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INTERNATIONAL DIALOGUE ON MIGRATION 2008

Challenges of Irregular Migration: Addressing Mixed Migration Flows

Discussion Note

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I. INTRODUCTION

1. The image of a small fishing boat drifting in the middle of the ocean brings into sharp relief key issues pertaining to the complex phenomenon of irregular migration and raises such questions as: Who are the people in the boat? What are their motivations? What are their needs? What is their legal status? Within whose responsibility do these persons fall? How can States and other stakeholders best address such situations? What can be done to reduce the incidence of such events and avoid undue suffering and loss of life?

2. The notion that migration flows are “mixed” is not an altogether new one. Migration has always been a multidimensional phenomenon, involving a variety of people who are on the move for a diversity of reasons. The IOM Constitution¹ notes that “international migration also includes that of refugees, displaced persons and other individuals compelled to leave their homelands” and calls for “facilitating the emigration of persons who desire to migrate to countries where they may achieve self-dependence through their employment and live with their families in dignity and self-respect”. The IOM Strategy² further reiterates the need to support “States, migrants and communities in addressing the challenges of irregular migration”, including through “regional and global debate and dialogue on migration”.

3. Whether moving in a regular or an irregular fashion, all migration flows contain a variety of individuals possessing human rights. Irregular migration constitutes only a part of the overall volume of global migration. Estimates refer to irregular migrants as representing 10 to 15 per cent of total migrant stock and flows.³ Irregular flows nevertheless represent particular challenges. On the one hand, they impede the rule of law and the legitimate functioning of government authority to regulate the entry and stay of non-nationals on its territory. On the other hand, irregular migrants face, to a disproportionate extent, all manner of dangers, hardships and infringements of their human rights. In order to ensure the effective management of migration that simultaneously ensures the integrity of appropriate governmental authority as well as the safety, dignity and well-being of migrants, national and international policy, legal and operational responses need to take into account the different profiles of the persons involved.

4. Mixed migration flows pose significant humanitarian challenges, but imply more than *ad hoc* emergency responses to individual events. Attention needs to be paid to the genesis of mixed migration flows in countries of origin (including the connection between internal and external migration), the movement itself, the arrival of irregular migrants in countries of transit or destination, the post-arrival stage and the longer-term options available to States and migrants, such as integration, onward or circular migration, return and reintegration.

¹ IOM (1989:9) *Constitution of the International Organization for Migration*. Available from http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/about_iom/iom_constitution_eng_booklet.pdf.

² IOM Strategy (2007). Available from http://www.iom.int/jahia/webdav/shared/shared/mainsite/about_iom/docs/res1150_en.pdf.

³ ILO (2004:11, para.37, citing Hatton and Williamson (2002)) *Towards a fair deal for migrant workers in the global economy*. Available from <http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/meetingdocument/kd00096.pdf>.

5. This note aims to stimulate discussion among governments, international organizations and other stakeholders concerning collaborative approaches to the comprehensive management of mixed migration flows. It seeks to provide food for thought based on IOM's experience with complex migration phenomena. This preliminary document will be updated in accordance with the discussions at the Council and the direction that IOM's membership may wish to take regarding further reflection on this issue.

II. CONCEPTUALIZING MIXED MIGRATION FLOWS

6. The principal characteristics of mixed migration flows include the irregular nature of and the multiplicity of factors driving such movements, and the differentiated needs and profiles of the persons involved. Mixed flows have been defined as "complex population movements including refugees, asylum seekers, economic migrants and other migrants".⁴ Unaccompanied minors, environmental migrants, smuggled persons, victims of trafficking and stranded migrants, among others, may also form part of a mixed flow.

7. A crucial consideration is the treatment of refugees and asylum seekers. Among all the persons who may be involved in mixed flows, refugees represent a particular case due to their unique status under international law. A key element of the management of mixed migration flows is the ability to ensure protection for refugees, especially regarding the principle of *non-refoulement*, even if the proportion of refugees is relatively small relative to the overall flow. When refugees use the same routes and means of transportation as other migrants, it can be difficult to distinguish refugees and asylum seekers from others, posing a challenge for the ability of States to fulfil their refugee protection obligations in managing the entry and stay of non-nationals in their territories. UNHCR's work on mixed flows, including the High Commissioner's Protection Dialogue of 2007 and the 10-Point Plan, focuses on ensuring refugee protection in mixed migration flows.⁵ Other specialized legal and protection regimes concern the particular case of victims of trafficking.⁶

8. Importantly, however, it should be noted that the vast majority of migrants in mixed flows do not fit any particular label or established (legal) category, such as that of a refugee or trafficked person. Such persons may nevertheless have humanitarian and other needs. Not all migrants and not all irregular migrants *per se* are vulnerable, but any mixed flow will include individuals with distinct vulnerabilities that merit special attention. Such distinctions notwithstanding, all migrants are entitled to the protection of their human rights, regardless of their status as non-nationals in the country of residence.⁷

⁴ IOM International Migration Law (2004:42) *Glossary on Migration*. Available from http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/serial_publications/Glossary_eng.pdf.

⁵ Please refer to <http://www.unhcr.org/cgi-bin/texis/vtx/asylum?page=interview> and <http://www.unhcr.org/protect/473db6522.html> for more details.

⁶ Most relevant here is the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (also known as Palermo Protocol), 2000.

⁷ The international legal framework on human rights is understood to consist of the 1948 Universal Declaration of Human Rights, the 1966 Covenant on Civil and Political Rights, and the 1966 Covenant on Economic, Social and Cultural Rights. In addition, relevant instruments include the 1965 Convention on the Elimination of All Forms of Racial Discrimination; the 1979 Convention on the Elimination of All Forms of Discrimination Against Women; the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the 1989 Convention on the Rights of the Child, and the 1990 Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Refugees are protected under the 1951 Convention Relating to the Status of Refugees, and its 1967 Protocol.

9. Although mixed flows take place outside legal migration channels, it is important not to approach this issue solely from the perspective of its irregular nature. A narrow focus may risk obscuring the varied needs, vulnerabilities, motivations, rights and obligations of all parties involved. A comprehensive approach to this issue also encompasses more fundamental considerations, including ways to minimize recourse to irregular migration channels in the first place, something which is in the interest of both States and migrants.

III. MANIFESTATIONS OF MIXED FLOWS

10. Mixed migration flows often come to public attention as emergencies, in the form of a single migration event or a series of events in which a group of migrants arrives in an irregular manner at a particular point of destination. These events can be highly visible, as in the case of the boats off the shores of Australia, traversing the Gulf of Aden or arriving on the Canary Islands. In other instances they may be of a more ongoing nature and take place across immediate borders between neighbouring countries, for example in the Sonora Desert or between Pakistan and Afghanistan. Often there is a seasonal pattern to these events, shaped, for instance, by climatic conditions at home or along the migration route, or by the ebb and flow of labour demands.

11. The emergency event, however, constitutes just one snapshot of a phenomenon that is much broader and a process that is much longer. To adequately capture the diversity of groups, motivations and needs involved in mixed flows requires a longitudinal approach which also considers the roles and experiences of countries and communities of origin, transit and destination along the way.

12. Moreover, mixed migration flows themselves are not static. Rather, transformations take place and new challenges arise during the course of the migration process, including the particular case of stranded migrants. The reasons for movement may also change, sometimes complicating the assessment of a person's legal status. An individual may, for example, start his or her journey as a refugee, but then decide to migrate onward in an irregular manner from the country of first asylum, sometimes through a smuggling network. Such secondary movements raise many questions, including that of the viability of stay in the first country of asylum.

IV. MIXED FLOWS: THE NEED FOR A COMPREHENSIVE MIGRATION MANAGEMENT APPROACH

13. IOM's approach to migration management focuses on the formulation and implementation of comprehensive policies, laws and administrative arrangements needed to address migration issues effectively according to national, regional and international priorities, while being consistent with international law, including human rights and refugee protection obligations. It encourages States and other relevant actors to manage the whole "migration lifecycle" in a coherent manner, including by addressing mixed migration flows before or as they develop, while in motion and in emergency situations, post-arrival and in the longer term.

Pre-departure

14. At the pre-departure stage, generating awareness of the rights and obligations of both States and migrants is a fundamental element in efforts to create realistic expectations among potential migrants. Many migrants are unaware of the practical, legal, social and economic consequences involved in moving to another country. For migration management to be effective, potential migrants need to have complete and accurate information about legal migration options as well as the hazards and consequences of irregular migration, in particular the risk of trafficking for sexual and labour exploitation. Migrant resource centres and targeted information campaigns have been used to this end and an appraisal of the “lessons learned” in this respect could serve to improve the effectiveness of such measures in the future.

15. Broader considerations regarding the management of mixed migration flows start at a more structural level and concern the factors that motivate or compel individuals to migrate and, in particular, to resort to irregular channels. Among the options available are initiatives linking migration and development, targeted development assistance in areas of high migration pressure as well as the creation of adequate legal migration channels, including possible temporary, seasonal or circular labour migration programmes, to address real needs.

In transit and upon arrival

16. Ensuring that States have the capacity to act and provide humanitarian support when sudden inflows occur is a matter of priority. Humanitarian action often starts with rescue procedures, for example interception on the high seas of ships carrying migrants which is partly regulated by the law of the sea. Specifically, training may be needed for law enforcement agencies in the humane handling of migration flows that are likely to contain a diversity of groups, including vulnerable individuals. In Angola, for example, IOM and UNHCR jointly facilitated four workshops on “Protection and Mixed Migration” in 2008, sensitizing nearly 200 immigration and border officials to the challenges of mixed migration border management.

17. The moment of arrival is also crucial for status determination and needs-based assessments and appropriate responses. Once the most acute welfare needs have been addressed, screening should be conducted for indicators of trafficking and legitimate claims for refugee status identified. The fact of having travelled as part of a mixed flow in irregular channels should not disqualify an individual from accessing the special protections reserved, for example, for victims of trafficking, migrant children or asylum seekers. All remaining persons should receive counselling on further options, such as legal onward migration or voluntary return.

18. On the island of Lampedusa, Italy, for example, IOM, UNHCR and the Italian Red Cross successfully support the Italian government in providing humanitarian assistance, identifying vulnerable groups, enhancing and monitoring access to refugee status determination as well as offering advice on migration options to the thousands of irregular migrants and asylum seekers who reach the southern coast of Italy each year. This type of cooperative approach should be considered for replication in similar situations. Other illustrations of effective field-based inter-agency collaboration include the Mixed Migration

Task Force (MMTF)⁸ which facilitates the joint efforts of seven organizations active in Somalia, led by IOM and UNHCR.

19. Migrants, and especially asylum seekers, victims of trafficking, minors and those in need of special medical care, may be severely distressed or traumatized by their experiences. Their dignity and well-being and respect for their human rights should be a central concern. In some cases, countries or groups of countries have opted for the establishment of off-shore processing centres or holding facilities to organize the reception and basic practical assistance. The use of such facilities should be subject to strict and carefully monitored legal and human rights standards and they must be sensitive to the range of needs encountered in such diverse groups of migrants, including, for example, access to adequate medical care and separate housing and sanitary facilities for women and children. Relevant agencies, non-governmental organizations or civil society can be effective partners in assisting vulnerable groups and in maintaining such centres consistent with international standards.

20. The term “stranded migrant” refers to individuals who have entered a country of transit or destination but have not been granted a right to stay, while at the same time being unable to return to their home countries.⁹ Their predicament may stem from an inability or unwillingness to prove their nationality, combined with a refusal by States to admit or readmit them. This raises immediate humanitarian questions and can pose a significant legal dilemma. Inter-State cooperation, for example concerning their return, is particularly important in this case to avoid situations in which migrants are pushed back and forth between countries.

Post-arrival

21. Post-arrival, a spectrum of policies and programmes are relevant to the short and medium-term stay of migrants in a country of destination. States may, for example, consider strengthening asylum procedures, as distinct but not decoupled from an overall immigration policy. Protection of the human rights of migrants, including labour rights, through national legal structures and access to legal redress for human rights violations is one particular area in which it is important to differentiate between the distinct groups. Migrant children have specific needs and rights, for example, as do victims of trafficking and asylum seekers. Rather than treating the mixed flow as homogeneous, case-by-case approaches are essential in identifying the most appropriate procedures and solutions. As considerable periods of time may elapse between arrival and status determination or alternative next steps, some States have decided to provide access to health care, education and other social services to the individuals concerned. Cooperation between countries of origin and destination, for example in the form of consular assistance, can be an effective way of managing the protection, possibly authorized stay, return or onward travel of migrants.

22. An important element is the destigmatization of irregular migrants in public discourse. A more nuanced awareness of the many “faces” and stories of migration contributes to a more balanced and productive picture of migration. By contrast, a negative image of migrants and of irregular migrants in particular can lead to diminishing public and political support for both

⁸ The MMTF was formed in 2007 and includes the following agencies: DRC, NRC, IOM, UNHCHR, UNHCR, UNICEF and UNOCHA.

⁹ For a concrete example of issues related to stranded migrants, please refer to the 2006 IOM report: *Stranded Ethiopian Migrants in Bossaso, North East Somalia/Puntland*. Available from http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/activities/regulating/ethiopians_stranded_in_bossasso_1106.pdf

refugee protection and immigration policies that aim to address the needs of the labour market.

23. Finally, in the past a number of States have conducted periodic regularization campaigns. Such campaigns normalize the stay of irregular migrants in a country usually by granting them temporary work and residence permits. While controversial and considered by many as an *ex post facto* migration policy that, moreover, creates inappropriate incentives in rewarding the violation of immigration laws, regularization does have the advantage of furthering social integration of migrants and formally recognizing the significant contribution many migrants make to the labour market, while helping to prevent some of the exploitation to which irregular migrants in particular can be exposed. It may be important to draw a few lessons learned from past experiences with regularization, including the potential for more individualized approaches to regularization which take into account such factors as family situation on a case-by-case basis and subject to specific criteria.

Long-term options

24. Migration trajectories and experiences are as diverse as the individuals who migrate. Whether or not a migrant plans to and eventually does return to his or her country of origin will be determined by a range of personal, political, economic, social and other factors.¹⁰ In other words, return is not always and necessarily the final stage of the migration lifecycle; but, where it is there are numerous issues to consider. A return policy needs to differentiate between individual cases – for example, the possibility of return of unaccompanied minors or trafficked persons involves special sensitivities. Some States also take into account the family situation and level of integration before deciding on return. Core considerations for States establishing return policies include respect for international principles and standards concerning migrants in an irregular situation, and the safeguarding of the human rights and dignity of migrants.

25. Where voluntary return is opted for, there are measures that can be undertaken to facilitate reintegration in the home country and to enhance the sustainability of return. Examples of such measures include ensuring the transferability of assets and establishing links to existing job networks and referral services. The particular circumstances of the individual, such as skills level and length of absence from the country of origin, are important considerations in designing suitable programmes.

26. In the long run, the growing interest of States in labour mobility programmes, including provisions for circular migration, points towards promising future approaches to create viable alternatives to irregular migration that are mindful of labour market requirements in both countries of origin and destination.

¹⁰ Please refer to the recent OECD publication, Part III Return Migration: A New Perspective in *International Migration Outlook 2008*, Available from http://www.oecd.org/document/3/0,3343,en_2649_33931_41241219_1_1_1_1,00.html

V. CONCLUSION

27. Coherent and systematic migration management strives to ensure the protection, dignity and well-being of all migrants, taking into account different needs and characteristics as well as specific categories of migrating individuals as part of one overarching approach. The comprehensive management of mixed flows gives effect both to refugee protection obligations and to migration management objectives, thus facilitating orderly and humane migration to meet the needs of individual countries, the global economy and mobile populations, restoring the element of choice to individuals and governments, while working to reduce forced and irregular migration.

28. The emergency dimension of mixed migration flows calls for a comprehensive but differentiated system that allows for nuanced responses to a diversity of protection and humanitarian needs within the framework of rapid humanitarian action. Beyond that, in addressing the broader phenomenon of mixed flows, there are opportunities for wider policy and programme options to minimize the level of human suffering and the potentially negative impacts of irregular migration on societies of origin, transit and destination.

29. In this context it is important to stress the need for and benefits of continuous inter-State cooperation, particularly at the regional level where most mixed flows take place. Such efforts need to include political and technical cooperation, information exchanges, systematic data collection, collaboration with and among international and other organizations, and a notion of shared responsibility. Examples of initiatives at the regional level to address this issue include memoranda of understanding on counter-trafficking measures, and the employment and regularization of migrant workers between various governments in the Greater Mekong Region, as well as a workshop on “Protection and Durable Solutions within Mixed Migratory Flows”, held by the Regional Conference on Migration in Costa Rica in August 2008. Lastly, several regional bodies have opted for liberalization of their migration regimes, thus effectively reducing irregular migration between participating countries.

30. IOM welcomes discussions with its membership and relevant stakeholders on how best to pursue this objective in full recognition of the roles and responsibilities of the different governmental, intergovernmental and non-governmental actors involved and with a view towards the possible synergies and complementarities to be achieved between and among them.