



IOM International Organization for Migration  
OIM Organisation Internationale pour les Migrations  
OIM Organización Internacional para las Migraciones

INTERNATIONAL DIALOGUE ON MIGRATION 2009  
INTERSESSIONAL WORKSHOP ON

**EFFECTIVE RESPECT FOR THE HUMAN RIGHTS OF MIGRANTS:  
A SHARED RESPONSIBILITY**

25 – 26 MARCH 2009

**BACKGROUND PAPER**

***Introduction: Human Rights and Migration***

**Human rights are migrants' rights:** human rights apply to all migrants, irrespective of their migratory status. Nevertheless, violations of such rights, abuse and exploitation of migrants regrettably continue to occur in countries around the world. For a range of reasons – including insufficient political will, a lack of technical or institutional capacity and human or financial resources, and other implementation challenges – a considerable gap still exists between the formal applicability of human rights and the enjoyment of these rights by many migrants in practice. How can human rights principles operate to support States' efforts to govern migration in a humane and effective way? What practical steps can governments and other stakeholders take – and are they taking already – to give effect to migrants' human rights at all stages of the migration process?

A focus on human rights highlights the profoundly human nature of migration and counters the tendency to “commodify” migrants and evaluate them simply in terms of their economic contribution to countries of origin and destination. Human rights provisions apply to all migrants, whether or not the individual is “productive”. Those, however, whose human rights are protected and whose general wellbeing is promoted are likely to contribute more to society than those who suffer human rights infringements, exploitation at the workplace and social exclusion.

It is therefore recognized today that protection of the human rights of migrants is an essential component of the effective governance of migration and a prerequisite for migration to be beneficial to both societies and migrants. Thus, governments are increasingly considering how best to incorporate considerations related to human rights, welfare, safety, dignity and security of individuals and communities into migration policies, legislation and programming.

The notion of **shared responsibilities**, a central theme of the 2008 Global Forum on Migration & Development (GFMD) in Manila, reflects the understanding that concerted, cooperative measures are best suited to realize the human rights of migrants in the overall management of migration.<sup>1</sup> All States have a stake in ensuring the

---

<sup>1</sup> The duty to cooperate is enshrined in migration-related instruments such as the ILO Convention No.97 concerning Migration for Employment (Revised 1949); the 1975 ILO Convention No.143 concerning

protection of the rights of their nationals abroad, therefore inspiring an interest in and need for inter-State reciprocity and cooperation. Duties and competencies in this respect rest primarily with States of origin, transit and destination and can be applied at the bilateral, regional or international level, but may also include partners from civil society and the private sector as well as international organizations.

### ***Human Rights of Migrants: Frameworks and Principles***

Migrants are human beings who have inalienable rights that States have an obligation to uphold. **International migration law**<sup>2</sup> draws together the norms governing the legal relationships between States and those between States and individuals involved in the migration process. It is an umbrella term for an area of law that has developed over time and indeed continues to develop.

A range of instruments apply to migrants, but these are spread across various branches of law. Human rights law is at the core of the protection.<sup>3</sup> Other branches of law relevant to migration include humanitarian and labour law, international criminal law, consular law and the Law of the Sea, to name a few.<sup>4</sup> In addition to binding legal mechanisms, there are numerous soft law instruments, such as General Comments and recommendations issued by the UN treaty bodies. Moreover, a wide range of regional instruments has developed with respect to human rights generally and rights of migrants specifically.<sup>5</sup>

A key tenet of human rights law is the **universal principle of non-discrimination** which places upon a State the responsibility to respect and ensure the human rights of "...all individuals within its territory and subject to its jurisdiction... without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion,

---

Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers; the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) (see Part VI); and the 2000 Palermo Protocols supplementing the United Nations Convention Against Transnational Organized Crime (Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children; and Protocol against the Smuggling of Migrants by Land, Sea and Air).

<sup>2</sup> For more information, please refer to the IOM International Migration Law database, available at <http://www.imldb.iom.int/section.do>

<sup>3</sup> The core human rights instruments are: 1948 Universal Declaration of Human Rights (UDHR); the 1966 International Covenant on Civil and Political Rights (ICCPR); the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR); the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); the 1989 Convention on the Rights of the Child (CRC); the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW); the 2006 Convention for the Protection of All Persons from Enforced Disappearance; and the 2006 Convention on the Rights of Persons with Disabilities (CRPD).

<sup>4</sup> Please refer to IOM (2007) *Compendium of International Migration Law Instruments* edited by Richard Perruchoud and Katarína Tömolövä, T.M.C. Asser Press, for a compilation of relevant instruments.

<sup>5</sup> The main general human rights instruments at regional level include the African (Banjul) Charter on Human and Peoples' Rights; the American Convention on Human Rights; the Arab Charter on Human Rights; and the European Convention for the Protection of Human Rights and Fundamental Freedoms. Regional instruments specifically aimed at the protection of migrant workers include the 1977 European Convention on the Legal Status of Migrant Workers and the 2007 non-binding ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers. For further reference, please see the IOM *Compendium of International Migration Law Instruments* (see above).

national or social origin, property, birth or other status”.<sup>6</sup> Human rights therefore apply to nationals and non-nationals alike, with very few exceptions.<sup>7</sup>

There is thus no shortage of mechanisms and frameworks whose provisions guarantee rights to migrants. The challenge is to give practical expression to these rights and to make them a tangible reality in the daily life of migrants, and in the interactions between migrants and communities. It is important to point out that whilst migrants enjoy human rights, regardless of their migratory status, they also have the obligation to comply with the laws and regulations of States of transit and destination.

### ***Human Rights and Migration: Challenges in Practice***

The interaction between the **principle of national sovereignty and international human rights** is at the heart of some of the challenges related to migration and human rights. Every State has the sovereign prerogative to determine which non-nationals it admits to its territory and under what conditions, to remove non-nationals in certain circumstances, to control its borders and take necessary steps to protect its security.<sup>8</sup> This power to govern migration, however, has to be exercised in full respect of the human rights and freedoms which are granted under international law.

Despite the *de jure* applicability of human rights to migrants, *de facto* migrants continue to be vulnerable to human rights violations due to their status as non-nationals in the country in which they reside and particularly if they are present in the territory in an irregular situation. Migrants, collectively and individually, are also disproportionately more likely to experience social and economic marginalisation, discrimination, hostility, xenophobia and racism, with direct consequences for their enjoyment of human rights. Vulnerabilities also arise during the course of movement (especially where migrants’ modes of travel are precarious), when migrants are detained, and when migrants return or are returned to the country of origin. Special attention also needs to be paid to potentially vulnerable groups, such as migrant women, migrant children (particularly unaccompanied minors), elderly migrants, migrants with disabilities, migrant indigenous peoples and stranded migrants.<sup>9</sup> The protection of all migrants, and vulnerable groups in particular, within the parameters set by international migration law and at every stage of the migration process, should be strengthened, through preventive and remedial mechanisms and cooperative efforts to respond to implementation deficits.

### ***Steps towards Implementation of Human Rights of Migrants***

The implementation of human rights refers to the putting in place of laws, structures, programmes and policies to facilitate the full enjoyment of human rights by migrants. Furthermore, the effective implementation of human rights is complemented by

---

<sup>6</sup> See Article 2 UDHR and Article 2(1) ICCPR. Similar non-discrimination clauses are included in the other core human rights treaties.

<sup>7</sup> Some exceptions apply, for example, in the area of political rights.

<sup>8</sup> A State’s right to admit and remove non-nationals is also subject to international protection obligations.

<sup>9</sup> The special vulnerabilities of migrants arising from situations of trafficking and exploitation will be explored in more detail in the second intersessional workshop *Trafficking and Exploitation of Migrants: Ensuring Protection of Human Rights*, 9-10 July 2009.

**promotion** of human rights, **prevention** of violations and **protection** and **redress** where abuses have occurred.

A migration regime that ensures respect for the human rights of migrants is typically based on a combination of the following values: the principle of non-discrimination; maximization of the economic, social and other benefits of migration for home and host countries and migrants themselves, and minimisation of negative consequences; a balanced approach to irregular migration; humanitarian considerations; respect for family unity; and decision-making structures and a system of migration governance that ensure due process and are inclusive of all relevant partners.

There is a clear and necessary connection between a State's **migration legislation** and its **migration policy**, each reflecting and affirming the other. As a first step to implementation, national migration policy, procedures and legislation need to be made compatible with international human rights standards, usually via the ratification of relevant treaties and incorporation of the provisions contained therein into national law. The successful implementation of human rights in policy, programming and practice for migration governance depends on and is facilitated by several important underlying conditions, including a) capacity, b) coherent policymaking, c) awareness, and d) cooperation:

a) **Effective capacity** to implement and respect human rights allows rights outlined in the legal text to be given effect in the daily realities of migrants. Capacity is needed to ensure that human rights are anchored in national laws through legislative development and reform. Capacity in the areas of administration, enforcement and accountability further support the effective application of human rights. Training of policymakers, government officials, immigration authorities, border guards, the police and others in the fundamentals of human rights and their applicability to migrants is an essential step towards mainstreaming respect for human rights into daily practices surrounding migration.

b) **Coherent policymaking** in the area of human rights and migration is shaped by two elements. First is the interaction between different policies. In an area as cross-cutting as migration, different government agencies have competencies that impact on the human rights dimension of migration policy overall: how, for example, a Ministry of Interior handles entry control, a Ministry of Social Affairs designs integration policies, a Ministry of Health devises public health policies, or a Ministry of Labour sets employment standards will have direct bearing upon how the human rights of migrants are effectively realized. Second, policy coherence seeks to avoid inconsistency and pursue synergies between distinct but related policies, while furthering the specific aims of each. Migration is linked to policy in the economic, social, labour, trade, health, environment, security and development domains, amongst others. In many of these, human rights standards play an important role.

c) The exercise of rights and the prevention of abuse require an **awareness of rights**. Individuals need to have access to complete and objective information about their rights and responsibilities as migrants, vis-à-vis their own country, the country of destination, their employers and other actors. Such awareness should begin pre-departure, but continues to be relevant upon arrival in the host country. Here, one should bear in mind the challenges migrants face in a setting where they are often isolated and unfamiliar with language, culture, and legal and administrative procedures.

The availability of such information and access to effective remedies to redress violations are significant and highlight important roles for social and other networks of which migrants may be part, such as trade unions. Knowledge of their rights is essential for migrants themselves, but there also needs to be an awareness of mutual rights and responsibilities on the part of migrants and other actors, particularly those responsible for enforcing the law on the ground.

**d)** The notion of **shared responsibility** – and the importance of cooperation more generally – has already been referred to.<sup>10</sup> By engaging in global and regional cooperation processes on migration, including regional consultative processes and other multilateral efforts, States can exchange concerns, experiences and solutions as regards protection of the human rights of migrants. Human rights provisions for migrants can feed into a variety of cooperative practices: expanding channels for regular migration, for example, is directly relevant for reducing the risk of human rights abuses associated with irregular migration. Important to mention in this context is cooperation between countries of origin and countries of transit and destination in providing consular assistance and protection to migrants. Recognizing that the responsibility of home countries to protect their nationals does not end when migrants leave the country of origin, this measure represents a potentially powerful tool in ensuring the human rights of migrants in various aspects of life, ranging from arrival and integration in the host country, to employment and labour relations, to situations in which migrants face legal procedures or detention, or wish, or are obliged, to return.

Effective respect for human rights and an awareness of mutual rights and responsibilities are significant elements in furthering harmonious and beneficial relationships between **migrants and societies**.<sup>11</sup> A dialogue between migrants and communities based on human rights principles can help counteract some of the misconceptions and suspicions towards migrants which can culminate in overt hostility and discrimination as well as the tendency to criminalise migrants, especially irregular migrants. This is an important task for governments, but also for civil society organizations and the media. Social rights, such as the right to access adequate housing, education and health, social and welfare services, as well as the rights of migrant children, are particularly pertinent when it comes to questions of integration. Effective capacity to implement the principle of non-discrimination is vital in this regard. Furthermore, the right of migrants to participate in decision-making processes, at home and abroad, as laid out in civil and political rights instruments, can be implemented through innovative partnerships which may include local and municipal levels of government or cooperation with countries of origin through out-of-country-voting procedures.

The **labour market** is another important arena in which human rights principles and international labour standards are relevant.<sup>12</sup> A non-discriminatory, protective

---

<sup>10</sup> Many concrete examples of cooperation can be found in the Working Paper RT 1.1 *Protecting the Rights of Migrants – A Shared Responsibility* of the Global Forum on Migration & Development (GFMD) 2008 and in the report of the proceedings of the GFMD 2008, both available at <http://government.gfmd2008.org/>

<sup>11</sup> Please also see International Dialogue on Migration, No. 11 *Migrants and Host Societies – Partnerships for Success* (2008), available at <http://www.iom.int/jahia/Jahia/cache/offonce/pid/1674?entryId=20084>

<sup>12</sup> Most relevant among these are the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW); the ILO Declaration on Fundamental Principles and Rights at Work (concerned with, inter alia, the abolition of forced labour, the elimination

regulatory environment consists, *inter alia*, of ethical recruitment, equal treatment and working conditions, employer monitoring, and access to basic health and social security. The development of effective relationships and cooperation between migrant workers, governments, employers, recruiters and trade unions is particularly relevant in this regard. Employers and recruiters need to be fully informed of their rights and duties towards migrant workers, and vice versa, while capacity is needed, for instance, to carry out inspection and supervision to ensure compliance with human rights and labour standards. Furthermore, attention needs to be paid also to particularly vulnerable groups of migrants for whom human rights abuses are of greater concern, including in particular low-skilled workers, migrants engaged in domestic or sex work, temporary contract workers and those employed in unregulated sectors and in the informal labour market.

In conclusion, human rights are critical building blocks in a comprehensive approach to migration governance in which the goals of ensuring the wellbeing, safety and dignity of migrants and societies and managing the movement of people are addressed as one. Prevention, promotion, protection and redress emerge as key concepts, as does the notion of shared responsibility, in the effort to overcome obstacles to the enjoyment of human rights by all migrants. The first intersessional workshop of the IDM 2009 seeks to continue the discussion between and among States, international organizations, and partners from civil society and the private sector that commenced at the GFMD and in other fora on this important subject.

---

of child labour, trade union rights and non-discrimination in employment, as covered in the eight core ILO Conventions); the abovementioned ILO Conventions No. 97 (Revised 1949) & No. 143 (1975); and the 2006 ILO Multilateral Framework on Labour Migration: Non-Binding Principles and Guidelines for a Rights-Based Approach to Labour Migration.

**BIBLIOGRAPHY AND SUGGESTED FURTHER READING**  
**BIBLIOGRAPHIE ET LECTURES SUPPLEMENTAIRES**  
**BIBLIOGRAFÍA Y OTROS ARTÍCULOS DE INTERÉS**

IOM (2008) *Human Rights of Migrant Children*, International Migration Law N°15, [www.iom.int/publications](http://www.iom.int/publications)

OIM (2008) *Droit international de la migration : Recueil d'instruments*, sous la direction de Richard Perruchoud et Katarína Tömolövä, Droit international de la migration N°14, [www.iom.int/publications](http://www.iom.int/publications)

IOM (2008) *Migrants and Host Societies – Partnerships for Success*. International Dialogue on Migration, N°11, [www.iom.int/publications](http://www.iom.int/publications) (English, Français, Español)

IOM (2007) *Compendium of International Migration Law Instruments* edited by Richard Perruchoud and Katarína Tömolövä. T.M.C. Asser Press

IOM (2007) *International Migration Law: Developing Paradigms and Key Challenges*, edited by Ryszard Cholewinski, Richard Perruchoud and Euan MacDonald. T.M.C. Asser Press

IOM (2007) *Migration and the Right to Health: A Review of European Community Law and Council of Europe Instruments*, International Migration Law N°12, [www.iom.int/publications](http://www.iom.int/publications)

OIM (2007) *Los migrantes, sus derechos y la legislación aplicable guía práctica*, <http://www.oim.org.co/>

IOM (2005) *Biometrics and International Migration*, International Migration Law N°5, [www.iom.int/publications](http://www.iom.int/publications)

OIM (2005) *Migraciones y Protección de los Derechos Humanos*, Derecho Internacional Sobre Migración N°4, [www.iom.int/publications](http://www.iom.int/publications)

OIM (2005) *Migrations et Protection des Droits de l'Homme*, Droit international de la migration N°3, [www.iom.int/publications](http://www.iom.int/publications)

Global Migration Group (2008) *International Migration and Human Rights: Challenges and Opportunities on the Threshold of the 60th Anniversary of the Universal Declaration of Human Rights*, [www.globalmigrationgroup.org](http://www.globalmigrationgroup.org)

GFMD (2008) Background Working Paper for Roundtable 1.1 *Protecting the Rights of Migrants: A Shared Responsibility*, <http://government.gfmd2008.org/> (English, Français, Español)

Business for Social Responsibility (2008) *International Labour Migration: A Responsible Role for Business*, [www.bsr.org](http://www.bsr.org)

December 18 vzw (2007) *The UN Treaty Monitoring Bodies and Migrant Workers: a Samizdat*, [www.december18.net/](http://www.december18.net/)

Chetail, V. ed., (2007) *Mondialisation, migration et droits de l'homme: le droit international en question / Globalization, Migration and Human Rights: International Law under Review*, Bruylant Brussels.

Amnesty International (2006) *Living in the Shadows, A Primer on the Human Rights of Migrants*, London, [www.amnesty.org/](http://www.amnesty.org/)

Cholewinski, R. (2005) *Protection of the Human Rights of Migrant Workers and Members of their Families under the UN Migrant Workers Convention as a Tool to Enhance Development in the Country of Employment*, UN Committee on Migrant Workers, Third Session, Day of General Discussion on “Protecting the rights of all migrant workers as a tool to enhance development”, <http://www2.ohchr.org/>

Platform for International Cooperation on Undocumented Migrants (PICUM) (2005) *Ten Ways to Protect Undocumented Migrant Workers*, Brussels, [www.picum.org](http://www.picum.org)

UNIFEM (2005) *Claim and Celebrate Women Migrants' Human Rights through CEDAW*, edited by Jean d’Cunha, a UNIFEM Briefing Paper, [www.unifem.org](http://www.unifem.org)

Aleinikoff, T.A. and Chetail, V. eds. (2003) *Migration and International Legal Norms*, The Hague, T.M.C. Asser Press.

UN Economic and Social Council, Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, 55<sup>th</sup> Session, Item 5 of the Provisional Agenda, *The rights of non-citizens*, Final report of the Special Rapporteur, Mr. David Weissbrodt, E/CN.4/Sub.2/2003/23 (26 May 2003), [www.unhchr.ch](http://www.unhchr.ch)

UNAIDS & IOM (2001) *Migrants' Right to Health*, UNAIDS Best Practices Collection, [www.unaids.org](http://www.unaids.org)

*Report of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance* (Durban, 31 August – 8 September 2001) A/CONF.189/12, Declaration and Programme of Action, [www.un.org/WCAR/](http://www.un.org/WCAR/)

### **Forthcoming publications / Publications à paraître / Próximas publicaciones**

OIM, *Compendio de instrumentos de derecho internacional sobre migración*.

IOM, *Migration and the Right to Health: A Review of International Law*.