" between international migration, development and human rights.[22]

Coming out of the first High-level Dialogue, the annual States-led, voluntary, informal and non-binding Global Forum on Migration and Development (GFMD) has provided a broad platform for States to conduct informal dialogue and cooperation on migration and development issues, based on identified State practice, and has included in these informal discussions increasing attention to migration and human rights issues.[23] However, the lack of a comprehensive human rights framing of discussions at the GFMD have raised some concerns, as has the lack of a human rights-based approach in the Forum, particularly in relation to participation. From its inception, the GFMD has explicitly steered away from producing negotiated outcomes or normative decisions. Nevertheless it is important to acknowledge the role that the GFMD has played in building confidence amongst states.

In the last few years there has been growing consensus that bilateral, regional and international

21 *Global Commission on International Migration, Migration in an Interconnected World: New Directions for Action, The Global Commission on International Migration, Geneva, October 2005, available at: www.unitar.org/ny/sites/unitar.org.ny/files/GCIM%20Report%20%20PDF%20of%20complete%20report.pdf*

22 *See Chairperson's Summary of the High-level Dialogue on International Migration and Development 2006, available at: http://www.un.org/ga/president/61/letters/HLD.migdev.Chairsummary.061016.pdf*

23 *As described in its Operating Modalities, the Global Forum on Migration and Development is a voluntary, inter-governmental, non-binding and informal consultative process open to all States Members and Observers of the United Nations. UN agencies and other international and regional bodies may be invited as observers. The Forum was initiated by Belgium and is led by governments. Its purpose is to address the multidimensional aspects, opportunities and challenges related to international migration and its interlinkages with development, to bring together government expertise from all regions, to enhance dialogue and cooperation and partnership and to foster practical and action-oriented outcomes at the national, regional and global levels. See the GFMD documents library for outcome reports of all GFMD meetings, and other related documentation. Available at http://www.gfmd.org. Maja Andrijasevi*

*Western Sahara. Refugees collect water at a well in the Dakhla refugee camp. June 2003, Algeria*

*© UN Photo / Evan Schneider*

cooperation is an essential element of contemporary migration. The Millennium Declaration called on states to "take measures to ensure respect for and protection of the human rights of migrants, migrant workers and their families."[24] Another recent expression of consensus on the need for international cooperation on migration and human rights issues arose in The Future We Want, the outcome document of the Rio+20 United Nations Conference on Sustainable Development, where States agreed 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."[25]

It is accordingly no longer deemed impossible to contemplate a global, multilateral discussion of international migration and human rights, indeed it is now considered not only possible but also necessary.

24 *United Nations Millennium Declaration, A/RES/55/2, 18 September 2000, para. V. 25.*

25 *The Future We Want, Rio+20, 2012.*

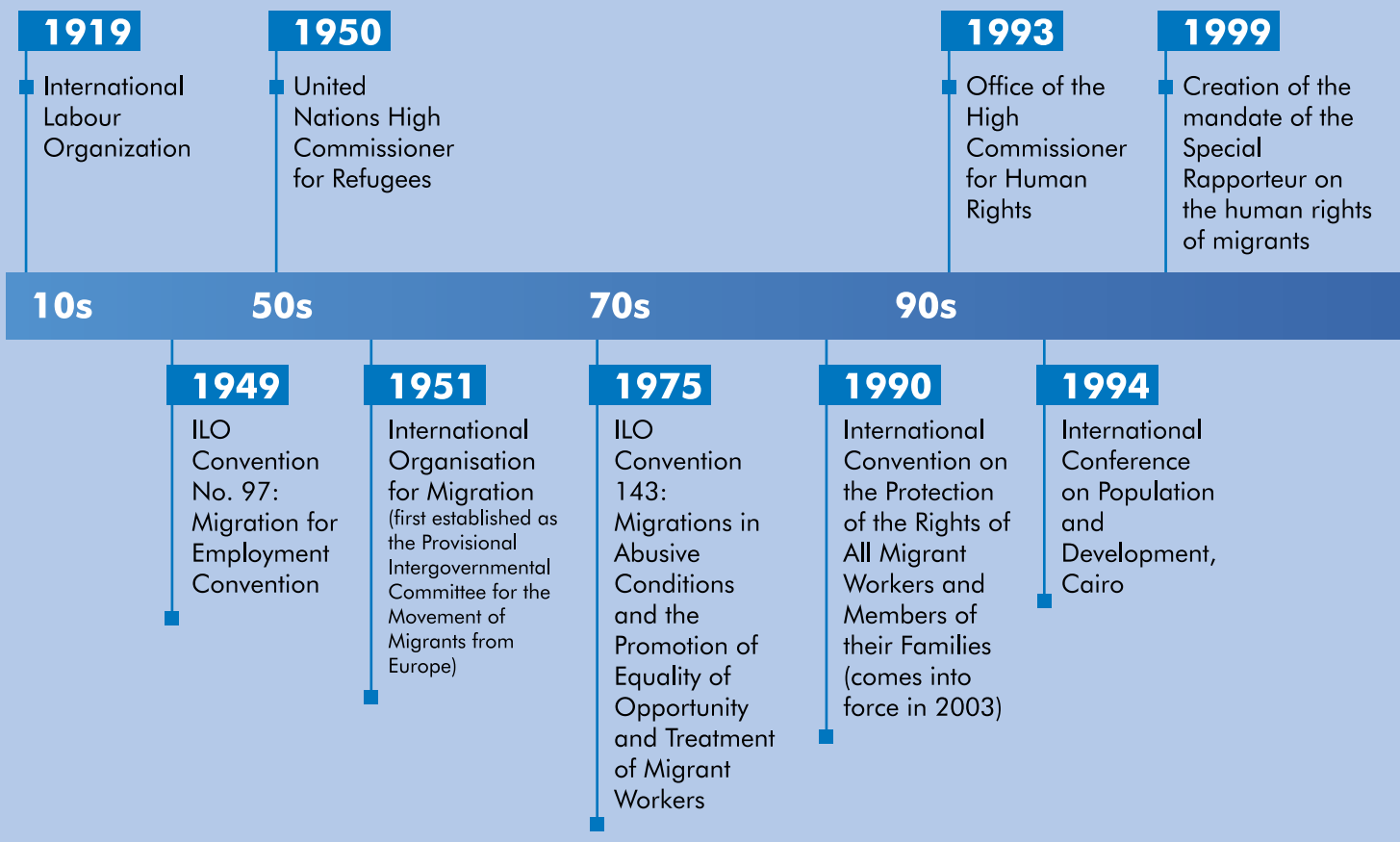
## HUMAN RIGHTS AND MIGRATION WITHIN THE UNITED NATIONS SYSTEM

Since its early beginnings, the UN has been concerned with the issue of international migration from a rights-based perspective. To mention but a few prominent examples; the constitution of the International Labour Organisation (1919) and the mandate of the United Nations High Commissioner for Refugees (1950) explicitly protect the rights of migrant workers and refugees respectively. In 1999 the mandate of a Special Rapporteur on the human rights of migrants was created and in 2003, following the entry into force of the International Convention on the Rights of All Migrant Workers and Members of their Families (ICRMW), the Committee on Migrant Workers began to monitor implementation of that instrument by its States Parties.

Over the last decade, the UN System has witnessed a marked rise in the number of activities and processes taking place under its auspices which are related explicitly to global migration governance. Many of these activities and processes have had a human rights focus.

Introduced in 2006, the Universal Periodic Review (UPR) is an important new peer review mechanism between states for monitoring and oversight on human rights. It is a unique process which involves a review of the human rights records of all UN Member States based on the provisions of the UDHR. The UPR is a state-driven process, under the auspices of the Human Rights Council, which provides the opportunity for each state to declare what actions they have taken to improve the human rights situations in their countries and to overcome challenges to the enjoyment of human rights. The UPR also includes a sharing of best human rights practices around the globe. Currently, no other mechanism of this kind exists. Within the first complete cycle of the UPR, states have made

### Box 3 A select timeline of global governance on migration and human rights



specific references to the human rights situation of migrants in their recommendations to each other, a number of which have been accepted.[26]

At the regional level within the UN System, the Regional Coordination Mechanisms (RCMs) established as part of the UN Reform are convened by the UN Regional Commissions since 1999, with the aim of addressing priority policy and programming issues at the regional level. Some regions, such as Asia-Pacific, have dedicated RCM thematic working groups on international migration.

In his 2002 report on 'Strengthening of the United Nations: an agenda for further change'[27], the then UN Secretary-General, Mr. Kofi Annan, identified migration as a priority issue for the international community, and convened a working group under the lead of Mr Michael Doyle. The final "Doyle Report" signalled the need for a unified United Nations "voice" on migration.[28]

26 *Please see the Universal Human Rights Index for more detail on recommendations related to migration within the UPR. The Universal Human Rights Index is a database that is designed primarily to facilitate access to human rights recommendations issued by three key pillars of the UN human rights protection system: the Treaty Bodies established under international human rights treaties as well as the Special Procedures, and the Universal Periodic Review (UPR) of the Human Rights Council. The Index is the only on-line tool compiling recommendations from the treaty bodies, the special procedures and the Universal Periodic Review. See OHCHR, Universal Human Rights Index, available at: http://uhri.ohchr.org/*

27 *Strengthening of the United Nations: an agenda for further change, A/57/387, 9 September 2002.*

28 *See Migration Working Group (Chaired by Michael W. Doyle), Report to the Secretary General on Migration, 2002.*

## 2000s

**2000**
Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children; Protocol against the Smuggling of Migrants by Land, Sea and Air

**2001**
World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance

Berne Initiative and International Agenda for Migration Management 2001-2005

**2002**
'Doyle Report' on International Migration

**2003**
Global Commission on International Migration 2003-2005

**2004**
International Labour Conference adopts a Plan of Action on migrant workers

Creation of the mandate of the Special Rapporteur on trafficking in persons, especially in women and children

Establishment of the Universal Periodic Review

## 2010s

**2006**
Appointment of the Special Representative of the Secretary General on International Migration and Development

First UN High-Level Dialogue on International Migration and Development

Creation of the Global Migration Group
(following on from the Geneva Migration Group which had been created in 2003)

**2007**
First annual Global Forum on Migration and Development

**2009**
UNDP Human Development report on human mobility and development

IOM International Dialogue on Migration: Human Rights and Migration

**2013**
Second UN High-Level Dialogue on Migration and Development

*UN agency heads attend meeting of the Global Migration Group in Geneva September 2010, Geneva, Switzerland*

*© UN Photo / Jean-Marc Ferré*

## GLOBAL MIGRATION GROUP

In recognition of the need to coordinate the work of the international system on migration, the inter-agency Global Migration Group was created in 2006.[29] The norm-based focus of its mandate is readily apparent from its terms of reference:

"The GMG is an inter-agency group, meeting at the level of Heads of agencies, which aims to promote the wider application of all relevant international and regional instruments and norms relating to migration, and to encourage the adoption of more coherent, comprehensive and better coordinated approaches to the issue of international migration."

The GMG has identified as a priority; "Working to ensure the full respect for the human rights and labour rights of international migrants so as to promote human security and development and, in particular, provide protection to vulnerable migrants, including asylum-seekers, refugees, stranded migrants and victims of exploitation and trafficking."[30]

Since 2006, the GMG has undertaken a number of joint activities related to migration and human rights including a publication on International Migration and Human Rights issued by the GMG to celebrate the 60th anniversary of the UDHR in 2008, and joint statements on The Human Rights of Irregular Migrants adopted by the GMG Principals in September 2010 and on the Impact of Climate Change on Migration adopted at the GMG Principals' meeting in November 2011. In addition, the GMG has organised expert meetings on migration

29 *The Global Migration Group had been preceded by the Geneva Migration Group, which was established in April 2003 by the principals of ILO, IOM, OHCHR, UNCTAD, UNHCR, and UNODC.*

30 *Global Migration Group, Terms of Reference, available at: http://www.globalmigrationgroup.org*

and development, on the human rights of irregular migrants, and on youth and adolescents in the context of migration. The GMG has three thematic working groups; a newly established working group on "human rights, gender and migration" in addition to one on "data and research" and one on "mainstreaming migration into national development strategies", which pool member agencies' expertise to deliver joint outputs. The Group has also recently created two time-bound task forces, on "migration and decent work" and on "capacity development and delivery." Also newly established, a multi-annual work plan for the GMG presents a comprehensive set of time-bound tangible outputs and several work streams relevant to migration and human rights; including on human rights and gender equality, migration and decent work, and the post-2015 development agenda.

Recent decisions taken by the Principals of the GMG in the context of the internal review carried out in 2012-2013 will enable the Group to be a more visible actor with respect to the migration and human rights agenda, to ensure greater coherence between the work plans and activities of UN System agencies and entities, and to function more efficiently and predictably as an internal coordination mechanism of the UN System.[31] While this is an important factor in ensuring a consistent UN "voice" in the global migration and human rights agenda, still left unresolved is the issue of bringing greater coherence to all the governance spaces of the UN that are concerned with migration and human rights. From a human rights perspective, there is need for more "joined-up" thinking within the work of the UN System on migration in order to ensure that the human rights situation of all migrants is considered in a coherent and comprehensive manner. Accordingly, there is increasing need for a space where Member States and other key stakeholders can interact with each other as well as the Global Migration Group on a broad range of cross-cutting human rights and migration issues.

31 *In addition to the measures outlined, such decisions include the establishment of a small joint administrative support team, the extension of chairing periods to one full year, and joint fundraising for specific activities. See www.globalmigrationgroup.org.*

### Box 4 Members of the Global Migration Group

***ILO**: International Labour Organization*

***IOM**: International Organization for Migration*

***OHCHR**: Office of the High Commissioner for Human Rights*

***UN Regional Commissions***

***UNICEF**: United Nations Children's Fund*

***UNCTAD**: United Nations Conference on Trade and Development*

***UNDESA**: United Nations Department of Economic and Social Affairs*

***UNDP**: United Nations Development Program*

***UNESCO**: United Nations Educational, Scientific and Cultural Organization*

***UN Women**: United Nations Entity for Gender Equality and the Empowerment of Women*

***UNHCR**: United Nations High Commissioner for Refugees*

***UNITAR**: United Nations Institute for Training and Research*

***UNODC**: United Nations Office on Drugs and Crime*

***UNFPA**: United Nations Population Fund*

***WHO**: World Health Organization*

***World Bank***

*Qartaba region. Migrant workers from Syria harvesting apples. Lebanon.*

*© ILO / P. Deloche*

*Migrant strawberry pickers working in the United States of America*

*© Fotolia / N. Barounis*

# 4. International migration governance: towards a human rights-based approach

**I believe it is time that we deliberately, publicly, and assertively pursue a meaningful policy shift toward the full and robust integration of human rights in development cooperation, and the adoption of human rights law as the basis for policy coherence across the international system … [W]e are all duty bound to uphold the norms and standards and principles of the UN and the international system so painstakingly built up over the course of the past sixty-plus years.**

*Statement of the UN High Commissioner for Human Rights to the United Nations Chief Executives Board, Fall Session, 2011*

Human rights, development, and peace and security are the three interlinked pillars of the UN System. Encouraging respect for human rights is a fundamental purpose of the United Nations under its Charter. All agencies and organizations under the UN System, within their own unique mandate, are committed to the common values and purpose of the UN Charter and contribute directly and indirectly towards the realization of human rights.[32] The role of the UN System in international migration governance is thus fundamentally defined by a human rights-based approach.

A human rights-based approach is normatively based on international human rights standards and operationally directed to respecting, promoting, fulfilling and protecting human rights. Applied to international migration governance, two main rationales for implementing a human rights-based approach to migration can be highlighted: (1) the intrinsic rationale, acknowledging that a human rights-based approach is the right thing to do, morally and legally, and (2) the instrumental rationale, recognizing that a human rights-based approach leads to better and more sustainable outcomes. In practice, the reason for pursuing a human rights-based approach will be a blend of these two.

***Human rights, development, and peace and security are the three interlinked pillars of the UN System.***

The underlying feature of a human rights-based approach identifies rights holders, who have a claim to certain entitlements, and duty bearers, who are legally bound to respect, protect and fulfil the entitlements associated with those claims Such an approach works towards strengthening the capacities of rights-holders to make their claims, and of duty-bearers to meet their obligations. In the context of migration governance it is all the more attractive because the approach elevates policy goals and practices to recognized normative standards and principles with international legitimacy, thus providing a universal and clear vision of implementation to States.

A human rights-based approach to migration brings the treatment of migrants as human beings to the forefront of all discussion and programming on migration, underlined by the fundamental principles of non-discrimination, empowerment, participation and inclusion, and accountability.

There are at least four major functions performed by the UN System in support of migration and human rights: (a) standard setting and normative oversight, (b) provision of a forum for human rights-based dialogue and cooperation, (c) technical assistance, and (d) building up the knowledge base, as described below.

### A) STANDARD SETTING AND NORMATIVE OVERSIGHT

The central function of international migration governance from a human rights perspective is linked to the promotion and development of international standards for the protection of the human rights of migrants. This includes the essential task of monitoring and overseeing the implementation of

32 *See the United Nations Development Group, UNDG Human Rights Mainstreaming Mechanism, Operational Plan 2011-2013, November 2011, Available at: http://undg.org/docs/12173/UNDG-HRM%20OperationalPlan%20Nov%202011.pdf*

### UN STATEMENT OF COMMON UNDERSTANDING ON HUMAN RIGHTS-BASED APPROACHES TO DEVELOPMENT COOPERATION AND PROGRAMMING

- All programmes of development co-operation, policies and technical assistance should further the realisation of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments.
- Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments guide all development cooperation and programming in all sectors and in all phases of the programming process.
- Development cooperation contributes to the development of the capacities of 'duty-bearers' to meet their obligations and/or of 'rights-holders' to claim their rights.

*The UN Statement of Common Understanding on Human Rights-Based Approaches to Development Cooperation and Programming (the Common Understanding) was adopted by the United Nations Development Group (UNDG) in 2003.*

states' existing obligations under the international legal framework relating to migration. This legal framework has been agreed by states within the UN System and as a consequence, the UN has a leading role in promoting the adoption and effective application, monitoring and implementation of the relevant legal norms by its Member States.

As with other issues of a cross-cutting nature, there is no single organization in the international system that has the mandate to provide overall normative oversight and leadership in the protection of migrants' rights. Instead this function is diffused within the UN System (see Box 5). UNHCR has a supervisory function under international refugee law.[33] ILO's mandate extends over the governance of labour migration and the protection of migrant workers.[34] OHCHR is mandated by the international community to promote and protect all human rights, and serves as secretariat to the human rights mechanisms; including the treaty bodies, special procedures and the UPR.

In addition, a number of entities of the international system carry out various important activities relevant to the legal framework, including promotion of and advocacy for the various human rights instruments relevant to the migrants.[35]

## B) PLATFORM FOR DIALOGUE AND COOPERATION

A second function carried out by the UN System is to promote dialogue and cooperation on migration and human rights issues. As noted in previous sections, considerable progress has been made in recent years towards a genuinely global dialogue on migration issues. In addition to the High-Level Dialogues, the General Assembly (Third Committee) has negotiated and adopted a series of resolutions which consider the protection of migrants and of women migrant workers. The Second Committee of the General Assembly has considered the issue of international migration and development in a separate process, while the Member States of the Human Rights Council adopt an annual resolution on the human rights of migrants, in addition to adopting resolutions on related issues such as birth registration and the right of everyone to

33 *Article 35 of the Refugee Convention obliges States Parties in Article 35(1) to "undertake to co-operate with the [UNHCR] in the exercise of its functions, and … in particular facilitate its duty of supervising the application of the provisions of [the] Convention."*

34 *The Constitution of the ILO specifically mandates the organization in its Preamble to give attention to the "protection of the interests of workers when employed in countries other than their own".*

35 *For instance, the Steering Committee of the Global Campaign for the Ratification of the Migrant Workers' Convention has played an important role in advocating for the ratification and implementation of the ICRMW. The Steering Committee consists of the following international agencies and entities; OHCHR, ILO, IOM and UNESCO in addition to international and regional NGOs, trade unions and other civil society organisations. See http://www.migrantsrights.org/*

### Box 5 Relevant monitoring mechanisms within the United Nations System

**Human rights treaty bodies:**

- Human Rights Committee (CCPR)
- Committee on Economic, Social and Cultural Rights (CESCR)
- Committee on the Elimination of Racial Discrimination (CERD)
- Committee on the Elimination of Discrimination against Women (CEDAW)
- Committee against Torture (CAT) and Subcommittee on Prevention of Torture (SPT)
- Committee on the Rights of the Child (CRC)
- Committee on Migrant Workers (CMW)
- Committee on the Rights of Persons with Disabilities (CRPD)
- Committee on Enforced Disappearances (CED)

**Human Rights Council**

- Special Procedures (including Special Rapporteur on the Human Rights of Migrants)
- Universal Periodic Review

**International Labour Organisation supervisory mechanisms**

- ILO Tripartite Governing Body
- Committee of Experts on the Application of Conventions and Recommendations
- International Labour Conference Committee on the Application of Standards
- Governing Body Committee on Freedom of Association

**United Nations High Commissioner for Refugees**

- Supervisory responsibility for the 1951 Refugee Convention

**United Nations Office of Drugs and Crime**

- Conference of the Parties to the United Nations Convention against Transnational Organized Crime and the Protocols Thereto, and the open-ended intergovernmental working groups established by the Conference to address Trafficking in Persons and Smuggling of Migrants

recognition everywhere as a person before the law. The Universal Periodic Review has created a platform for all UN Member States to engage with each other on migration and human rights issues. Within the first cycle, in which all UN Member States were reviewed, recommendations addressed such concrete issues as improved data collection on the human rights situation of migrants, measures to enhance their access to health care and other services, the release of migrant children from detention, and the implementation of national action plans to protect migrants from discrimination. The International Labour Conference of the ILO has endorsed a rights-based approach to labour migration, adopting in 2004 a Plan of Action for migrant workers.

Also relevant are major international conferences related to migration, such as the International Conference on Population and Development and the

*Vietnamese refugees in detention center in Phnom Phen, Cambodia. January 1972, Phnom Phen, Cambodia*

*© UN Photo/ J Robaton*

World Conference against Racism, and the follow-up processes initiated in the aftermath of these conferences.

### C) SERVICE PROVISION AND TECHNICAL ASSISTANCE

At the operational level, a number of international organisations have extensive programmes of service delivery in support of the human rights of migrants. Several UN agencies and IOM have developed a broad range of activities in this regard, offering support to States on such issues as pre-departure orientation, migrant worker recruitment, medical screening, assistance with the provision of travel documents, facilitation of family reunification, undertaking labour market assessments to determine the demand for migrant workers and improving the labour market integration of migrants, measuring discrimination against migrants, assisting migrants in the informal economy, providing emergency assistance to stranded migrants or migrants in crisis situations, providing assistance to returning migrants, and facilitating migrants' access to criminal justice systems and labour tribunals.

Agencies also carry out activities aimed at those who do not move, such as families left behind in countries of origin and children born to migrant parents in countries of destination.

Several organisations assist States to integrate migrants in destination countries, to facilitate recognition of diplomas and qualifications, to promote ethical labour recruitment frameworks, to extend social protection coverage to migrants, to provide assistance to victims of trafficking in persons and smuggled migrants, to facilitate the transfer of remittances, and education sector initiatives targeting negative stereotypes and xenophobia against migrants.

**The greatest source of strength enjoyed by the United Nations stems from its universality of membership and the comprehensive scope of its mandate. And the most encompassing manifestation of this strength is in the normative realm. Norms that approach universality form a principled basis on which to assess and guide practice within the community of nations. Such norms have not only a moral import. They also provide the institutional underpinnings of daily life within the international community: expectations as to rights and obligations, the mutual predictability of behaviour afforded by the rule of law, the specification of best practices, a nearly endless array of standards without which the conduct of routine international transactions would be inconceivable.**

*Report of the Secretary-General on United Nations reform: measures and proposals, A/51/950, 1997, para. 8.*

Agencies provide technical assistance and capacity-building support to States and other stakeholders through training of migration officials, through support to review, adopt and/or amend relevant legislation, in the form of legal training, and through strengthening the capacity of and partnerships with a range of ministries, regional authorities, national human rights institutions, non-governmental organisations, trade unions and employers' organizations to govern migration.

### D) DEVELOPING THE KNOWLEDGE BASE ON MIGRATION AND HUMAN RIGHTS: DATA COLLECTION AND INDICATORS

The UN System has an important knowledge development and dissemination function in relation to data on migration and human rights issues. Human rights-based policy formulation on migration and its effective implementation is dependent on the availability of relevant, valid and reliable data, international comparative analysis and rigorous monitoring o f results and outcomes.

Several agencies and entities, as well as the GMG working group on data, have made progress in data collection on issues relating to human rights and migration.[36] OHCHR has recently developed a publication entitled *"Human Rights Indicators: A Guide to Measurement and Implementation."* [37] The methodology on human rights indicators develop ed by OHCHR will assist States and other relevant stakeholders in building national capacities for human rights implementation. The framework focuses on quantitative as well as qualitative indicators and offers a structured and consistent approach to facilitate a dialogue among stakeholders by translating universal human rights standards into indicators that are contextually relevant at country level.

### GAPS AND CHALLENGES

In each of the four functions described above it is apparent that there has been progress in advancing the migration and human rights agenda in recent years. There remain, however, continuing challenges and gaps.

There is a significant knowledge gap in relation to migration and human rights. For example, most official data systems fail to capture either the number or the circumstances of migrants, and much international data on migration does not accurately account for migrants in an irregular situation. Where data is available, it can be incomplete; data is often available on migrants who are detained or otherwise

36 *For example, MigrantInfo is a flexible database system that displays the UN Population Division's estimates of the international migrant stock to facilitate data sharing in a uniform format. Developed by UNICEF in partnership with UN/DESA and the University of Houston, the database allows users to generate tables, graphs and maps using the latest available estimates of the international migrant stock, disaggregated by age and gender. UNODC produces biennial global reports on trafficking in persons, analyzing trafficking flows and patterns across the globe, and maintains a public global database of human trafficking cases in national criminal justice systems.*

37 *Available at http://www.ohchr.org/Documents/Publications/Human_rights_indicators_en.pdf . The Guide defines human rights indicators as "specific information on the state or condition of an object, event, activity or outcome that can be related to human rights norms and standards; that addresses and reflects human rights principles and concerns; and that can be used to assess and monitor the promotion and implementation of human rights." OHCHR, Human Rights Indicators: A Guide to Measurement and Implementation, New York and Geneva, 2012, p. 16.*

*Helping Palestinian refugees to cope. Mother carrying her newborn infant in Baga'a camp, Jordan August 1986, Jordan*

*© UN Photo / John Isaac*

subject to state action – e.g. arrests or even deaths at border control points, numbers in immigration detention, and return figures - but this is rarely indicative of the total irregular migrant population. Population censuses remain the main statistical source of information about migrant populations, and they are of limited value in tracking irregular and marginalized migrant populations.[38] A human rights perspective can help to reorient the collection of data to go beyond traditional sources, and to analyse such sources as population statistics or economic indicators with an eye on vulnerability, discrimination and exclusion. In addition, providing a more accurate and rights-based picture of migration, including through documenting the economic and social contributions of migrants, investigating the wider public impact of denying access to essential services, and conducting more research on the human rights impacts of remittance flows for example, can help to improve public perceptions of migration and combat xenophobia.

In relation to the standard setting and monitoring functions in various parts of the UN System, a lack of overview of and coherence between the various monitoring mechanisms could lead to overlaps and gaps, particularly where mandates are haphazard or diffuse. Similarly, while there is an impressive array of programmes and projects currently being undertaken in order to protect and promote the human rights of all migrants in practice, at the same time the s heer number of actors with sometimes overlapping mandates related to migration and human rights has resulted in a somewhat fragmented institutional picture, at the international and regional levels. In such a picture, it can be difficult for Member States and other stakeholders to identify those agencies and entities with the most relevant and appropriate mandate for the technical assistance being sought. Finally, despite the important space provided to norm-based migration issues by the UN, it is a reality that global discu ssion on the human rights aspects of migration has tended to be more subdued, with a tendency to focus prominently on the more economic dimensions of migration and its development implications. The lack of inclusive, participatory and accountable global dialogue on migration and human rights is an important migration governance gap.

38 *See the debate that took place within the recent Day of General Discussion of the Committee on Migrant Workers on the role of migration statistics for treaty reporting and migration policies. Available at http://www2.ohchr.org/english/bodies/cmw/dgd22042013.htm*

*Item from Tunisian migrant boat abandoned at Lampedusa Port March 2010, Lampedusa Italy*

*© UN Photo /UNHCR/ Phil Behan*

*Migrant children working in a field in North Carolina*
*January 1978, North Carolina, United States*

*© UN Photo / S Rotner*

*Migration group guardians in the region of Abalak. Niger*

*© ILO / M. Crozet*

# 5. Conclusions and Recommendations

The governance of international migration within the institutional structures of the United Nations presents a somewhat inconsistent picture; on the one hand migration and human rights issues are being discussed more frequently and more integrally within UN institutions and its governance spaces, while at the same time there is a need for a more robust commitment to a human rights-based approach to migration and a clear vision on how such an approach could be implemented. The challenge addressed in this paper is the search for systematic, coherent and coordinated international cooperation in protecting the human rights of all migrants. Based on the existing and agreed legal and normative framework of migration, the UN offers a common platform to address migration and human rights issues for its Member States as well as important stakeholders including the different UN organizations with a relevant mandate, IOM, regional organisations, human rights mechanisms and other experts, national human rights institutions, civil society, social partners, the private sector and migrants themselves. In this context, it is important not to disregard the significant space that does and will continue to be provided by the GFMD for non-binding and informal discussion of existing migration practice, while also seeking to enhance the human rights content of the Global Forum.

Yet, even while the space offered by the GFMD continues to exist, the analysis of this report leads to the conclusion that a technical and working platform, potentially within the context of the General Assembly or the ECOSOC, is needed in the long or even medium term in order to enable systematic interaction between all stakeholders on a broad range of cross-cutting human rights and migration issues, including to identify policy gaps and emerging issues.[39]

***The challenge addressed in this paper is the search for systematic, coherent and coordinated international cooperation in protecting the human rights of all migrants.***

The platform, possibly entitled a Standing Panel on Migration and Human Rights, would thus aim to facilitate a norm-based discussion, share information and establish common understandings on cross-cutting issues, particularly those which are not being adequately considered within existing UN governance forums. This would include issues which cut across mandates as well as those where further guidance is needed from monitoring and expert bodies, such as the

- protection interface between asylum and migration movements;
- human rights of smuggled migrants;
- exploitation and abuse of migrant workers;
- countering discrimination and xenophobia against migrants;
- access of irregular migrants to essential services such as health and education;
- rights of migrants caught in disaster or conflict situations;
- protection of migrant women, particularly in the context of sexual and gender-based violence; and
- situation of children in the context of migration.

It would seek to establish working links with the human rights and ILO mechanisms as well as other relevant supervisory and monitoring mechanisms, including a close link with the Special R apporteur on the human rights of migrants. It would bring together all relevant stakeholders so as to ensure coherence and consistency in addressing migration and human rights-related issues. Such a platform could be supported by the Global Migration Group, particularly through its working group on Migration, Human Rights and Gender. In order to be politically acceptable, such a structure would need to demonstrate its added value in the growing tangle of migration-related discussions taking place within and outside the UN.

39 *Such a platform could take inspiration from existing formats within the United Nations System. In terms of the involvement of experts and migrants respectively, for example, inspiration could be taken from the structure of the Inter-Governmental Panel on Climate Change and the Permanent Forum on Indigenous Issues, noting however that the human rights framework must be central to the agenda and the working methods of the platform.*

In the more immediate term, however, the analysis of this report leads to a number of recommendations as below for practical and action oriented ways in which to strengthen the vision of migration and human rights within the UN System.

## RECOMMENDATIONS

As relevant, Member States, the UN System and IOM, and other stakeholders should

**a.** Continue to strengthen and promote the coordination function of the GMG in relation to migration and human rights, particularly in order to support the wider application of all relevant international and regional instruments and norms relating to migration, and to encourage the adoption of more coherent, comprehensive and better coordinated approaches to the issue of international migration.

The GMG should ensure that states and other stakeholders seeking technical assistance on migration and human rights issues are provided with a clear entry point to the different parts of the UN System and IOM working on such issues, to match competence and expertise according to the different mandates of the agencies involved.

**b.** Strengthen discussions on migration and the human rights of migrants within the deliberations of the Human Rights Council, and specifically to

i. enhance and strengthen the examination of migration and human rights issues within the Universal Periodic Review;

ii. include consideration of the human rights of migrants within its annual panel discussions on, inter alia, the rights of the child and women's human rights;

iii. hold an annual panel discussion on the human rights of all migrants.

**c.** Establish a UN-led multi-stakeholder initiative on indicators on migration and human rights. Human rights indicators are necessary in order to build capacity to develop rights-based policy at the national and local levels, and to develop tools for monitoring, implementation, capacity-building and advocacy. What is needed is a methodology to highlight the human rights norms and principles, spell out the essential attributes of the rights enshrined in international instruments and translate this narrative into contextually relevant indicators and benchmarks for implementing the human rights of migrants at country level. Such an initiative could

iv. develop a set of human rights indicators, specifically concerned with migrants and migration with a focus on the most vulnerable. The indicators could be targeted to inform emerging debates related to the Post-2015 UN Development Agenda;

v. elaborate guidelines for more reliable and accurate data collection on the human rights aspects of migration, including disaggregation by age, sex and sector of employment and where possible by legal status;

vi. enhance knowledge on and monitoring of the human rights situation of migrants, through disseminating the indicators through the Universal Periodic Review process and the work of other relevant human rights mechanisms, and producing publicly available information to address popular concerns surrounding migration.

# Annex 1

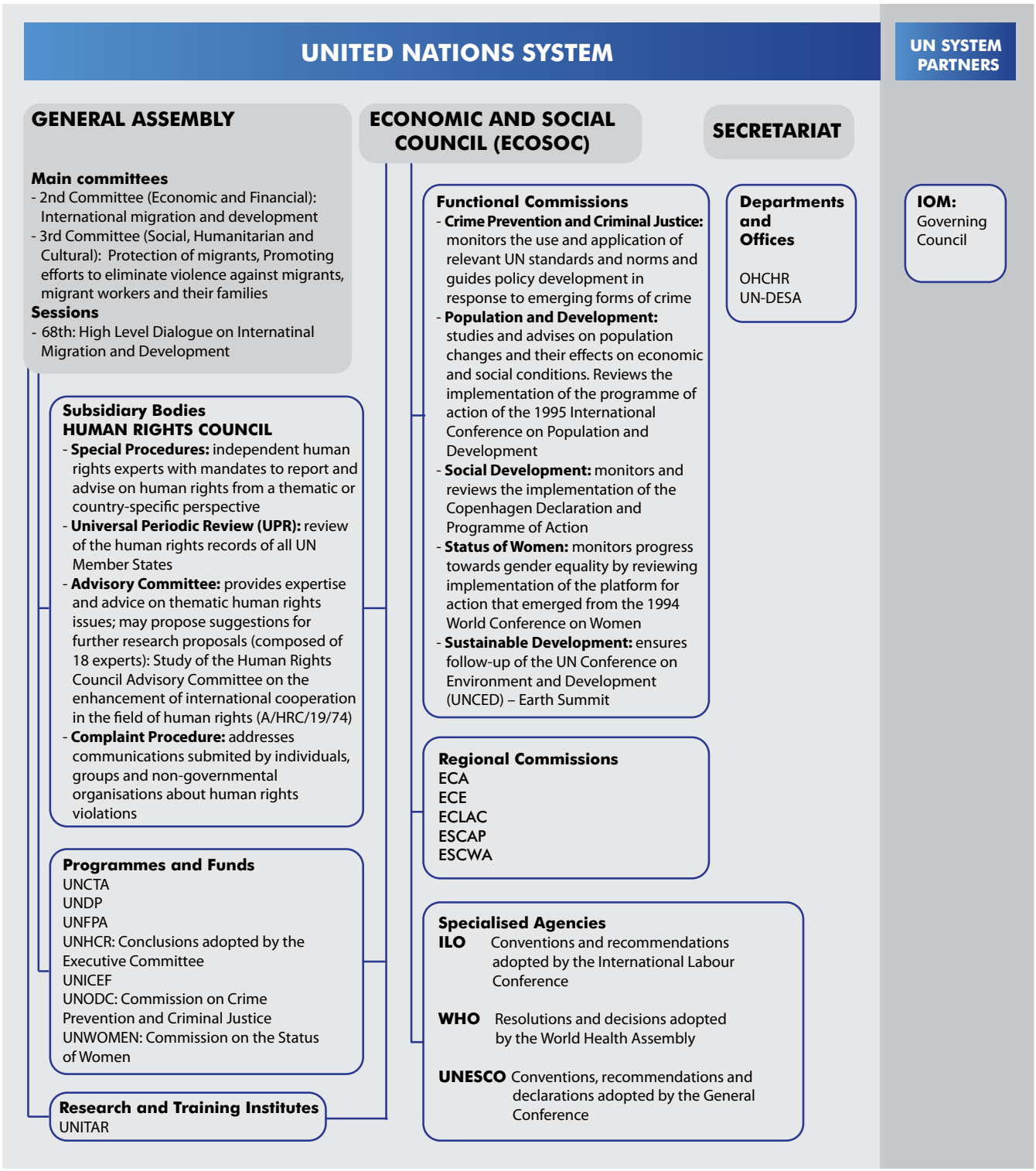
## DECLARATIONS, GUIDELINES AND PRINCIPLES RELEVANT TO THE HUMAN RIGHTS OF MIGRANTS

While covenants, statutes, protocols and conventions are legally binding on those States that ratify or accede to them, there are many other universal human rights instruments with a different legal status. Declarations, principles, guidelines, standard rules and recommendations have no binding legal effect, but have an undeniable moral force and provide practical guidance to States in their conduct. These include:

- Declaration on the Rights of Individuals who are Not Nationals of the Country in Which They Live (1985)
- Programme of Action of the International Conference on Population and Development (1994)
- Durban Declaration and Programme of Action (2001)
- United Nations Declaration on the Rights of Indigenous People (2007)
- United Nations Global Plan of Action to Combat Trafficking in Persons (2010)
- UN Guiding Principles on Business and Human Rights (2011)
- United Nations Conference on Sustainable Development, Outcome document "The future we want" (2012)
- OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking (2002)
- ILO Multilateral Framework on Labour Migration (2006)
- UNHCR, Refugee Protection and Mixed Migration: A 10-Point Plan of Action (2007)
- UNODC International Framework for Action to Implement the Trafficking in Persons Protocol (2009)
- UNODC International Framework for Action to Implement the Smuggling of Migrants Protocol (2011)
- IOM Migration Crisis Operational Framework (2012)

# Annex 2

## MAP OF THE INSTITUTIONAL FRAMEWORK FOR MIGRATION WITHIN THE UN SYSTEM AND THE PRIMARY GOVERNANCE SPACES ON MIGRATION AND HUMAN RIGHTS. ALSO SEE BOX 5



# Annex 3

## KEY MESSAGES OF THE UNITED NATIONS SYSTEM ON MIGRATION

**1. International migration is a key feature of globalization in the 21st century.** Migration drivers include the search for better living and working conditions, global labour markets, persistent economic, social and demographic inequalities, human rights violations, environmental change as well as conflict and violence. Some 214 million people, 3% of the world's population, almost half of whom are female, live outside their countries of origin. Migration is an integral part of the development process. South-South migration is almost as common as South-North migration and is likely to increase in the near future.

**2. Governments should foster the benefits of international migration.** Migration can significantly improve human development outcomes for migrants and their families by raising incomes through decent work and improving access to education and health. The contribution of migrants and diaspora communities is significant through remittances, trade, investment, networks and knowledge sharing. Migrants' contributions can be further enhanced by lowering the costs of migration, ensuring their rights and equal treatment with nationals concerning their working conditions, wages, safety and health protection, portability of pensions and other social security benefits, and through promoting mutual recognition of diplomas and qualifications.

**3. Governments should reduce the negative impacts of international migration.** Governments should enhance access to regular migration channels and combat all abusive forms of migration. Migration policies should be better aligned with actual and projected labour market needs and address other relevant issues, including the loss of human capital in critical sectors, such as health and education, and the negative impact on children and families left behind.

**4. States should respect, protect and fulfill the human rights of all migrants, regardless of their legal status.** Migrants whose rights are protected are able to live with dignity and security and, in turn, are better able to contribute to their host and origin societies both economically and socially than those who are exploited and marginalized. Migrants in an irregular situation, especially women, children and youth, are particularly vulnerable to abuse and exploitation. Host countries should avoid the criminalization of irregular migration, and prevent and combat discrimination, xenophobia, related intolerance and crimes against migrants and their families. Care should be taken to ensure that all persons in need of protection, including refugees, are identified and assisted within mixed migration flows.

**5. States should ratify and implement all relevant international instruments related to international migration**. This includes the core international human rights instruments, relevant ILO conventions, the protocols against human trafficking and migrant smuggling, the 1951 refugee convention.

**6. Enhanced cooperation and coherence on migration and mobility is required at the national, bilateral, regional and global levels as no country can manage international migration alone**. Cooperation requires the involvement of all stakeholders, including local governments, the private sector, employers' and workers' organizations, civil society and the research community. The United Nations should play a key role in assisting Member States to respond to the opportunities and challenges of migration through a gender-sensitive and a rights-based approach.

**7. There is need to strengthen migration capacities, coordination and cooperation, foster knowledge and informed migration policy making.** Capacity development, including investments in migration data collection and research, is necessary to formulate and implement evidence-based migration policies. International migration should be mainstreamed into national development planning and strategies, taking account a rights-based and age- and gender-sensitive perspective.

UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

The Office of the United Nations High Commissioner for Human Rights (OHCHR) represents the world's commitment to universal ideals of human dignity. It has a unique mandate from the international community to promote and protect all human rights. Created in 1993, OHCHR is mandated to promote and protect the enjoyment and full realization of all human rights by all people. The mandate includes preventing human rights violations, securing respect for all human rights, promoting international cooperation to protect human rights, coordinating related activities throughout the United Nations, and strengthening and streamlining United Nations human rights work. OHCHR also functions as the secretariat of the Human Rights Council, the special procedures mandate holders, the treaty bodies and the Universal Periodic Review.
www.ohchr.org

Migration and human rights

IMPROVING HUMAN RIGHTS-BASED GOVERNANCE OF INTERNATIONAL MIGRATION

Office of the High Commissioner for Human Rights

Palais des Nations
CH 1211 Geneva 10 – Switzerland
Telephone: +41 22 917 90 00
Fax: +41 22 917 90 08
www.ohchr.org