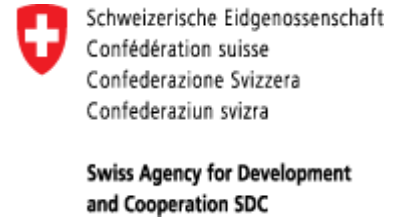




# Experts Meeting on the Global Compact on Migration: Overview and Background Papers

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The Experts Meeting on the Global Compact on Migration was organized by the Global Knowledge Partnership on Migration and Development (KNOMAD) with the support of the Deutsche Gesellschaft fuer Internationale Zusammenarbeit on behalf of the Germany’s Federal Ministry of Economic Cooperation and Development (BMZ).

A global hub of knowledge and policy expertise on migration and development, KNOMAD aims to create and synthesize multidisciplinary knowledge and evidence; generate a menu of policy options for migration policy makers; and provide technical assistance and capacity building for pilot projects, evaluation of policies, and data collection.

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# Experts Meeting on the Global Compact on Migration

## Overview

Dilip Ratha

April 2018

The New York Declaration by the UN General Assembly, issued in September 2016, proposed a Global Compact for (safe, orderly and regular) Migration (GCM) and a separate Global Compact on Refugees (GCR). Unlike the GCR which has a relatively clear normative framework (Geneva Convention) and a lead implementing agency (UNHCR), the proposed GCM lacks such a framework and governance architecture.

In April 2017, we suggested that, in light of negotiations on the GCM, the global community needs to:

- Identify thematic priorities;
- Suggest an institutional architecture to support the GCM, by mapping the current institutional arrangements and clarifying the missions of key organizations and how their work programs and budget allocations are aligned with those missions; and
- Develop a normative framework, or guidelines, for governments and international organizations, building on existing global conventions and regional and bilateral agreements that address migration (see World Bank 2017).

In June 2017, KNOMAD brought together a small group of global migration experts to provide a concrete vision for the GCM from a global development perspective. Notes and papers prepared by experts addressed specific policy priorities; examined existing conventions, guidelines, practices, and databases; and identified gaps. They also addressed questions regarding operational architecture: Which actors must be strengthened to take responsibility for safe, orderly, regular, and responsible migration and mobility—and at which levels (global, regional, national, or subnational)? What kind of administrative structure is needed (linked to the question of leadership and lead organization)? What kind of technical capacity building might be needed to achieve safe, orderly, and regular migration and mobility? How can/should institutions and activities be financed? How should commitments under the GCM be monitored? Finally, these notes attempt to explore any overlap between the GCM and the Global Compact on Refugees in the context of mixed flows of refugees and migrants.

Negotiations on the Global Compact on Migration (GCM) are in full swing, with a third round concluded on April 6, 2018. Negotiations will continue until July 2018. The Intergovernmental Conference to Adopt the Global Compact for Safe, Orderly, and Regular Migration will be held in Morocco on December 10 and 11, 2018. Building on the New York Declaration for Refugees and Migrants, and extensive consultations with all stakeholders, the GCM lists 22 objectives for the achievement of safe, orderly, and regular migration along the migration cycle (box 1). These objectives are comprehensive in their coverage of the range of issues and stakeholders involved: focusing on migrants' well-being, progressing toward the migration-related SDGs of reducing remittance and recruitment costs, and improving policies and public perceptions based on data analysis, addressing adverse drivers of migration, and improving migration's

impacts on both host and origin countries. The GCM also considers migration induced by environmental change, especially displacement due to natural disasters.

**BOX 1 Objectives for safe, orderly, and regular migration**

1. Collect and utilize accurate and disaggregated data as a basis for evidence-based policies
2. Minimize the adverse drivers and structural factors that compel people to leave their country of origin
3. Provide adequate and timely information at all stages of migration
4. Provide all migrants with proof of legal identity, and proper identification and documentation
5. Enhance availability and flexibility of pathways for regular migration
6. Facilitate fair and ethical recruitment and safeguard conditions that ensure decent work
7. Address and reduce vulnerabilities in migration
8. Save lives and establish coordinated international efforts on missing migrants
9. Strengthen the transnational response to smuggling of migrants
10. Prevent and combat trafficking of persons in the context of international migration
11. Manage borders in an integrated, secure, and coordinated manner
12. Strengthen certainty and predictability in migration procedures
13. Use migration detention only as a measure of last resort and work toward alternatives
14. Enhance consular protection, assistance, and cooperation throughout the migration cycle
15. Provide access to basic services for migrants
16. Empower migrants and societies to realize full inclusion and social cohesion
17. Eliminate all forms of discrimination and promote fact-based public discourse to shape perceptions of migration
18. Invest in skills development and facilitate recognition of skills, qualifications, and competences
19. Create conditions for migrants and diasporas to fully contribute to sustainable development in all countries
20. Promote faster, safer, and cheaper transfer of remittances and foster financial inclusion of migrants
21. Cooperate in facilitating dignified and sustainable return, readmission, and reintegration
22. Establish mechanisms for the portability of social security entitlements and earned benefits

*Source: Global Compact on Migration, revised draft March 26, 2018.*

Many of these objectives—such as those to collect data and shape policy based on evidence and the evaluation of past policy—are noncontroversial; the main challenges would relate to collecting relevant and reliable data, creating knowledge by analyzing data, and then building capacity, both financial and technical. Some others—such as those related to migrant rights and return migration—will be debated. In particular, many countries may hesitate to cooperate with host countries in the return, readmission, and reintegration of migrants. Missing from the GCM—perhaps because they relate to nonmigrants—are three themes that are critical to successful migration policy making. These are, in descending order of difficulty, the challenges of maintaining national identity in the face of large immigration flows, perceived (or actual) job competition impacting native workers in host countries, and the difficulties faced by migrants' family members left behind in countries of origin (Ratha 2017). There are no simple answers,

but these challenges should be acknowledged in the GCM, especially considering that they are likely to become even more difficult in the coming decades.

In terms of implementation, the GCM proposes to repurpose and rename the High-Level Dialogue on International Migration and Development as the International Migration Review Forum (IMRF). The IMRF would convene in 2022, 2026, and 2030. Various existing global and regional forums and processes would contribute to the preparation of the IMRF. The GCM calls on the IOM and various international agencies within and outside the UN to contribute data and knowledge to shape the IMRF.

The IMRF would benefit from establishing a formal review mechanism similar to the G-20 Mutual Assessment Process (MAP). Through this process, G-20 countries identify objectives for the global economy, the policies needed to reach these shared objectives, and progress toward the objectives (International Monetary Fund, 2016). At the request of the G-20, the International Monetary Fund (in collaboration with the World Bank) provides technical analysis to evaluate key imbalances and how members' policies fit together—and whether, collectively, they can achieve the G-20 goals.

The World Bank Group, through KNOMAD and the Global Remittances Working Group (GRWG), stands ready, on a demand basis, to contribute data and knowledge to the IMRF, as well as support the review, evaluation, and formulation of policy.<sup>1</sup> Even though the GCM is nonbinding, its chances of success would improve if its objectives were formalized on the basis of existing international, regional, and bilateral agreements. Taking stock of such agreements and categorizing them by their relevance to each GCM objective is an essential next step. Operationalizing the GCM will also involve mapping institutions and their missions and capabilities, as proposed in this Experts Meeting. Currently, the UN Special Representative of the Secretary-General (SRSG) is undertaking an exercise to map the missions and capabilities of Global Migration Group agencies.

The GCM does not clearly mention how its implementation would be financed. Many countries hosting migrants are likely to welcome financial assistance through a mechanism similar to the Global Concessional Financing Facility, created by the World Bank, the UN and the Islamic Development Bank, to assist countries hosting refugees. However, such financing should be additional, not a diversion from existing development programs. A controversial question, not explicitly mentioned but indirectly implied in the GCM, relates to the concept of achieving codevelopment (that is, the mutual benefit of both migrant-sending and -receiving nations) through “conditionalities.” As mentioned earlier, a cooperation framework that links readmission and reintegration of return migrants to aid, trade, and investment policies may not be sustainable in countries with high unemployment.

The working-age population in LMICs is projected to increase by over 2 billion by 2050 (according to UN population projections), while employment levels (according to ILO projections) are likely to fall short of this number by over 800 million (see World Bank 2016b). This shortfall is an indicator of growing migration pressures in the next three decades. If the GCM were to acknowledge the possibility that the flow of migration could accelerate by a significantly higher rate than currently anticipated, this would allow some contingency framework for response, and also spur a search for innovative solutions to the challenge of managing large and unexpected movements of people. At the very least, to acknowledge the enormity of

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<sup>1</sup> The World Bank and KNOMAD could be mentioned in the GCM in paragraph 16 on data, and paragraph 48 on implementation. The World Bank and the GRWG should be mentioned in paragraph 35 as a lead actor for reducing remittance costs.

the risk would lend a greater sense of urgency to member states' adoption and implementation of the GCM.

### **Links to Global Compact on Refugees (GCR) – Need for Pragmatism**

While the specific refugee focus of well-established norms and governance mechanisms has many benefits, the rather strict separation of the GCR from the GCM leaves a gap in addressing the complex reality of mixed migration. A more comprehensive approach could include addressing the adverse drivers of migration; integrated border management; the special needs of vulnerable groups, such as women and children during journeys over sea or land; and reception and integration issues (World Bank 2017). In the end, addressing mixed migration flows would require a pragmatic approach based partnerships among institutions and stakeholders, guided by the human rights of migrants.

Formal consultations on the draft of the Global Compact on Refugees (GCR) are taking place between February and July 2018. The final draft will be included in the High Commissioner's 2018 annual report to the General Assembly. Unlike the GCM, the GCR has standards, foundations, legal frameworks, operational knowledge, and a lead implementing agency (the UNHCR) already in place. The GCR, as developed in consultation with governments and stakeholders, will consist of two parts: the Comprehensive Refugee Response Framework (CRRF), and a Program of Action. The CRRF will have four pillars: (i) reception and admission, (ii) support for immediate and ongoing needs, (iii) support for host countries and communities, and (iv) durable solutions. The Program of Action will provide mechanisms for accomplishing the CRRF's goals; it will not impose any new obligations on states.

The GCR proposes the establishment of stronger mechanisms for burden and responsibility sharing, including global summits at which states will make formal commitments and global support platforms for specific refugee situations. The UNHCR-World Bank Group Joint Data Center could undertake the measurement of the costs and impacts of hosting refugees to inform such mechanisms. The GCR will be governed by the 1951 Geneva Convention, its 1967 Protocol, regional instruments, the principle of non-refoulement, and article 14 of the Universal Declaration of Human Rights. The implementation of the GCR will include the specification of measures to accomplish key objectives related to refugees' reception and admission, and international financial assistance to hosting states (particularly in the areas of education, health, and livelihoods). The GCR will focus on prevention, including ways to address the root causes of refugee movements.

### **References**

International Monetary Fund. 2016. "Factsheet: The G20 Mutual Assessment Process (MAP)," Washington, DC, March.

Ratha, D. 2017. "Contributions of Migrants to Development: A Roadmap to a Global Compact." GFMD Dialogue on the Global Compact for Safe, Orderly and Regular Migration, Geneva, April 7.

World Bank 2017. "Migration and Development Brief 27." World Bank, Washington, DC, April.

# Background Papers

## Issues on Low-Skill Migration, Trafficking, and Reducing Migration Costs

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### 1. Challenges and Potential Benefits

How can growing movements of labor across national borders be accommodated through regular channels? Demographic trends already indicate the likelihood that the next decades will see rising migration pressures. A surge in young population is already forecasted in countries in the South, especially in Sub-Saharan Africa and parts of Asia, where labor absorption remains weak. Demographic and economic trends suggest that there is scope for larger, mutually beneficial movements of workers across national borders, and more so into the future due to plunging fertility rates and aging populations. However, public anxieties about the social impact of immigration have stymied more informed debate about immigration and integration policies in many countries. Unless avenues for regular migration are expanded, migration is likely to take clandestine channels and worsen the problems already faced with the smuggling and trafficking of persons, and the consequent implications on working conditions, wages for the low-skilled and income inequalities, social marginalization and discrimination, as well as criminality. Faster growth of employment in origin economies will reduce emigration propensities over the long term. Continuing conflicts at home and protectionist tendencies abroad can scuttle the efforts of poor countries to provide their youth with the real option of staying at home. These conditions pose many challenges for migration policy. How can admissions policies be liberalized in the face of growing public anxieties about jobs and security? How can destination and origin states work together to create the conditions for job growth in sending countries and mutually beneficial migration regimes?

How to meet increasing shortages of workers in sectors and occupations that are increasingly shunned by native workers? As incomes rise, the better educated native youth tend to leave for the cities in search of more rewarding job options and preferred life styles. The typical consequence is labor shortages in agriculture and low-skill and low-status jobs in services, construction, public transport, and the like. At the same time, there remains political resistance in many countries to opening avenues other than for seasonal workers and temporary contract workers for the regular or legal migration of low-skilled foreign workers. Recent discourse has shifted to a reduction in admissions for all types of immigrants. Although some jobs can be eliminated by mechanization or automation, many others, such as in health care, cannot. For example, in many aging societies, there are emerging shortages of workers to take care of the elderly. The fast-rising cost of caring for the elderly has already created serious dilemmas for families, local communities, and overburdened hospitals. Aging populations and rising medical costs are undermining the financial viability of many social security systems, and bringing up fiscal policy dilemmas aside from social tensions and political backlash. These challenges are likely to rise as medical progress leads to lengthening life expectancy.



Migrants generally face discrimination in the labor market. Native workers and earlier immigrants without much skill are commonly displaced by migrant workers who are not able to demand equal treatment in wages and other working conditions. This situation is especially true of migrant workers without regular or legal status. Insuring equal treatment of migrants is not only just and fair, but also the best way to protect native workers against being competed out of their jobs. What measures can counter discrimination in recruitment, the terms or conditions of employment, and opportunities for advancement?

How to prevent abusive treatment of women migrants in domestic service occupations? Millions of women are employed as domestic helpers in countries other than their own, and violation of their human and labor rights is widely reported. The demand for their services continues to grow, as native women in rich countries and rapidly developing economies prefer to work outside their homes. Domestic work is typically a low-wage occupation, with many working long hours without appropriate compensation, and not allowed rest periods or rest days. Unfortunately, domestic work is not covered by labor laws in many countries, especially less developed ones. Even where domestic work is covered under such laws, application is seldom effective, reflecting lack of political will or weak governance.

How to reduce the recruitment costs paid by low-skill migrants? The cost of finding work in a foreign country can be very high, especially for those in manual work and less skilled occupations. The Global Knowledge Partnership on Migration and Development (KNOMAD)/ International Labour Organization (ILO) surveys of migration costs reveal large differences among migration corridors. In some corridors, migration costs can be equal to a low-skill worker's earnings for 10 months; in others, where no barriers to crossing borders exist, they may only be the cost of bus fare to the worksite. Workers in remote provinces often rely on informal job brokers in addition to licensed agents of foreign employers who charge high fees. Recruitment typically involves passing skills tests, getting health certifications, obtaining approval of their job contracts from national authorities, and paying for work visas (which in some corridors are known to be sold). Already burdened with such high costs, migrant workers lose their ability to negotiate for better terms of employment, are forced to work long hours or in multiple jobs, and risk overstaying their periods of authorized stay, to be able to bring home some savings. Those who cannot secure work abroad through regular channels often end up at the mercy of smugglers, working temporarily in transit countries, and being subjected to various deprivations.

## **2. Recommendations**

For international organizations:

- a. Contribute to better informed debate on migration and security by undertaking studies, organizing discussions on their implications for policy, and bringing recommendations to the attention of important political forums, like the G7, G20, and so forth.
- b. Contribute to a better understanding of the social and economic impacts of migration, especially on the low-skilled and host countries/societies.
- c. Put more concerted efforts and resources into promoting ratification of international migrant Conventions, especially by countries of destination.

- d. Review how bilateral agreements have worked in various migration corridors, with a view to drawing lessons for other countries.

For governments of destination countries:

- a. Establish a multi-partite advisory body to help government periodically assess the labor market situation and identify labor shortages in the short to medium term, by occupation and sector.
- b. Establish quotas on immigration and provide for a political process for its acceptance by the electorate, through legislation or referendum.
- c. Enter into bilateral labor agreements with origin country governments for the orderly organization of recruitment, nondiscriminatory terms of employment, and reasonable terms for return, and provide adequate instruments and resources for their effective implementation.
- d. Provide for effective enforcement of labor standards and enjoyment by migrant workers of equal protection under the law, including the right to organize for collective bargaining.
- e. Take measures, especially at the local community level, to integrate migrants through skills and language training, employment, housing, and education of children. The socioeconomic marginalization of migrants is at the root of much of the negative attitudes toward migration.

For employers and their recruiters in destination countries:

- a. Organize along industry lines for the implementation of orderly recruitment and placement of foreign workers, meeting the cost of recruitment, providing accommodation and transport, and facilitating the workers' return and/or future reengagement.
- b. Adopt industrywide codes of conduct for fair recruitment of foreign workers, and cooperate with national authorities in combating the trafficking and smuggling of persons.

For trade unions and civil society organizations:

- a. Allow and encourage membership of migrants in trade unions, including the provision of services to address their need for protection.
- b. Provide services to facilitate the integration of migrants and their families in host societies.

For governments of origin countries:

- a. Enable direct hiring by employers to minimize the need for workers to use intermediaries, including removing legal barriers, and supply information and skills-testing facilities.
- b. Enter into agreements with destination country governments for the orderly recruitment of workers, including the adoption of minimum standards and model contracts, certification of skills and other qualifications, and such other services as may be required to enhance skills for job matching.
- c. Establish simple but efficient infrastructure for regulating and supervising emigration, to encourage aspiring migrants to go through regular channels and prevent fraud and abusive practices by commercial job brokers. The major effort should be to bridge the information gaps that often lead to job-seekers making poor decisions and falling victim to fraud and malpractice. Experience shows that

recruitment industry practices improve with incentives and penalties that promote stable relationships between foreign employers and their recruitment agents, cooperation between regulators and firms, and speedy resolution of reported violations of standards and regulations.

- d. Require recruiters to follow industrywide standard pricing of services to foreign employers, to avoid price undercutting that inevitably leads to passing on costs to the workers.
- e. Provide on-site support services for nationals working in foreign countries, including information about rights and access to remedies, emergency shelter, legal aid, regularization of status, and the like.

### **3. Existing Norms**

International norms to protect the rights of migrants are already elaborated in many international Conventions of the United Nations and its specialized agencies, the most important of which are the basic human rights Conventions (International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights); 1990 United Nations Convention on the Protection of Migrant Workers and Members of Their Families; 2000 Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons; Convention on the Elimination of All Forms of Racial Discrimination; and Convention on the Elimination of all Forms of Discrimination Against Women. The Fundamental Principles of the ILO apply equally to local and migrant workers—Freedom of Association and Collective Bargaining, Elimination of Forced Labour, Abolition of Child Labour, and Equality of Opportunity and Treatment. ILO also has several Conventions that are particularly relevant to migrant workers, including the Protection of Wages, Labour Inspection, Occupational Health and Safety, Social Security, and Employment Agencies.

In 1949, ILO adopted the Migration for Employment Convention (C.97), and in 1975, the Migrant Workers' Supplementary Convention (C.143). Both Conventions specify the obligations of ratifying states to protect the rights of migrants, including the right to equal compensation of those who may not have regular status. The 1975 Convention further requires ratifying states to take measures against clandestine migration. The 1975 ILO Convention as well as the 1990 United Nations Migrant Convention have suffered from not having wider ratification, especially among countries of destination. ILO's Domestic Workers' Convention (C 189), which came into force in 2013, represents a major step toward a global agreement on protecting the rights of domestic workers, but it remains to be ratified by many countries.

Although international norms have been adopted to provide for the protection and equal treatment of migrant workers, there are no international agreements binding states to the admission of migrants, except for refugees or people needing temporary protection when fleeing from persecution for reasons of their race, religion, nationality, membership of a particular social group, or political opinion. There are now 147 State Parties that have signed the 1951 United Nations Convention on the Status of Refugees, and the 1976 Protocol, which extended its mandate. But especially in the context of the current migration crisis, the Convention has been faulted for failing to take into account the need for protection of people fleeing from violent conflict at home, and failing to provide for a more equitable sharing of responsibilities over the protection of asylum seekers and refugees.

#### **4. Global Institutional Architecture**

The Global Commission on International Migration, which submitted its report to the United Nations Secretary General in 2005, identified “...overlaps in the current *institutional architecture* that at times undermine an integrated, coherent and effective response to the opportunities and challenges presented by international migration. Rather than being complementary, different institutional approaches to the same issue can diverge and even conflict, and there is also frequent competition for limited funds to achieve the same goals.”

The two major international institutions that have been mandated by their Member States with responsibilities over migration are ILO and the Office of the United Nations High Commissioner for Human Rights (OHCHR). In its 1919 Constitution, ILO was specifically charged with the responsibility to “..protect those working in countries other than their own.” UNHCR has in its statute the responsibility to supervise the implementation of the Refugee Convention, the commitment to which was again confirmed by the State Parties in 2001.

The Global Commission called attention to the need “...to ensure a more efficient, coherent and coordinated institutional response to international migration,” but did not go as far as to recommend the establishment of an international organization to meet such need. Instead, it suggested the establishment of a “global migration facility” as an interim measure while the United Nations undergoes its reform process. The International Organization for Migration (IOM) has emerged as a major international organization promoting the coordination of migration policies among states through so-called “regional processes,” but it has not been assigned normative functions, which remain with ILO and UNHCR. What the recent decision by United Nations Member States to bring IOM into the formal structure of the United Nations means for developing an integrated approach to migration remains to be seen. In the meantime, various United Nations and international agencies with relevant functions and activities, including the World Bank, have established the Global Migration Group, which today serves as a kind of mechanism for the coordination of their respective activities. The intergovernmental Global Forum on Migration and Development, now on its ninth year, is also a response to the call for continuing consultations and dialogue on major migration challenges. It originally focused only on how migration can promote development, but is increasingly being drawn to address other migration challenges.

#### **5. Connection to the Global Compact on Migration**

A Global Compact on Migration and Refugees will no doubt focus on broad principles that can be accepted by Member States of the United Nations, but these will need to be underpinned by a deeper appreciation of what concrete measures may be necessary, at the national and multilateral levels, to give them effect. These recommendations are based on lessons drawn from experience with using various approaches and strategies to promote more orderly movements of people, especially workers, across national borders, and to align them with internationally accepted principles and standards.

#### **6. List of Desirable Elements for the Global Compact**

The Berlin Meeting identified the following as possible elements to propose for the Global Compact:

- a. Countries facing labor shortages should open wider channels for the orderly admission of temporary migrant workers, offer a path to permanence for those employers who wish to keep migrant workers, and enable circular movements for those who wish to return home.
- b. Countries must take measures or amend laws so as not to criminalize “irregular” migrants.
- c. Guest worker programs should allow for the mobility of migrants in the labor market, since this is the best guarantee that they will be employed most productively.
- d. Migration has always served as a channel for technology transfers; destination countries should provide opportunities and make it easy for migrants to bring back their acquired know-how to their countries of origin.
- e. With a view to spreading good practice, international agencies should evaluate the experience of countries in managing labor migration, including systems for identifying labor market shortages and gaining political support for admission programs.
- f. Because it is a public good, there is underinvestment in labor market information that can reduce migration costs. Governments of origin and destination countries must invest in providing information that supports efficient recruitment.

## Irregular Migration and Regular Pathways

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### 1. Themes and Issues for the Normative Guideline

Focusing on the field of governance of irregular migration, it is reasonable to start from a consideration of current *policy gaps* and shortcomings. The stubborn worldwide existence of irregular migration indicates that current policy approaches are inefficient and fail to accomplish their objective. This observation raises the question of whether this failure is due to insufficient policy implementation or the fundamental inappropriateness of the currently pursued approaches.

Until now, the pursued policy approaches have been shaped by the views of receiving countries' governments, which frame the unwanted primarily as a security issue and threat to public order. The basic policy feature is a top-down, imposed command-and-control approach guided by the conviction that a nation state has the sovereignty and capacity to decide who is allowed to enter and stay in its territory. The prior objective is the prevention of *unwanted* immigration by intensifying border control and establishing bilateral or multilateral agreements with governments of transit and sending countries, with the target to achieve their cooperation in migration control. Ironically, migration control efforts do not curb or prevent irregular migration but, first and foremost, induce the status of an irregular migrant. Irregular migration is irresolvably linked with migration control and emanates from these efforts.

The hotbed for irregular migration is the discrepancy between demand for and supply of legal migration opportunities. Restrictive immigration policies exacerbate this discrepancy. The incidences and amounts of unauthorized migration are shaped by the factors of *accessibility* and *connectivity*. Connectivity points to opportunities to (a) connect to income generating activities; (b) join a family, community, or social network; and (c) connect to an institutional framework providing social assistance or humanitarian protection.

Accessibility without connectivity does not evoke irregular migration, as the decline of irregular entries into the European Union during the global financial crisis indicated. Existing connectivity without accessibility provides causes for irregular immigration. In a situation of given connectivity *without* accessibility, an informal market for unauthorized border-crossing services occurs. This informal market contributes to the self-perpetuation of migration processes by actively recruiting "clients," in some cases to the point of fraudulent services and treatments outlawed as trafficking in human beings. However, an exclusive focus on suppliers of informal border-crossing services as the main target of migration control fails to address the structural factors underlying the occurrence and persistence of the *markets* for smuggling services and the markets for undeclared employment of migrant workers in the informal economy in receiving countries.

Migration researchers have found that top-down, command-and-control policy fails for several reasons. The state of economic globalization, transnational social connections, political interdependencies, and requirements of international legal regimes, including trade agreements and human rights obligations, restrict the scope of national migration policies. And self-imposed human rights commitments and the

influence of competing interest groups within receiving countries restrict the capacity and space to enforce migration policies. Diverging interests between sending, transit, and receiving countries make it unlikely that the migration management–related objectives mainly determined by rich receiving countries will be codified in bilateral or multilateral agreements deploying the intended objectives in the real world. Finally, the currently dominantly pursued command-and-control attitude disregards the structural factors and processual logic of migration processes. Unauthorized migrants see themselves as “travelers;” thus, they are more or less implicitly expressing freedom of movement as a basic liberty that aggregates to autonomy of migration.

A migration policy that neglects the processual logic of migration processes and operates in opposition to the interests of the multitude of involved actors will inevitably fail to accomplish its objectives. The discrepancy between declared and achieved objectives undermines trust in state authorities and provides the ground for xenophobic fears and racist resentments, which are stirred up and used by populist extremist parties.

### ***Identification of Thematic Issues***

Against the background of this analysis, the design of a normative framework for safe, orderly, and regular migration should be sensitive toward a set of interrelated thematic issues:

- The Global Compact on Migration (GCM) initiative should not only stress the rights of governments to decide on the entries and stays of foreign nationals. In addition, the right to freedom of movement should be explicitly indicated, and the tensions occurring when both rights are conflicting in application should be admitted.
- The GCM initiative should make aware that governments alone do not have the capacity to command and control migration processes.
- The GCM initiative should make aware that attention to evidence-based insights into the process logics and dynamics of migration and the interests of the involved actors is a basic requirement for the design of regulations that addressees will accept and with which they can comply.
- The GCM initiative should encourage a normative framework not imposing interdictions but regulation of standards that allow adjustments to ongoing migration processes, with particular attention to actors at the local level.
- The agency and autonomy of actors at the local level, who directly experience migration processes, should be recognized.
- The GCM initiative should abandon the language of management and apply a language of regulation of standards that fosters an understanding of the normative framework as supportive for migrants.
- The enforcement of regulations should not rely on command-and-control strategies alone, but apply additional soft modes.
- The regulation of migration processes should remain oriented toward the extension of free movement.

### ***Commitment to a Spirit of Freedom***

GCM should include a commitment to the right to freedom of movement as a guiding principle. Such a commitment complies with the international normative framework's guiding principle to respect and enable personal freedom. In particular, normative frameworks in the areas of international trade, mobility of services, and capital transfer favor individual freedom. Thus, it is consistent to apply the respect for this guiding principle also in the area of movement of people.

The commitment to "freedom of movement" as a basic liberty and value clarifies the fundamental orientation on the general objective of GCM to respect the right to freedom of movement. The commitment implies a differentiation between "freedom of movement" as a basic liberty and "free movement" as the utilization of this liberty. Although "freedom of movement" should explicitly inform every GCM initiative as a guiding principle, the utilization of this freedom—just like other basic liberties, such as freedom of speech—can be subject to restrictions.

The use of the term "free" does not imply a complete lack of regulation, but expresses an orientation that regulations should serve the objective to enable individual transactions that are as free as possible, and prevent coercive transactions that are harmful for the transaction partners and communities. The GCM commitment to freedom implies that the language of migration management should be avoided, because it suggests that "managers" determine and control movements in a top-down, command-and-control mode.

A regulative framework provides common standards and institutional arrangements, which serve the purpose to foster trust and enable as much free movement as possible. Indeed, agreements on free trade, free movement of services, and free circulation of capital do not imply a lack of regulation. Present-day distortions—like the increasing gap between rich and poor, environmental pollution, or evasion of taxes—are caused by a lack of appropriate regulations.

The enforcement of regulations should not rely on command-and-control strategies alone; it should apply additional modes. The additional modes of steering include, for example, market-based incentives, providing legal certainty, strengthening of migrants' ability to respond to and deal with a legal conflict (as a kind of bottom-up and horizontal mutual control), and structural arrangements with nudging effects.

### ***Proposed GCM Commitments***

GCM should include commitments that

- Not only confirm a government's right to decide on entries and stays, but also its right to introduce a consistent policy approach that acknowledges freedom of movement as a general principle.
- Recommend the development of a legal and institutional framework that is compatible with and enables free movement.
- Recommend the introduction of appropriate channels for labor market-related immigration that corresponds to the existing demand for labor at the local level.
- Recommend regulations and procedures that acknowledge that job placement is primarily the responsibility of employers and employees and not subject to bureaucratic administration.



- Recommend the establishment of an effective assistance structure that provides information and support to migrants, to foster empowerment and prevent vulnerability.
- Recommend the abandonment of the criminalization of irregular entry and stay.
- Recommend the development more nuanced treatment of unauthorized migrants, including opportunities for status adaptation (regularization) through employment.
- Clarify that domestic legislation should have the objective to protect the human rights and labor rights of migrants irrespective of status
- Recommend instructing law enforcement and labor inspection to protect the human rights of all migrants.

## **2. Recommendations on How to Act**

This section presents recommendations on guidance for migration-related programs in development, and concrete, operational aspects of migration as a topic for development actors.

### ***Which actors must be strengthened to take responsibility for safe, orderly, and regulated migration? At which level?***

Top-down implemented command-and-control policies that address factors of accessibility but neglect factors of connectivity fail to accomplish the intended targets. Such policies generate severe unwanted and harmful effects for migrants and communities in sending, transit, and receiving countries. Legal vulnerability provides incentives to organize undeclared employment, which works as a pull factor for irregular migration.

Strengthening *migrants'* legal certainty and ability to stand in a legal conflict is the most important measure to make migration and mobility safer and more orderly. Empowering migrant workers regardless of their status is in line with international law. Legislation threatening unauthorized migrants with criminalization should be avoided, and the criminalization of unauthorized entry as such should be repealed. Assistance structures providing information and support in case of emergencies have the effect to empower migrants and thus reduce their vulnerability and exploitability. When migrants feel protected and see a fair chance to realize legal claims, it is more likely that exploitation and abuse will be reported to the authorities.

An increased risk of detection and persecution works against unscrupulous employers' expectations of making extra-profit from super-exploitation of irregular migrants, and hampers their willingness and readiness to organize undeclared, exploitative employment. Consequently, informal labor markets lose relevance as a pull effect for irregular migration. The consistent empowerment of migrant workers, irrespective of their legal status, addresses severely exploitative employment in particular and serves beyond that as an internal mechanism "taming" informal employment relations. Consequently, working conditions will improve and fewer unscrupulous employers will recruit irregular migrants.

The strengthening of migrants' legal certainty and ability to deal with legal conflicts, which is considered to be the strategic key element for making migration safer, depends on adequate proliferation from a normative framework and institutionalized supportive structure. National legislation should provide a framework that offers legal certainty and protection to migrants. National governments should provide a

regulative framework that includes the establishment of supportive structures providing information and assistance that strengthens the ability to stand a legal conflict. Such systems are currently developed and implemented as anti-trafficking measures. The access to assistance should be opened to all migrants in vulnerable situations.

***Which administrative structures are needed?***

The administrative structures depend on the status of the GCM declaration. Ideally, the GCM commitments should acquire the status of a Convention, a legally binding document that, under international law, would require signatories to adhere to its tenets. In this case, the administrative structure should be a United Nations Office for Migration, as a regular norm-setting and monitoring United Nations body. However, given that governments are reluctant to commit to goals that bind them too strongly and for too long, especially at a time when unwanted migration is a controversial issue in most countries, it is unlikely that a Convention will receive many ratifications. Moreover, the ambitious goal of a legally binding document may have the effect that commitments to the protection of migrants' human rights are weakened and the commitment to freedom of movement avoided.

Another and preferable option would be a document that sets out specific targets for nations and the global community to meet within a certain time. This option would allow for the inclusion of much more ambitious objectives and commitments to migrants' human rights, including a reference to the right to freedom of movement. Such a document would include a monitoring system and feature annual reports by an independent organization in an attempt to hold governments accountable. It would have an implicit binding effect in that it would place unwanted attention on those governments that do not comply.

***What kind of technical capacity building might be needed to achieve safe, orderly, and regulated migration?***

For now, the technical capacity building for migration management is mainly provided by the International Organization for Migration (IOM). As an intergovernmental agency associated with the United Nations System, this agency outside the United Nations System is not formally bound to comply with United Nations commitments. It is unlikely that governments will abstain from IOM services. In addition, governments make use of the International Labour Organization (ILO) for technical support and legal advice in the area of labor migration.

An option to enhance the efficiency and effectiveness of these services is the requirement for independent evaluation in accordance with the United Nations Evaluation Group's norms and standards of evaluation. This requirement could be also included as a GCM commitment.

***How can/should commitments in GCM be monitored?***

The monitoring procedure will depend on the status of GCM. In the rather unlikely case that GCM acquires the status of an international Convention, the supervision and further development of norms should be processed by a newly founded special United Nations Office for Migration, with the same competencies as other comparable United Nations offices.

In the case that GCM acquires the status of a nonbinding document, the monitoring should be in the competence of a permanent office. Signatories should be obliged to report every five years on the progress in implementing the committed objectives. Nongovernmental organizations and international organizations should have the opportunity to prepare shadow reports. The permanent office should be competent to make fact-finding missions in countries selected by the office and report on the state of implementation and progress.

### ***How do the commitments relate to the Agenda 2030?***

The proposed commitments relate in particular to

- Declaration statement 10: “People who are vulnerable must be empowered,” with a particular reference to refugees and migrants.
- Declaration statement 29: “We will cooperate internationally to ensure safe, orderly and regular migration involving full respect for human rights and the humane treatment of migrants regardless of migration status, of refugees and of displaced persons.”
- Goal 8.8 of Agenda 2030: “Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment.”
- Goal 10.7 of Agenda 2030: “Facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies.” (It is noteworthy that management is related here to migration policies and not to the management of migration.)

### **3. Existing Norms, Conventions, Agreements, and Guidelines**

The themes and issues identified in this paper relate to already established normative frameworks at the international, regional, and national levels. The following selected documents are particularly relevant:<sup>2</sup>

- Freedom of movement is already an important asset in international law. The 1949 Universal Declaration of Human Rights stipulates that “Everyone has the right to freedom of movement and residence within the borders of each State” (Article 13.1) and “Everyone has the right to leave any country, including his own, and to return to his country” (Article 13.2). The lack of a provision stipulating a migrant’s right to immigrate does not nullify the strong commitment to individual freedom of movement as a basic liberty.
  - The International Covenant on Economic, Social and Cultural Rights<sup>3</sup> and the International Covenant on Civil and Political Rights cover migrants. An important source for interpretation is provided by the

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<sup>2</sup> An extensive overview is provided by Bernard Ryan, 2014, “The Labour and Social Rights of Migrants in International Law,” in *Human Rights and Immigration*, edited by Ruth Rubio Martin, Oxford University Press.

<sup>3</sup> United Nations General Assembly, 1966, *International Covenant on Economic, Social and Cultural Rights*, United Nations, Treaty Series, vol. 993, p. 3, <http://www.refworld.org/docid/3ae6b36c0.html>.

recently published Office of the United Nations High Commissioner for Human Rights report on Economic, Social, and Cultural Rights of Migrants in an Irregular Situation.<sup>4</sup>

- In practical terms, a 2009 United Nations Development Programme report pointed to the significance of freedom of movement and stressed the importance and potential of free movement for development.<sup>5</sup>
- The International Convention on the Rights of All Migrant Workers and Members of Their Families (Migration Workers Convention or ICMRW), adopted in 1990.<sup>6</sup>
- The United Nations Convention against Transnational Organized Crime, which includes nonbinding recommendations to protect victims of trafficking, and the related United Nations Trafficking Protocol, which provides specifications of victims' rights.
- The Council of Europe Trafficking Convention No. 196 includes specifications on the rights of trafficking victims.
- Several ILO Conventions include provisions that cover migrant workers in an irregular situation.<sup>7</sup> The recent 2014 Protocol to the Forced Labour Convention includes rights for victims of forced labor.
- The EU Employers' Sanction Directive stipulates the right of undeclared employed irregular migrants to claim wages for work done.
- Guidelines highlighting the human rights dimensions are provided by agencies like ILO,<sup>8</sup> IOM, and the Organization for Security and Co-operation in Europe.

#### **4. Overlap between GCM and the Global Compact on Refugees**

The frequent reference to the concept of "mixed migration" indicates a growing awareness that irregular migration channels and smuggling services are used by migrants with different legal status, including refugees in need of protection, survival migrants in search for sustainable living conditions, and economic migrants seeking to increase income.

A GCM that strengthens the rights of migrants will reduce the incentives to connect with the system of humanitarian protection without foundation.

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<sup>4</sup> Office of the United Nations High Commissioner for Human Rights, 2014, *The Economic, Social, and Cultural Rights of Migrants in an Irregular Situation*, New York: United Nations, [http://www.ohchr.org/Documents/Publications/HR-PUB-14-1\\_en.pdf](http://www.ohchr.org/Documents/Publications/HR-PUB-14-1_en.pdf).

<sup>5</sup> United Nations Development Programme (UNDP), 2009, *Overcoming Barriers: Human Mobility and Development*, New York: UNDP, <http://hdr.undp.org/en/content/human-development-report-2009>.

<sup>6</sup> United Nations General Assembly, 1990, *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, A/RES/45/158, <http://www.refworld.org/docid/3ae6b3980.html>.

<sup>7</sup> The Migration for Employment Convention of 1949 (No. 97); Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (Migrant Workers (Supplementary Provisions) Convention) of 1975 (No. 143); Convention concerning Private Employment Agencies of 1997 (No. 181), Decent Work for Domestic Workers Convention of 2011 (No. 189), and Recommendations Nos. 86 and 151; Forced Labour Convention of 1929 (No. 30) and the 2014 Protocol to the Forced Labour Convention.

<sup>8</sup> <http://www.ilo.ch/dyn/migpractice/migmain.home>.

## Preventing Migrant Smuggling: Promoting Safe Migration

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The smuggling of migrants is a significant and worldwide phenomenon that involves complex issues concerning human rights, criminal justice, state sovereignty, and international relations. Globally, the smuggling of migrants is the subject of controversial debate, polarizes public opinion, and features prominently in political contests and media coverage. Seen by some as ruthless criminals who prey on the vulnerability of irregular migrants, others see migrant smugglers as Samaritans who act to aid refugees and those fleeing war, discrimination, and poverty. For refugees and other migrants lacking regular avenues of migration, smugglers frequently offer the only way to reach safety and pursue the hope of a better life abroad.

### 1. Terms

The terms “smuggling of migrants” and “migrant smuggling” are used interchangeably throughout this paper. The terms are understood as defined by Article 3(a) of the United Nations *Protocol against the Smuggling of Migrants by Land, Sea and Air*.

The smuggling of migrants sits along a continuum of irregular migration where many activities occur in a policy vacuum and in legal grey areas that are not or not fully regulated. The smuggling of migrants frequently entails great dangers to those involved, and can morph into situations of trafficking in persons when migrants are exploited, threatened, harmed, coerced, or deceived. Migrant smugglers take advantage of differences in national laws and weaknesses in law enforcement. They create illegal avenues of migration by using clandestine methods of transporting people and/or supplying fraudulent documents to those who are willing or forced to migrate. Generating considerable profits for those involved, migrant smuggling fuels corruption and empowers organized crime.

Around the world, the number of forcibly displaced persons and those willing to move abroad has grown considerably. A growing demand for international migration combined with nonexistent or slow, expensive, and cumbersome avenues for legal migration has fueled the demand for migrant smuggling. Most states have responded to the rise in migrant smuggling and other forms of irregular migration by tightening border controls, building fences, denying entry to asylum seekers, and turning around or towing away boats carrying refugees. Such measures come at vast financial costs and increase human suffering. Moreover, such measures are incapable of stopping international migration and the flow of refugees; they merely displace migration routes, stop refugees from finding protection, and push migrants into the hands of smugglers.

The smuggling of migrants can be prevented and the uncontrolled flow of irregular migrants reduced, if source, transit, and destination countries cooperate; migration is managed effectively; coherent policies and laws are adopted; and feasible avenues for seeking protection and for legal migration are created. To that end, several international organizations and experts expressly promote the position that states need

to take on the role of smugglers by opening legal avenues for safe and controlled migration while addressing the conditions that lead migrants to use the services of smugglers.

The purpose of this note is to explore the main challenges in stopping the smuggling of migrants and outline the principal benefits of coherent policies, laws, and practical measures that are designed to prevent the smuggling of migrants and protect the rights of smuggled migrants. The main policy priorities at the national, community, global, and regional levels are also discussed. The main existing international frameworks and the main international organizations are briefly outlined. Synergies with the *Global Compact on Refugees* are explored in the final part of this note.

## **2. Issues: Challenges and Benefits**

### ***Challenges***

The smuggling of migrants, along with other forms of irregular migration, poses complex challenges for policy makers, legislators, and government administration, and has major implications for international relations, development, national budgets, and, importantly, human rights. Migrant smuggling is of eminent concern for law enforcement agencies, immigration authorities, human rights organizations, and the international community. It poses a particular problem for states seeking to address conflicting goals and competing priorities: honoring international obligations, protecting the rights of refugees and other migrants, exercising control over their borders, punishing migrant smugglers, and managing migration flows, while taking due account of budget pressures, labor market needs, population developments, and public sentiments.

### ***Scale of the Problem***

The scale of migrant smuggling has elevated this topic to a key policy area in many countries and dominated news headlines worldwide for many years. Law enforcement agencies in Europe estimate that some 90 percent of irregular migrants, many of them asylum seekers who have traveled to Europe in recent years, have been assisted by smugglers. According to the United Nations Office on Drugs and Crime (UNODC), approximately 80 percent of irregular cross-border migration in Asia is assisted by smugglers. Although accurate data on migrant smuggling are not available and perhaps impossible to collect, due to their clandestine nature, suggestions that several million people are smuggled worldwide each year are plausible and reasonable. Estimates about the number of migrants who are in situations of trafficking vary greatly and are often based on vague guesses rather than methodical research. According to UNODC, victims of trafficking were identified in 106 countries.

### ***Worldwide Phenomenon***

The smuggling of migrants is a global phenomenon that is of major concern to national governments and regional and international organizations. The smuggling of migrants involves a myriad of means and methods, and often follows complex and circuitous routes. Adding to the complexity is that many states play more than one role in the smuggling of migrants, in that they are simultaneously countries of origin and transit, transit points and destinations, and, in some cases, countries of origin of some smuggled migrants and destination countries for others. For transit and receiving states, migrant smuggling and

irregular migration pose a particular challenge if many migrants arrive at once and public opinion toward asylum seekers and other foreigners begins to shift.

### *Migrants and Their Families*

Smuggling affects individual migrants and their families, as well as the communities in sending, transit, and destinations countries. Migrant smuggling involves considerable risks to health and personal safety and places the lives of many migrants in jeopardy. All too frequently, smuggling results in the loss of life, physical injury, psychological harm, and trauma. Tens of thousands of migrants have drowned at sea, suffocated in containers, and perished in deserts. If migrants are threatened, coerced, deceived, or otherwise exploited, migrant smuggling can transcend into situations of trafficking in persons. In this context, trafficking in persons has been described as “the most corrupt form of migration,” although in international law and most domestic systems, trafficking in persons also captures trafficking within one country and instances that involve no movement of the victim at all.

### *Lack of Data and Knowledge*

Although the smuggling of migrants is receiving more attention than at any time in recent history, the phenomenon remains not well understood and is too often characterized by simplistic analysis and a high degree of imprecision and distortion. Data documenting the level of migrant smuggling, the profile of smuggled migrants, and migrant smugglers are almost nonexistent. The causes and characteristics of migrant smuggling, methods and routes, and factors that drive would-be migrants into the hands of smugglers are only poorly documented and insufficiently analyzed.

### *Policy Vacuum and Lack of Sustainable Responses*

Presently, meaningful and durable solutions to this long-standing problem remain elusive. Despite many horrific events, most domestic laws and programs aimed at stopping the smuggling of migrants remain short-term and tactical, not strategic, and certainly not focused on addressing the conditions that drive many migrants into irregular avenues of migration. States are struggling in their efforts to provide fair and feasible solutions to the perceived rise in irregular migration, and many recent policy announcements and border measures are driven by simplistic slogans rather than evidence-based research. Although many policy and legislative changes aimed at stopping irregular migration have been proposed in recent years, few of them are supported by in-depth research, and many of them lack sustainability and vision. There is an urgent need for strategic solutions and concerted efforts in this field.

### ***Potential Benefits***

Developing sustainable solutions to the smuggling of migrants and irregular migration is of immediate concern to governments and civil society worldwide. The loss of life attributable to the smuggling of migrants every year underscores the need for urgent action to prevent further deaths and injuries, protect the rights of migrants, restore the capacity of states to manage and control migration, and develop fair and feasible alternatives for those desperate to flee persecution and poverty.

To that end, it is important to examine existing models and conceptualize new ideas that

- a. Incentivize the use of safe, lawful, feasible, efficient, and inexpensive avenues of migration and asylum seeking.

- b. Discourage the use of irregular avenues, such as migrant smuggling.
- c. Sanction those who take advantage of or exploit migrants.

The creation of programs and practical tools needs to go hand in hand with the development of concerted immigration, labor, population, and criminal justice policies. These policies must take due account of states' capacity to manage migration and protect refugees as well as their labor demand, existing migrant communities, ability to integrate new migrants, economic and demographic developments, and environmental factors. This requires a conversation between all levels of governments and all segments of society, nationally and internationally.

To counteract the smuggling of migrants, states need to accept responsibility for all forms of migration into and out of their territory. In the 21st century, international migration is a reality that all countries need to confront, whether as countries of origin, transit, or destination. Governments worldwide need to recognize that migration is not a phenomenon that can be stopped or prohibited, but it can be controlled and managed. If managed properly, migration can have tremendous benefits to national economies, local communities, and society as a whole. Through careful planning, broad-based consultation, and international cooperation, states can manage the flow of people across their borders and control migration in a positive way that provides fair and feasible options for those seeking to migrate.

International research and collaboration enhances the ability of states to manage migration flows and improve their preparedness for new and emerging refugee crises. Policy initiatives, law reform, and practical measures need to be designed to ensure that states maintain their ability to control the levels and patterns of migration, protect asylum seekers, and successfully integrate refugees and other new immigrants. Best practice models and recommendations can assist states in producing practical solutions to the smuggling of migrants that balance national policy concerns with international obligations and human rights.

Legal avenues of migration need to be explored that serve to prevent the smuggling of migrants and provide safe migration for people fleeing persecution or poverty. Such avenues should enable migrants to seek protection and admission directly from source and transit countries, thus making it unnecessary to resort to irregular migration and the dangerous offers made by smugglers.

### **3. Policy Priorities**

#### ***National Level***

##### *Comprehensive and Coherent Immigration and Labor Market Policies*

To maximize the benefits of international migration, protect the rights of refugees and other migrants, and prevent the smuggling of migrants, states need to develop comprehensive national immigration and labor market policies that take due account of national economic developments, labor demand and unemployment rates, medium- and long-term demographic developments, and environmental factors. This is an important step to gain better control of migration flows, create capacities for refugee protection, manage the demand and supply of labor migrants, and produce real benefits from migration for local communities and national economies. Policy making in this field can also help raise awareness of the



advantages of controlled migration and the plight of refugees, thus countering misinformation, xenophobia, and prejudice.

To be effective, policy development needs to be followed by implementation and enforcement. This requires human and financial resources that turn policy goals into practical measures. It also needs the political will to face the challenges and obstacles that are associated with drafting relevant legislation, setting up institutions and procedures, working with a range of different stakeholders, and convincing migrants, industry, voters, and other parts of society of the advantages of managed refugee and migration flows.

### *Legal Avenues of Migration*

Strategic and practical measures that divert refugee and migration flows from irregular to regular avenues are key policy components. This also involves taking active steps to ensure the safety of migrants during their journeys. Promoting safe migration involves creating incentives and highlighting the advantages of official and managed migration that is free from exploitation and trafficking and does not place the safety of migrants at risk. Legal and safe migration options need to be designed in a way that they are perceived by migrants as easy, affordable, and effective, and as preferable to irregular and clandestine avenues.

These efforts need to go hand in hand with measures designed to discourage the use of smugglers and other forms of irregular migration. The high costs, dangers, and uncertain outcomes of the smuggling of migrants need to be communicated to would-be migrants. This must be supplemented by greater efforts to criminalize, investigate, arrest, and prosecute smugglers and traffickers, such that smuggling and trafficking turn from high-profit, low-risk activities into high-risk, low-profit crimes. It is important in this context that the focus of efforts to combat and criminalize the smuggling of migrants should be aimed squarely at the smugglers who facilitate illegal entry to obtain a financial or other material benefit. Such efforts do not criminalize migrants for being the object of migrant smuggling. States also need to respect the non-criminalization principle enshrined in international refugee law.

### *Source Countries, Root Causes, and Education*

Sending countries may fear that any further facilitation and promotion of regular migration may lead to a greater “brain drain” of skilled and educated people. This is a valid concern, especially for economies that offer few job opportunities or only jobs that are poorly paid in comparison with other countries. For this reason, the development of avenues for regular migration must be accompanied by the development of national labor migration policies that protect the rights of overseas workers and facilitate remittance transfers, as well as economic policies that foster development, education, training, and job creation in source countries. These are long-term goals that will have little immediate effect on would-be migrants. In the meantime, sending countries need to acknowledge and maximize the benefits of labor migration, remittances, and the “brain gain” that returning workers bring to the national economy.

It is important that any strategy aimed at preventing the smuggling of migrants takes due account of the root causes that trigger migration and displacement in the first place. Although many policies and practical measures have sought to address the symptoms of irregular migration, the underlying factors, structural deficits, and political and economic realities are often overlooked. Any meaningful attempt to reduce if

not eliminate irregular migration must be accompanied by efforts to promote sustainable development, economic growth, democracy, the rule of law, and peace.

A point of particular importance in this context is the access to and quality of education, especially in rural and remote areas. In many parts of the world, irregular migration involves people with limited schooling and skills. Women are disproportionately affected if families choose to keep their sons in school and send their daughters abroad to work. Lack of education not only limits the employment opportunities at home, but also makes people more vulnerable to the promises of smugglers and traffickers. An important step in preventing smuggling thus involves improving school attendance, reducing the numbers of early school leavers, and ensuring that boys and girls are given fair, equal, and easy access to primary and secondary education. Such measures need to be complemented by initiatives that foster tertiary education and skills training and improve employment opportunities for school graduates, so that they have real incentives to complete school and pursue a career in their home country.

#### *Law, Law Enforcement, and Protection of Migrants*

The development of comprehensive legal frameworks and their consistent enforcement are central to any strategy aimed at preventing the smuggling of migrants and promoting safe migration. In the absence of such frameworks and enforcement, irregular migration is likely to flourish, as smugglers and traffickers take advantage of legal loopholes and the inability or unwillingness of the authorities and officials to enforce existing laws rigorously.

Law enforcement, border agencies, coast guards, immigration authorities, and so forth have an important role to play, not only by investigating cases of smuggling and trafficking, identifying suspects, arresting offenders, and seizing the assets of such crimes, but also by protecting smuggled migrants and victims of trafficking. For law enforcement to be meaningful, investigators need to be equipped with relevant powers that enable them to conduct searches, interview witnesses and suspects, enter premises, seize assets, and make arrests. As these powers are intrusive, they need to be limited and monitored to prevent the abuse of power and unnecessary infringement of human rights and civil liberties.

When apprehended by the authorities, smuggled migrants and victims of trafficking in persons may be in urgent need of shelter, food, and basic medical care. In many instances, irregular migrants are found in situations of emergency, exposed to the elements, or at risk of dehydration, suffocation, or drowning. For these reasons, it is crucial that those who are likely to encounter victims of trafficking and smuggled migrants are adequately informed about the vulnerabilities and rights of migrants, and appropriately equipped to provide immediate assistance without further traumatizing or harming the victims.

#### *Civil Society and Local Communities*

Civil society and local communities can be the cause of and shape irregular migration, and play multiple important roles in preventing migrant smuggling and promoting safe migration.

When people, especially young men and women, experience or witness persecution, generalized violence, poverty, and high youth unemployment in their home communities, it becomes likely that they may emigrate and use the services of smugglers. Whether on their own accord or at the initiative of their parents and other family members, young men and women are often the first to move abroad. They seek

to find protection and employment and, in the medium and long term, support their families through remittances or sponsor the migration of their remaining relatives.

Parents, siblings, other relatives, and friends in the home country and existing migrant communities in transit and destination countries play a crucial role in enticing would-be migrants, connecting them to smugglers, and financing their journey. Many migrants rely on the information obtained from family and friends, believe the tales of visiting and returning migrants, and create false expectations about the life, opportunities, and prosperity in the destination countries. These expectations are also often based on television shows, movies, and social media that embellish or misrepresent the situation in destination countries and the journeys to reach them. Consequently, many migrants, especially those with low education, are ill-prepared and have little understanding about the travel arrangements, legal status, employment opportunities, wages, and working conditions they can expect.

Further research is needed for better profiling of smuggled migrants and identifying the specific circumstances that lead them to leave their home communities, move abroad, and use the services of smugglers. This needs to be followed by awareness raising and education campaigns, along with targeted interventions that address the causes of displacement and emigration and empower those communities that are most vulnerable to the false promises made by smugglers.

Information sharing, awareness raising, and education about the causes, characteristics, circumstances, and consequences of migrant smuggling not only concern communities and individuals in source countries; they are also of great importance to destination countries and transit points. In many countries, rising levels of and reports about the smuggling of migrants, refugee flows, and other forms of irregular migration have led to fears about the levels of immigration and concerns about the capacity of states to manage them. All too frequently, these fears translate into prejudice, xenophobia, and racism, especially if they are fueled by sensationalized media reporting and populist political rhetoric. In some instances, these circumstances have led to discrimination, abuse, threats, and outright violence against foreigners. For these reasons, it is important that government authorities, local communities, the media, and all parts of civil society work together to provide accurate information about the complex facets of migrant smuggling, correct false and sensationalized reports, and establish avenues for dialogue, informed discussion, and the development of solutions.

### ***Global Level***

International cooperation at all levels of government is a crucial element in the fight against the smuggling of migrants. Although it is well known and self-evident that cooperation across borders is needed to fight transnational activities, and although the tools and frameworks to facilitate such cooperation have been available for some time, actual cooperation and practical measures that involve partners from more than one country remain the exception rather than the rule. The opportunities offered by international cooperation remain underutilized, and many criminal elements greatly benefit from the fact that investigations and criminal justice usually stop at the border.

The weak capacity of any one state to address the challenges posed by the smuggling of migrants and irregular migration effectively translates into an overall weakness in the international system. Accordingly, many instances of smuggling remain undetected and many offenders on the loose. This is a further reason

why comprehensive, multi-agency, and flexible cross-border cooperation is essential. The United Nations *Convention against Transnational Organized Crime* and the Protocols on the smuggling of migrants and trafficking that supplement the Convention set out a myriad of avenues to enable and facilitate international law enforcement and judicial cooperation. If implemented and utilized effectively, these measures can make a real difference in preventing and suppressing trafficking and smuggling, arresting offenders, and protecting the rights of trafficked persons and smuggled migrants.

The United Nations *Protocol against the Smuggling of Migrants by Land, Sea and Air* sets out an ambitious international approach to prevent and combat the smuggling of migrants. The Protocol is the first and only international instrument to define and criminalize the smuggling of migrants, foster international cooperation, and protect the rights of smuggled migrants. In the 17 years since its creation, the *Smuggling of Migrants Protocol* has garnered considerable support: as of June 1, 2017, 143 states are Parties to the Protocol. The Protocol and its extensive explanatory and interpretative materials provide national legislators with a blueprint to prevent and combat the smuggling of migrants at the domestic level, which can be integrated bilaterally, regionally, and multilaterally. The drafters of the Protocol were cognizant of the need for the provisions to be sufficiently malleable to apply to varying legal systems. To prevent and combat the smuggling of migrants more effectively and more universally, it is thus important that more states ratify this important treaty.

Although the Protocol has found widespread adoption worldwide, many states have not—or not yet—signed and ratified the Protocol. Among these are several states that play a major role as sending, transit, and/or destination countries for smuggled migrants. The main barriers to ratification relate to the extensive costs and complexities associated with the implementation and enforcement of the Protocol, and a lack of political will or understanding in some non-Party States. The perceived absence of incentives, the view that enough is already done through national laws or other initiatives, and a general reluctance to accept binding obligations on issues that are traditionally matters of national concern are other reasons why some states have not ratified the Protocol.

A further weakness in the international system is the lack of mechanisms to monitor and enforce the implementation of the Protocol, and the law in many states departs greatly from the Protocol's requirements. Regrettably, the Conference of the States Parties, and UNODC, the “guardian” of the Protocol, are not well equipped to rectify these concerns. Although they can assist in interpreting the Protocol and giving guidance to States Parties, they have no power to enforce Protocol obligations or compel non-Party States to accede to this body of law. For many years, the United Nations has advocated the creation of review mechanisms for the *Smuggling of Migrants Protocol* and the *Convention against Transnational Organized Crime*, but some states remain fiercely opposed to such moves. However, to strengthen the international system, it is important to promote and strengthen the Protocol and its implementation and, through the Working Group on Smuggling of Migrants established by the Conference of the States Parties, examine possibilities for enhancing the Protocol and fostering further integration and harmonization of this body of law.

International law, cooperation, and other initiatives to prevent the smuggling of migrants and promote safe migration are not limited to the mechanisms set out in the *Smuggling of Migrants Protocol*. In particular, international refugee and human rights instruments are crucial in protecting the rights of

smuggled migrants, providing assistance and support, and ensuring that they are not returned to a place where they may face or fear persecution, torture, armed conflict, or serious human rights violations. It is also important that many treaties and principles seek to protect the rights of migrant workers, and prohibit slavery and slavery-like practices, forced labor, child labor, exploitation, and trafficking in persons. The international organizations supporting the implementation of these treaties and assisting refugees, migrant workers, displaced persons, and others are also instrumental in preventing migrant smuggling and promoting safe migration. For these reasons, it is important that international law relating to refugees and migrants is adopted more broadly, and that all states implement and enforce their international obligations.

### ***Regional Level***

Although the smuggling of migrants is a worldwide phenomenon, it affects different parts of the world differently. Different regions experience different patterns, levels, and characteristics of migrant smuggling. The means and methods employed by smugglers, experiences of smuggled migrants, and causes of irregular migration vary between countries and continents.

Some international organizations with a regional focus, chief among them the European Union and now also the Council of Europe, have devoted some attention to the challenges posed by migrant smuggling in their Member States, and have set up forums and mechanisms to exchange information and explore adequate responses. In the case of the European Union, binding measures have been adopted that require Member States to criminalize the facilitation of illegal entry, transit, and stay of third-party nationals in the European Union. Elsewhere, regional consultation processes have been created to facilitate a dialogue between source, transit, and destination countries, and to explore opportunities for regional cooperation. The Budapest Process, which brings together countries from Europe and Asia, and the Bali Process, in which countries from the Asia Pacific region gather, are particularly noteworthy in this context.

These initiatives are important tools for discussing and examining the many challenges associated with migrant smuggling, exchanging ideas, exploring opportunities for cross-border cooperation, and creating a sense of burden-sharing. These processes are particularly important for those states that are not Parties to international treaties relating to migrant smuggling and refugee protection.

However, regional initiatives and the work of regional organizations should align closely with the standards set by international law, and must not serve as options to avoid international obligations. There are valid concerns that nonbinding discussion forums are used by some states as an excuse not to participate in binding treaties, and that the guidelines and laws developed by regional forums conflict with the requirements of international Conventions.

## **4. Existing International Frameworks**

### ***United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air***

The United Nations *Protocol against the Smuggling of Migrants by Land, Sea and Air* was opened for signature on December 15, 2000, and entered into force on January 28, 2004. The Protocol seeks “to prevent and combat the smuggling of migrants, as well as to promote cooperation among States Parties to that end, while protecting the rights of smuggled migrants” (Article 2). The Protocol mandates the

criminalization of the smuggling of migrants and associated offences; provides a range of mechanisms for law enforcement, border control, and international cooperation; and contains a limited number of provisions concerning the protection of the rights of smuggled migrants.

The *Smuggling of Migrants Protocol* supplements the United Nations *Convention against Transnational Organized Crime*, which was opened for signature on December 12, 2000, and entered into force on September 29, 2003. This relationship between the Protocol and the Convention places the smuggling of migrants in the category of organized crime. Through the Convention, States Parties to the Protocol also gain access to a range of investigative, prosecutorial, and judicial tools to combat organized crime, including in cases that require international cooperation.

Of further significance in this context is the United Nations *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*, which, like the *Smuggling of Migrants Protocol*, supplements the *Convention against Transnational Organized Crime*. The *Trafficking in Persons Protocol* was opened for signature on December 12, 2000, and entered into force on December 25, 2003. Its stated purpose is to prevent and combat trafficking in persons, protect and assist victims of trafficking, and promote cooperation among States Parties (Article 2). Although trafficking in persons and the smuggling of migrants are two phenomena with distinct constituent elements, both are forms of irregular migration and, conceptually and in practice, are closely related and frequently indistinguishable.

#### ***European Union Council Directive and Framework Decision***

On November 28, 2002, the Council of the European Union adopted *Directive 2002/90/EC, defining the facilitation of unauthorised entry, transit and residence* (OJ L238/17), which was followed one week later by *Framework Decision 2002/946/JHA, on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence* (OJ L238/1). These two interconnected documents set out the requirements for criminalization of the smuggling of migrants in EU Member States, although the documents do not use the term smuggling of migrants. Council Directive 2002/90/EC serves to provide the definition of facilitation of unauthorized entry, transit, and residence; Framework Decision 2002/946/JHA sets out the “minimum rules for penalties, liability of legal persons and jurisdiction” of the offenses under the Council Directive.

The “package” established by these documents is less comprehensive than the *Smuggling of Migrants Protocol* and, in several instances, departs from the requirements of the Protocol. In 2016–17, the European Commission conducted a review of the EU instruments and simultaneously commissioned an independent assessment. Although the Commission and the independent assessment identified several weaknesses in this framework and confirmed the discrepancies with the Protocol requirements, the Commission nevertheless recommended to leave the European Council Directive and Framework Decision unchanged for the time being.

#### ***International Refugee and Human Rights Law***

Many smuggled migrants are refugees, seeking protection from persecution. For this reason, the *Convention and Protocol Relating to the Status of Refugees* are of great importance in the context of migrant smuggling. In particular, these instruments prohibit the return of refugees to places where they may fear or face persecution, known as the non-refoulement principle. The non-refoulement obligation

also arises from several other international instruments, including Article 7 of the *International Covenant for Civil and Political Rights*, Article 45(1) of the *Convention for the Protection of Civilians in Time of War*, Article 3 of the *Convention against Torture*, and Article 22 of the *Convention of the Rights of the Child*. Of further importance is the *Convention Relating to the Status of Stateless Persons*, given that many irregular migrants are not considered nationals by any state. General provisions in international refugee and human rights law are important insofar as they provide substantive and procedural rights that are relevant to migrants in an irregular situation.

### **Other International Instruments**

International labor law contains several instruments that serve to protect the rights of migrant workers. The *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* addresses the elimination of the exploitation of migrant workers throughout the entire process of migration, and attempts to institute measures for the protection of documented and undocumented migrants. Article 68 requires States Parties to impose sanctions on persons, groups, or entities that organize, operate, or assist in illegal or clandestine movements, and those that use violence, threats, or intimidation against migrant workers or members of their family in an irregular situation. The *Migration for Employment Convention*, supplemented by two annexes, deals with the recruitment, placing, and conditions of labor of migrants in employment. The *Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (or Migrant Workers (Supplementary Provisions) Convention)*, Part I, includes provisions concerning trafficking in persons. If irregular migrants are the object of forced labor or labor trafficking, international treaties concerning slavery and slavery-like practices may also be relevant.

## **5. International Organizations**

The following sets out a list of some of the main international and regional (political) organizations with mandates that concern the smuggling of migrants and associated issues. Only UNODC and the International Organization for Migration operate programs that are specifically designed to prevent the smuggling of migrants.

- International Labour Organization
- International Organization for Migration
- Office of the United Nations High Commissioner for Human Rights
- United Nations Children's Fund
- United Nations Development Programme
- United Nations High Commissioner for Refugees
- United Nations Office on Drugs and Crime
- Various international aviation and carrier organizations
- Regional organizations, including the African Union, Association of Southeast Asian Nation, Council of Europe, European Union, Gulf Cooperation Council, Organization of American States, and Pacific Islands Forum.

## **6. Connection to the Global Compact on Refugees**

The smuggling of migrants involves mixed groups of migrants who may be forcibly displaced or fleeing from persecution, war, generalized violence, discrimination, human rights abuses, environmental degradation, poverty, or employment—or any combination of such factors. It may also involve persons who voluntarily decide to leave their home communities to find better jobs or higher wages, use their skills and education, gain education or skills training, join other relatives or friends, or simply look for new opportunities and a better life abroad. In many cases, the decision to migrate is less a choice by the individual but more a decision by their parents or families, who want the migrant to find safety or employment abroad and support the remaining relatives through remittances or support them to follow later.

The smuggling of migrants may involve refugees, persons displaced for other reasons, labor migrants, and others without access to legal avenues of migration, because such avenues are nonexistent or expensive, slow, unreliable, or extremely bureaucratic. The distinction between refugees fleeing persecution, other forcibly displaced persons, and other migrants is often not an easy one to draw, as many migrants choose or have no choice but to leave their home communities because of factors that involve political as well as economic causes.

The United Nations High Commissioner for Refugees' "roadmap," *Towards a Global Compact on Refugees*, dated May 17, 2017, contains many initiatives and mechanisms that are equally important to prevent the smuggling of migrants and promote safe migration. These include the full range of measures aimed at addressing the causes of displacement, development, and support for host communities, to name but a few.



## **International Cooperation and Governance of Return Migration**

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### **1. Challenges and Potential Benefits of Return Migration**

Return and readmission constitute particularly sensitive areas for migration-related international cooperation. Just like initial emigration, return migration has developmental effects. Whether these effects are positive or negative depends on the individual circumstances of return. Spontaneous and state-induced returns differ from one another, as do voluntary and forced returns and temporary and permanent returns. A key insight from migration studies is that return expectations—of the migrants themselves and state authorities—are often upheld for extended periods of time without amounting to actual returns. This is because migration often constitutes a fundamental shift in life course and individuals tend to adapt the length of their stay abroad, which may initially have been meant to be strictly temporary, to their evolving personal situation. For this reason, return migration is notoriously difficult to plan, and often constitutes an area of conflict and contestation between state authorities and the individuals concerned.

From a development perspective, voluntary return is clearly preferable to forced return. Most returns are spontaneous, that is, individuals choose to return once their migration project (for example, a course of study or the plan to earn and save a certain amount of money) has been completed. The state is not involved in these types of return. In other cases, individuals return when they are required to leave their host country because they have no right to stay there. For example, their temporary work visa has expired; their asylum claim has been rejected; or they did not have a legal residency title in the first place. Under these circumstances, individuals may benefit from assisted voluntary return (AVR) schemes, like those run by the International Organization for Migration (IOM), or be subjected to forced return—as individual deportees, or in the context of mass expulsions, despite these being prohibited under international law.

From the perspective of countries of origin, there can be good reasons to encourage and support voluntary returns, despite the fact that this may amount to a decrease in remittances. Countries of origin can benefit from migrant return if this reverses brain drain (for example, in the notoriously understaffed health sector); provides much-needed labor force for reconstruction in a post-conflict scenario; or comes with the benefits of new business contacts, potential for innovation, and entrepreneurial skills of returnees. Forced returns, by contrast, typically go along with greater obstacles to reintegration and can be particularly challenging when individuals are de facto returned to a situation of internal displacement—for example, as was often the case in the aftermath of the Bosnian War. Further, forcibly returning large numbers of people to a situation of poverty can threaten positive development trajectories, exacerbate existing conflicts, and have a destabilizing effect on already fragile regimes. However, governments that refuse to accept back their own nationals if they have been subject to forced removal not only disregard their international legal obligations, but also risk strained relationships with host countries that may be important business partners or donors.

Host countries can likewise benefit from voluntary return migration, for example, through strengthened business ties with countries of origin. At the same time, host countries count forced removal among their core sovereign powers, and a crucial one for upholding their border regime and ensuring the integrity of their asylum system. However, forced removal is a notoriously costly endeavor, and its usage therefore has clear limitations. Weighing the costs and benefits of forced return can therefore be difficult, with tangible financial and social costs being weighed against the value of signaling resolve in upholding the laws regulating the entry and stay of noncitizens. In addition, the development and political risks outlined above also constitute points of concern for host countries that pursue a long-term development agenda in partner countries and have an interest in stabilizing fragile regimes.

Although actors on the ground agree that reintegration assistance greatly increases the chance of returns being successful and sustainable, there is a shortage of well-planned reintegration programs and a dearth of studies evaluating and comparing the existing schemes. German AVR schemes, for instance, have traditionally been limited to covering travel expenses and potentially a small cash grant upon return. This falls short of the ideal of assisting returnees in becoming self-reliant. Countries like the United Kingdom have experimented with offering substantial cash grants upon return. However, these measures have been reversed, as they were found to be politically unpalatable and potentially counterproductive, since there has been anecdotal evidence that these reintegration schemes constitute an additional pull factor for potential migrants.

## **2. How should Member States respond to these issues?**

Authorities in countries of origin should

- Respect their obligation to accept back their own citizens, and refrain from using readmission as a bargaining chip in aid negotiations.
- Support returnees in returning to their place of residence if they so wish.
- Consider under which circumstances returnees are most likely to constitute an asset to local communities, and invest in preparing the ground for bringing these circumstances about, such as by including reintegration in national development plans.
- Refrain from discriminating against returnees, and counteract negative stereotypes about forced returnees, to facilitate their reintegration.
- Consider the challenges and opportunities of reintegration into urban versus rural settings, and provide targeted assistance.

Authorities in transit countries should

- Offer “stranded” migrants protection as well as genuinely voluntary return options.

Authorities in host countries should

- Respect their non-refoulement obligations under international law.
- Avoid returning people to situations of internal displacement.
- Avoid using negative aid conditionality to pressure countries of origin to accept back their own nationals, and instead engage in constructive discussions on how obstacles to return can be overcome.

- Provide comprehensive and transparent information about the political, economic, and security situation in the countries of origin.
- Provide open-ended counseling services that discuss the possibility of return among other options.
- Offer reintegration assistance that starts prior to departure, such as by investing in training that matches the job market requirements of countries of origin.
- Uphold the rights and dignity of migrants during return proceedings.
- Be sensitive to the specific needs of families and children, and avoid disrupting family units as well as courses of study and vocational training.
- Be realistic about the full cost of forced return (human, financial, and political), rather than only taking into account the cost of transport and escort personnel in planning return activities.
- Consider the development effects of voluntary and forced return activities.
- Provide reintegration assistance upon return that is directed at the individual returnee (for example, financial assistance or credit schemes for setting up small businesses) and the wider community (for example, by opening job counseling or training opportunities to non-returnees, or encouraging small business entrepreneurship that creates employment for members of the local community).
- Consider setting up circular migration schemes that allow for adaptation to changes in life course.

### **3. What aspects of return are currently covered by existing Conventions, agreements, and practices?**

#### **Where are the gaps and how can they be filled?**

On a very basic level, states depend on international cooperation to achieve migrant returns. Although entry and integration remain a sovereign prerogative, in that they require no formal approval or acceptance by other states, the modern state system is structured in a way that leaves no in-between spaces. The physical exclusion of migrants from one state presupposes their physical acceptance by another state, and potentially also the consent of transit states. This amounts to a situation where international cooperation is a condition sine qua non for migrant return. In line with this, migrant return is on paper / in theory one of the most developed areas of international cooperation on migration, with a clear basis in international law. In practice, however, return migration is a particularly contested area of international cooperation.

The four most fundamental elements of international law pertaining to migrant return are individuals' right to return, the obligation of states to accept back their own nationals, the principle of non-refoulement, and the prohibition of collective expulsions. First, return to one's country is a fundamental right enshrined in Article 13(2) of the Universal Declaration of Human Rights. Second, this goes along with the customary law obligation of states to accept back their own nationals. Third, international refugee law contains the well-established principle of non-refoulement, that is, the prohibition to return individuals to countries where their life or freedoms may be in danger. The 1951 Refugee Convention first established the principle of non-refoulement, which now constitutes a peremptory norm of international law by which all states are bound. Fourth, the prohibition of collective expulsions is set out in Protocol 4 of the European Convention of Human Rights (which has been further strengthened through subsequent case law of the European Court of Human Rights), and constitutes a rule under general international law.

Beyond these basic principles, many countries have signed bilateral or multilateral readmission agreements. These readmission agreements are aimed at specifying forced return procedures, and typically spell out the administrative details of identification, documentation, and operational cooperation that are required in individual instances of forced return. European Union–level Mobility Partnerships often entail readmission clauses, making the opening of legal migration channels for individual third countries dependent on the readmission of unwanted foreigners—their own nationals and third-country nationals who have transited through their territory.

In terms of practices, host countries have developed a plethora of strategies to facilitate the identification of individuals whose citizenship is unclear. These practices include inviting foreign delegations to hold interviews with detainees, and are often based on existing bilateral contacts between government officials. In the European context, the European Union’s Border and Coast Guard Agency, Frontex, carries out joint return flights with deportees from different EU Member States, effectively pooling material resources and the benefits of good bilateral relations with individual countries of origin to step up the number of removals. One of the most glaring gaps in the international governance of migrant return is that there is no international agreement (apart from the principle of non-refoulement) on the standards to which state-induced returns must adhere.<sup>1</sup> Another gap is that there is no international prohibition against returning individuals to a situation of internal displacement, despite the problems this can entail—for the individuals concerned, who may find themselves in a situation with no support network, and for society in instances where, for example, return exacerbates existing urbanization trends and further increases the number of the urban poor. From a development perspective, it is problematic that return policies rarely take into account the broader economic and political impacts of forced returns. States should cooperate in developing common standards on return, so that readmission and reintegration are in line with the Sustainable Development Goals, and work together to put these standards into practice.

#### **4. How well developed is the global institutional architecture on migrant return? How can cooperation and coherence between organizations be improved?**

The global institutional architecture on migrant return has evolved in an incremental manner. Having started with a few AVR schemes from Western Europe in the late 1970s and early 1980s, IOM has gradually expanded its return portfolio. Today, IOM is by far the leading provider of structured return assistance, operating AVR schemes in more than 90 countries.

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<sup>1</sup> This is different in the European Union, where EU Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals (EU Return Directive) stipulates that under normal circumstances, voluntary return should be preferred over forced return (Article 7), obliges member states to provide for an effective forced return monitoring system (Article 8(6)), and sets a maximum length of detention prior to removal. In terms of its more restrictive elements, the EU Return Directive does not allow child detention (Article 17) and allows Member States to set re-entry bans following voluntary departure (Article 11).

Migrant return therefore constitutes a core field of IOM's operational activities. Many of these schemes have in the past been criticized for not being genuinely voluntary. In addition, monitoring and evaluation of migrant return schemes lags far behind these operational advances, as does the collection of data on migrant return.

The type and amount of reintegration assistance provided to returnees under these schemes differs from country to country, with IOM putting the respective government's preferred scheme into practice. This points to IOM's ambiguous identity of being an advocate of migrants' rights and dependent on project-based funding from governments that often hold more restrictive views. The tension between IOM's increasingly rights-based outlook and its role as a service provider, predominantly to its wealthiest donors situated in the global North, has so far remained unresolved despite IOM having joined the United Nations family as a related agency in September 2016.

Further, the operational specificities of migrant return often feature prominently on the agendas of migration-related regional consultative processes. These processes are informal dialogues that bring together governments and other relevant stakeholders for best practice exchange and identification of common points of interest in migration-related policy making. IOM acts as a secretariat for many of the currently 14 active regional consultative processes.

#### **5. How is the theme of migrant return connected to the Global Compact on Refugees addressing forced migration due to conflict and political persecution?**

In the past, the United Nations High Commissioner for Refugees has singled out voluntary repatriation as the preferred durable solution for refugees. The organization has a role in migrant return insofar as it may have an interest in "freeing up asylum space" for people in need of international protection, and against this background supports the return of rejected asylum seekers or irregular migrants.

Although the Global Compact on Refugees is not aimed at internally displaced persons (IDPs), several soft law instruments that have been developed to protect the rights of IDPs can be instructive in thinking about the return of displaced persons more generally. The 1998 United Nations Guiding Principles on Internal Displacement spell out the right of refugees and displaced persons to voluntary return in safety and dignity. The 2005 United Nations Principles for Housing and Property Restitution for Refugees and IDPs (the Pinheiro Principles) provide guidance on the technical and legal aspects of housing, land, and property restitution. Any provisions for the return of refugees to be included in the Global Compact on Refugees should take note of these principles in order to allow enhance the sustainability of returns.

## Return, Reintegration, and Development in the GCM Debate: Some Policy Proposals from a German Perspective

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Germany is currently experiencing a rapid shift in migration and refugee debates and policies. In contrast to the 2015 “refugees welcome” approach, the public is now increasingly concerned about how to cope with the economic, social, cultural, and security implications of the 2015-16 inflows. According to recent polls, there is still much support for protecting those who are persecuted or displaced by wars and violence. However, there is growing public concern that many of the 746,000 asylum claims filed in Germany in 2016 (compared with 477,000 in 2015)<sup>1</sup> were unfounded, and that at least those who do not need international protection should return to their home countries. The debate is no longer focused on the failures of the Common European Asylum System, the lack of European solidarity, and how to protect refugees under such poor conditions. The current discussion is about caps, controls, and return—a profound change in less than two years.

In this regard, Germany is shifting towards current European mainstream migration and asylum policies, characterized by more restrictive national asylum policies, a substantial increase in external and national border enforcement (including a considerable upgrade of Frontex, the European Union’s Border and Coast Guard Agency), a more or less temporary reintroduction of internal EU border controls, and a sharp increase funds promoting return. In addition, more and more political endeavors are focused on the external dimension of asylum and migration policies—through bilateral cooperation in the field of readmission agreements, or external EU policies, especially in the Rabat and Khartoum processes and the Joint EU-Africa Strategy.<sup>2</sup>

These trends may – in mid-perspective – lead to a general asylum policy shift: Away from the traditional principle of granting individual protection through access to the territory of the host country, toward externalization of protection through external border enforcement, permanent refugee camps in third countries, and successive resettlement to Europe as the main source of protection.<sup>3</sup> Obviously, this new

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<sup>1</sup> EMN/BAMF (European Migration Network/Federal Office for Migration and Refugees), 2017, *Migration, Integration, Asylum: Political Developments in Germany 2016*, Annual Policy Report by the German National Contact Point for the European Migration Network, Nuremberg: Federal Office for Migration and Refugees.

<sup>2</sup> See International Centre for Migration Policy Development (ICPMD), 2015, Valletta Summit on Migration: A Common Political Basis, Cooperation in Migration between Africa and the European Union, Analysis of the Political Commitments of the Rabat Process, the Khartoum Process and the Africa–EU Dialogue on Migration, ICPMD, Vienna, [http://www.icmpd.org/fileadmin/ICMPD-Website/Newsletter/October\\_2015/Common\\_Political\\_basis\\_Analysis\\_for\\_Valletta.pdf](http://www.icmpd.org/fileadmin/ICMPD-Website/Newsletter/October_2015/Common_Political_basis_Analysis_for_Valletta.pdf) ; Nelly Robin (2015), The Rabat Process – A Decade of Dialogue on Migration and Development , International Centre for Migration Policy Development (ICPMD), Vienna 2015. [https://www.icmpd.org/fileadmin/user\\_upload/Rabat-Process-10years-anniversary-publication.pdf](https://www.icmpd.org/fileadmin/user_upload/Rabat-Process-10years-anniversary-publication.pdf).

<sup>3</sup> See Steffen Angenendt, David Kipp, and Anne Koch, 2016, “Border Security, Camps, Quotas: The Future of European Refugee Policy?” SWP Comments 2016/C 32, [https://www.swp-berlin.org/fileadmin/contents/products/comments/2016C32\\_adt\\_kpp\\_koh.pdf](https://www.swp-berlin.org/fileadmin/contents/products/comments/2016C32_adt_kpp_koh.pdf).

system is not yet in place, and it may even take years or decades to implement such a policy. Therefore, it is to be expected that Europe will continue to have large-scale, mixed irregular inflows of refugees and migrants, and that many of the newcomers will not receive legal residence status.<sup>4</sup> Thus, growing demand for return policies is expected, and the political pressure on all stakeholders to provide solutions and implement return and reintegration will only grow further. This trend has already influenced the debate on the Global Compact on Migration (GCM). This influence became visible during the June 2017 Global Forum for Migration and Development (GFMD) in Berlin, an important element of the ongoing process toward the GCM. One of the core events of the summit, Round Table 2.2, was dedicated to “Return and Reintegration,” and the topic was vividly discussed throughout the summit.<sup>5</sup>

Against this background, it is (again) necessary to conceptualize “return.” What exactly do we mean when we use this term? Given the broad variety of return situations, it is helpful to develop a typology of return, to clarify terms and concepts. This and other conceptual issues are discussed in part one of this paper. Some criteria for “good” return policies are developed. Part two presents criteria that can be applied to assess the quality of return regimes, and develops some suggestions for good policies. Finally, the core issues of conceptualizing and implementing reintegration policies are presented and discussed in part three. The paper approaches these issues from the home countries’ perspective, since reintegration is mainly an issue of these countries.

### **1. Part One: Conceptual Issues**

It should be clear that both topics—return and reintegration—are not *terra incognita* for development actors. In contrast, during the past decades, return migration has been conceptualized in all major socioeconomic migration and development theories—neoclassical theories, structuralism, new economics of labor migration, or transnationalism and cross-border network theories. Nevertheless, the accepted definitions of return and reintegration lack universality, and there are barely any reliable and comparable data on both issues. In addition, the drivers of return are difficult to access. As many colleagues have pointed out since the early 1970s, the drivers include highly different factors, such as failure to integrate in the host country, migrants’ preferences for their home country, achievement of saving goals, opening of employment opportunities in their home countries, and preparedness (willingness and readiness) for return. More recent studies, for example by Koser and Kuschminder, identify three broader categories of return motives: structural factors, individual factors, and policy interventions by destination and origin countries.<sup>6</sup>

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<sup>4</sup> See Steffen Angenendt, David Kipp, and Amrei Meier, 2017, “Mixed Migration: Challenges and Options for the Ongoing Project of German and European Asylum and Migration Policy,” Bertelsmann Foundation, Gütersloh.

<sup>5</sup> See Global Forum for Migration and Development (GFMD), 2017, “Fostering the Development Impact of Returning Migrants,” Roundtable Session 2.2 Background Paper, Berlin, [https://gfmd.org/files/documents/gfmd\\_2017-2018\\_rt\\_session\\_2.2\\_background\\_paper.pdf](https://gfmd.org/files/documents/gfmd_2017-2018_rt_session_2.2_background_paper.pdf); GFMD, 2017, “Towards a Global Social Contract on Migration and Development,” Co-Chair’s Conclusions, [https://gfmd.org/files/documents/2017-06-30\\_co-chairs\\_conclusions\\_of\\_the\\_10th\\_gfmd\\_summit\\_0.pdf](https://gfmd.org/files/documents/2017-06-30_co-chairs_conclusions_of_the_10th_gfmd_summit_0.pdf).

<sup>6</sup> See Khalid Koser and Katie Kuschminder, 2015, “Return and Reintegration of Migrants,” International Organization for Migration, Geneva, [https://www.iom.int/sites/default/files/our\\_work/DMM/AVRR/IOM-KoserKuschminder-Comparative-Research-on-AVRR-2015.pdf](https://www.iom.int/sites/default/files/our_work/DMM/AVRR/IOM-KoserKuschminder-Comparative-Research-on-AVRR-2015.pdf); Katie Kuschminder, 2017, “Taking Stock of Assisted Voluntary Return from Europe: Decision Making, Reintegration and Sustainable Return—Time for a Paradigm

There is a growing body of theoretical and empirical work on the development impact of return and reintegration, especially the impact of human capital mobility. Some research has also been done on the financial contribution of returnees and their impact on innovation and investment, the impact of transnational networks and their role in fostering development, and the impact of returnees on social change, including norms and values. On the other side, there is (as Debnath has recently pointed out in a KNOMAD paper)<sup>7</sup> also a growing research interest in the impact of policies on return and reintegration—for example, policies that foster brain circulation and returnees’ entrepreneurship, the role of return agencies, the impact of the diaspora on return and reintegration, and the leverage of domestic policy reforms.

Nevertheless, despite all these insights, the upcoming GCM debate on return and reintegration will need clear and commonly shared definitions and concepts for return and reintegration. Instead of starting from scratch, it makes sense to take into account definitions and concepts that have already been developed. There are some established concepts that can be used to address the challenges of return, reintegration, and development.

One such concept is the so-called “migration cycle.” In Germany, this concept was adopted some years ago. At that time, the dominant idea was that the German immigration system does not work well, with the immigration reform initiated in 2001 being still incomplete, and Germany being unable to attract the skilled labor needed to replace the shrinking and aging German labor force. In addition, there was growing sensitivity about the development impact of migration, the changing pattern of international migration toward repeated and circular migration, and the idea that the positive effects of migration would depend on the degree of mobility people have. Against this background, the idea of the migration cycle has found some political interest—and this concept also remains extremely helpful for conceptualizing return migration.

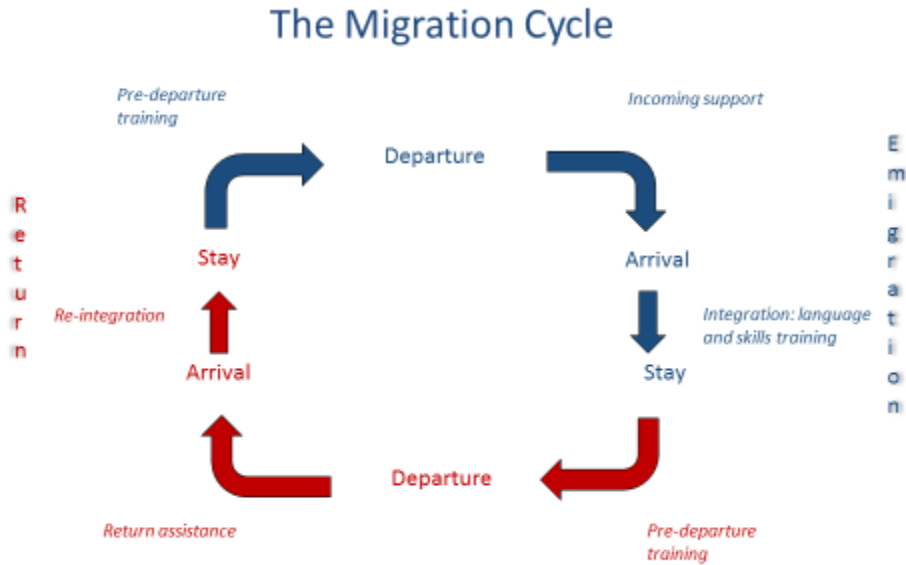
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Shift,” Robert Schuman Centre for Advanced Studies, 2017/31,  
[http://cadmus.eui.eu/bitstream/handle/1814/47064/RSCAS%202017\\_31.pdf?sequence=1&isAllowed=y](http://cadmus.eui.eu/bitstream/handle/1814/47064/RSCAS%202017_31.pdf?sequence=1&isAllowed=y).

<sup>7</sup> See Priyanka Debnath, 2016, “Leveraging Return Migration for Development: The Role of Countries of Origin: A Literature Review,” KNOMAD Working paper 17, World Bank, Washington, DC,  
<https://www.knomad.org/publication/leveraging-return-migration-development-role-countries-origin-literature-review>.



**Figure 1. Migration Cycle**



As figure 1 suggests, various support measures applied throughout the migration cycle enhance a development-oriented “triple win outcome” of migration. The German migration and development portfolio includes several support measures: preparation before migration, including language and profession-specific training; information seminars; financial literacy training; placement and financial subsidy support to returning experts; country information seminars; start-up counseling in Germany and upon return; support for migrant organization engagement; networking support to connect with employers and e-/job fairs; and a matching grants program for returnees starting their own business.

The core idea was that—given the “ideal” of a full migration cycle—all migration phases need some policy intervention to increase migrants’ success in the respective migration phase, and instruments for each of these phases must be developed.

For better conceptualization of migration and displacement in development policies, and to clarify what development cooperation could and should do for mixed flows, this concept was complemented by a distinction the author proposed during a parliamentary hearing on migration and development. It was suggested to distinguish between voluntary and forced flows, as well as between regulated and unregulated flows. These distinctions result in four types of flows, each with specific implications for development (table 1).

**Table 1. Types of Flows**

Type of flows	Voluntary	Forced
Regulated	Recruitment programs, highly skilled, return programs, family reunification, and so forth	Resettlement, relocation, compulsory change of residence, and so forth
Unregulated	Forced displacement and internally displaced persons	Irregular migration

Germany’s development policy implementation agency (GIZ) added two important aspects to this simple model: time and gradation, indicating that there is always a transition between the poles “regulated” and “unregulated,” as well as between “voluntary” and “forced,” providing a continuum of migration and forced displacement situations.

These two frameworks—the migration cycle and migration flows model—are sound starting points for the debate about good or bad return policies. The frameworks may indicate that a normative basis for developing proposals for good return policies is present and well needed. Obviously, considering the respective types of flows, it is clear that some refugees and migrants as well as their receiving and home countries are far better off than others. In general, voluntary and regulated flows are far more likely to achieve better results than forced and unregulated flows.

On voluntary return, the International Organization for Migration (IOM) has already made a couple of proposals, especially for home countries that want to get their skilled migrants back. However, IOM’s previous experience with this specific type of return migration clarifies what would be good return policy in such cases. Good return policy is a comprehensive voluntary return policy coming from the perspective of home countries. The policy would focus on attracting high-skilled return migrants and be directed toward removing obstacles to return. It would create the conditions to realize the potential of the returnees, and set up regional and local development strategies.

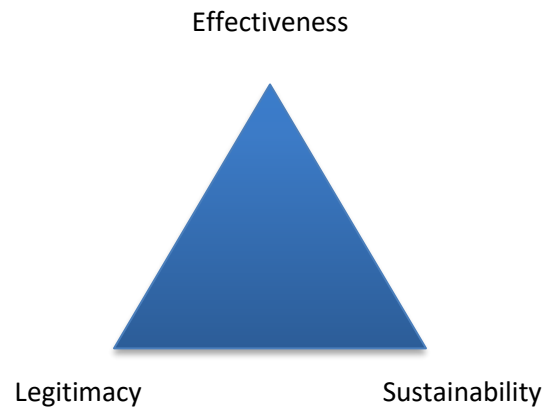
The challenges are different for involuntary return, but here it is at least possible to formulate some general criteria for a good return policy.

**2. Part Two: Criteria for “Good” Return Policies**

In international relations theory, there is a long-standing debate on the quality of political regimes. It might be helpful to use such international relations theory criteria to assess the quality of return regimes

and develop good policies. Building on that, those policies should be considered good that are effective, sustainable, and legitimate (figure 3).<sup>8</sup>

**Figure 3. Good Governance Triangle**



These three criteria are equally important cornerstones for good return policy. If the policy is not effective, it is highly unlikely that it would be sustainable or legitimate. The same is true for legitimacy: if a return policy is not considered legitimate—by the domestic electorate or the government of the returnee’s home country—it will be neither effective nor sustainable. And finally, a return policy that is not sustainable—for example, if returnees have no chance to make a living in their home country—it cannot be efficient, since the probability of a new attempt at irregular migration would remain high. Obviously, all three criteria are interlinked and mutually influence the outcome of any return policy. Therefore, the three criteria should be applied together to develop good return policy schemes.

The establishment of a common European Return Agency, a proposal that has recently been brought into the return debate, is a good example of how these criteria can be applied. It is supposed that such an agency would pool personal and financial capacities to support Member States’ return policies, and would therefore strengthen the European Union’s bargaining power and make EU return policy more effective. On the flip side, however, there is a concrete risk that this agency would need political and financial support from all Member States, which could be difficult to reach, given the highly diverging national interests in return policies. Some EU countries have hardly any people to return; others have high numbers. And some Member States have special relations with specific countries of origin and transit; other countries do not have such connections. This variety could undermine the effectiveness of a common approach. A common European Return Agency could be expected to strengthen the sustainability of return programs, simply because the planning and implementing capacities it has

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<sup>8</sup> See Tim Cadman (2012), “Evaluating the Quality of Contemporary Global Governance: A Theoretical and Analytical Framework,” *International Journal of Social Quality* 2 (1): 4–23; Cord Schmelzle, 2011, “Evaluating Governance. Effectiveness and Legitimacy in Areas of Limited Statehood,” Working Paper Series, No. 26, Research Center, Berlin, [http://www.sfb-governance.de/publikationen/working\\_papers/wp26/SFB-Governance-Working-Paper-26.pdf](http://www.sfb-governance.de/publikationen/working_papers/wp26/SFB-Governance-Working-Paper-26.pdf).

available would be much greater, and the funds and instruments much more powerful. Nevertheless, there could be a lack of legitimacy, if some partner countries felt steamrolled by such EU return policy power.

Similar criteria should be developed for reintegration policies. Reintegration is increasingly perceived as an essential part of return migration policy, because it empowers and protects returnees, by providing them the necessary tools and assistance for their reinsertion into their respective countries of origin. This topic has gained prominence in recent years, and multiple efforts have already been made toward improving return policy formulation and making assistance more effective. Accordingly, several international and regional forums have been dealing with the topic, especially with return in the aftermath of natural or man-made crises.

Nevertheless, it is still to be expected that a considerable number of migrants will return to situations of vulnerability, and that many will risk irregular and unsafe remigration options, as well as unsustainable living conditions at home. At the individual, family, and community levels, this can have dramatic consequences, as most migrants and their families invest substantial efforts and resources into their migration project. Migrants face multiple challenges upon their return to the home country, related to the economic, social, and sociocultural aspects of reintegration. The main economic reintegration challenges are the mismatch of skills that returning migrants possess and those needed by the home country's economy, lack of personal networks, poor labor market situation, reduction of income (often connected to the inability to continue sending remittances to the family), and lack of capital. Social reintegration can be difficult if returnees are not welcomed by those who stayed, or in the case of poor coordination of return policies due to multiple stakeholders. Finally, sociocultural reintegration is a major challenge for migrants who have lost their sense of belonging to their home country or are exhausted by the double adaptation stress during emigration and return.

In such circumstances, reintegration assistance and respective programs can make a difference. These programs should consider the diversity of possible reintegration patterns, which to a large extent depend on whether the migrants return voluntarily or are forced to return.

The programs can range from limited, one-time reinstallation grants at the micro level, to a range of economic and social assistance measures, including assistance for the community of return and individualized assistance for vulnerable migrants. Assistance may be provided directly to the migrants or (in the case of institutional assistance) at the meso level to the communities of return. Targeting communities in return countries may involve longer-term, structural, and development aid.

IOM has proposed some additional principles for comprehensive reintegration programs. Such programs should be measurable, balanced and tailored, complementary (in local, national, and regional approaches and activities), and innovative, in partnerships with the private sector, diasporas, development actors, and virtual networks.<sup>9</sup>

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<sup>9</sup> Ana Fonseca, Laurence Hart, and Susanne Klink, 2015, "Reintegration: Effective Approaches," IOM, Geneva, [https://www.iom.int/sites/default/files/our\\_work/DMM/AVRR/Reintegration-Position-Paper-final.pdf](https://www.iom.int/sites/default/files/our_work/DMM/AVRR/Reintegration-Position-Paper-final.pdf).

### 3. Part Three: Conclusions for Good Return and Reintegration Policies

As this paper indicates, return and reintegration, which dominate the current debate on refugees and migration, are extremely multifaceted and complex policy issues. Although it is not possible here to address in full the factors determining successful return and reintegration, this section presents some general suggestions for developing good return and reintegration policies.

***Be reluctant in suggesting large development outcomes of return migration.*** The policies should avoid unfounded expectations about the development impact of return. As always in migration, the development impact of return migration will be smaller in the case of involuntary migration, and it will be difficult for low-skilled returnees to find access to their home country's labor market.

***Be careful with numbers, especially with promising return numbers.*** The policies should bear in mind that de facto not all people who have not been recognized as refugees have to leave the country. The number of those who have the right to stay is high, consisting for example of those who cannot be expelled due to legal, practical, humanitarian, or personal reasons. In addition, the overall protection rate (*Gesamtsschutzquote*) in Germany has substantially increased during the past few years, and in 2016 stood at 62 percent. In addition, according to the Federal Office for Migration and Refugees (BAMF) statistics, 85 percent of the 540,000 rejected asylum seekers living in Germany in 2015 had a limited residence permit. BAMF would be well advised to mention this fact again and again in its public communications.<sup>10</sup> That would also be helpful for managing political expectations concerning the contribution of development cooperation to addressing the return problem.

***Develop targeted return programs for each group.*** A comprehensive return policy must consider the highly diverse structure of the returnees. As potential emigrants as well as returnees have a broad variety of skills, qualification levels, and work experiences, all support programs should be skills-tailored and provide pre-departure or pre-return vocational and professional training courses.

***Mainstream migrants' rights in any return process.*** As in all other migration and forced displacement contexts, the issue of individual rights is essential. It could include the right to work, social rights, access to social security, land rights, antidiscrimination, and so forth.

***Cooperate with political and other institutions of the partner country.*** As for recruitment programs, a good return migration policy depends on cooperation. Without cooperation and a fair balance of interests, there will be insufficient support for the returnees. In addition, return programs must be conceptualized as development programs in national development plans. Generally, return programs must also strengthen the local population in the home country.

***Strengthen local administrative capacities.*** Any comprehensive return and reintegration policy needs adequate implementation structures on the ground. Therefore, mobility centers should be set up to provide reliable information and advice on support measures throughout the migration cycle: prior to migration (through legal emigration channels), while abroad and before return, as well as after return. It would be helpful to introduce awareness-raising campaigns providing reliable information on the risks

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<sup>10</sup> Bundesamt für Migration und Flüchtlinge, 2017, Das Bundesamt in Zahlen, 2016, Asyl, Nuremberg, [http://www.bamf.de/SharedDocs/Anlagen/DE/Publikationen/Broschueren/bundesamt-in-zahlen-2016-asyl.pdf?\\_\\_blob=publicationFile](http://www.bamf.de/SharedDocs/Anlagen/DE/Publikationen/Broschueren/bundesamt-in-zahlen-2016-asyl.pdf?__blob=publicationFile).

and opportunities of migration. Here the respective country's diaspora can play an important role. The partner country's government should be supported to intensify cooperation with its diaspora abroad.

## Integration of Migrants into the Host Community: Implementing Integration Partnerships

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### 1. Challenge of Migrant Integration

Despite the economic upturn that Europe has experienced in the past couple years, the acceptance and integration of new migrants and asylum seekers remains a thorny issue in many European countries. The rise of international terrorism that has particularly struck on Europe's soil during the same period keeps bringing Muslims under a negative spotlight as those that fail to integrate into liberal secular democratic societies.

At the same time, free movement within the European Union has been perceived as an unwelcome challenge for national labor markets and welfare systems. Many of the transformations that the integration of the global economy brings, such as global supply chains, delocalization and outsourcing of production, and erosion of welfare rights, have been attributed to the presumed illegitimate competition that migrant workers bring by being prepared to work longer and harder for lower salaries.

The asylum seeker flows of 2015–17 have not helped in appeasing these concerns. By contrast, they have added a further insecurity and unpredictability dimension, questioning the effectiveness and resilience of national and regional mechanisms of migration and asylum governance.

Along with these political concerns, socioeconomic data for employment, education, health, and housing demonstrate that equal and proportional inclusion of migrants in vital spheres of life has not yet been achieved. Migrants suffer from low employment rates, concentration in specific segments of the labor market, low wages, poor working conditions, and underrepresentation in skilled jobs and senior positions in the workplace.

Their educational attainment is on average lower than that of other groups; they are underrepresented in university-track schools and higher education; and they tend to be concentrated in poorly resourced, ethnically and socially homogeneous schools. Migrants are generally in worse health than their native counterparts, have higher death rates, and are more likely to be exposed to health risks than the overall population. They often live in poorer housing conditions and are less likely to own property than the rest of the population. Migrants tend to reside in poorer urban districts with fewer public services and a high proportion of migrant residents (OECD 2012, 2015; Heath and Cheung 2006, 2007).

In this tense landscape, however, migrant integration in host societies remains a pressing and important concern from a principled (upholding the view of egalitarian democratic societies) and policy (ensuring social cohesion and a well-functioning labor market and welfare system) perspective. *Migrant integration is a common challenge for state and civil society stakeholders, and at different levels of governance (local, regional, national, and European).*

Nonetheless, policies for migrant integration seem to have stalled in “old” host countries, notably those that have experienced immigration since the 1950s and 1960s, and thus have a long experience of immigrant integration policies. Migrant integration has been transformed into a migration flow

management tool through the introduction by several EU countries, like the Netherlands and Denmark, of premigration language and integration tests in the countries of origin of prospective migrants (see Triandafyllidou and Gropas 2014). In the meantime, in recent hosts in southern Europe, notably countries that have experienced immigration predominantly as part of the wider post-1989 socioeconomic transformations, integration was initially addressed as a “luxury” they could not afford, and later as an evil that could lead to parallel societies. Civic and full assimilation have been preferred instead as appropriate alternatives.

Looking more closely at what is happening in Europe, the so-called multiculturalism backlash persists at least in political rhetoric, arguing that too much leeway was given to the cultural specificities of immigrant groups and that a more dynamic, muscular, liberal, and civic assimilationist approach is necessary (Mouritsen and Olsen 2013; Triandafyllidou and Kouki 2013). This has led to renewed emphasis on predeparture integration tests, effectively used as tools to manage migration inflows, and on requiring longer periods of residence for long-term stay permits and naturalization.

## **2. Integration Partnerships to Bridge the Local and Global**

The best way to address the challenge is to *link directly local integration efforts with transnational networks*. This can be achieved by pioneering an institutional framework for integration partnerships that would promote cooperation and synergies among stakeholders (local authorities, business actors, nongovernmental organizations, trade unions, and churches or mosques) at the local/regional level, and mobilizing transnational ties with countries/regions of origin.

Integration partnerships are conceived as voluntary partnerships that involve *one migrant host country (and one or more regions within that country) and one or more countries of origin*. The partnership involves *several actors at the local and regional levels*, such as employers, trade unions, professional associations, cultural associations, schools, media, local authorities, political parties, *and transnational actors*, such as diaspora networks, ministries and authorities at the country of destination, and international organizations at both ends of the migration pathway, origin and destination. Although the integration partnership takes place at destination, it can mobilize resources among the origin and host communities.

Recent research (Garcés-Mascreñas and Penninx 2015) shows that although integration is best achieved at the local or regional level, countries of origin have an important role to play in contributing to the integration of their migrant populations at destination. Such contributions can take the form of collaboration for training teachers and educators or religious personnel, providing textbooks and educational materials, elaborating common curricula, and organizing cultural and study exchange activities. Such collaboration can help forge opportunities for trade and business, improve health and cultural well-being among the migrant population, and overall lower the costs of migrant integration while also enhancing social cohesion in host communities.

*Integration partnerships resemble what is called in the EU jargon an open method of coordination*. Integration partnerships are not one-size-fits-all solutions, but offer a specific institutional framework. Although they would mostly take place at the local level, they would benefit from transnational connections and could be best disseminated through international organizations, such as the International Organization for Migration (IOM) or United Nations High Commissioner for Refugees (UNHCR).



They are public and private sector cooperation schemes and hence adhere to the notion of flexible and multilevel governance. They can be inspired from the model of Mobility Partnerships implemented by the European Union to cooperate with the EU Neighbourhood countries in the Eastern and Southern Neighbourhoods. The aim would be to avoid the unequal power relations and unilateral character of the Mobility Partnerships, which aim to serve mainly the interests of EU Member States. And unlike Mobility Partnerships, integration partnerships do not involve a high level of funding; they start from the ground up rather than from the state level downward.

Integration partnerships are conceived as *start-up schemes with little seed funding*. They rather aim at *taking advantage of existing know-how on specific policy areas or economic activities*. They normally would not require a major state intervention or significant financial support. They aim at generating support for the financial but most importantly human and social capital of migrants, their host communities, and their hometowns or regions of origin.

An integration partnership can involve a *wider set of topics (for example, work, welfare, education, and housing) or be focused on a single issue (education)*.

The partnership would normally involve several migrant groups (as applicable) that live in the same town, the local population and stakeholders, and the region of origin. An integration partnership can have a very ambitious or indeed a more modest objective, and will evolve in different timeframes depending on its objectives and resources.

The idea of an integration partnership framework arises from the *need for more dynamic, flexible, and interactive policy instruments in the overall area of socioeconomic integration of migrant populations*. The advantages of integration partnerships include the following:

- Economies of scale: by addressing several policy areas within a common institutional framework for cooperation and exchange, they can achieve cross-fertilization and better mobilization and use of resources.
- Multiplier effects: integration partnerships can promote an overall climate of cooperation that recognizes cultural diversity as an integral part of a given city or region's identity and socioeconomic landscape, and that promotes such diversity as an enriching and positive feature for the entire community. To this end, integration partnerships can become points of contact and cooperation among immigrant populations that live in the same locality or city, with a view to address similar challenges. The German Forum on Integration and several interfaith initiatives in the United Kingdom can serve as examples of such multiplier effects.

The following are examples of policy areas where integration partnerships can flourish:

*Combatting discrimination in housing and employment.* Migrants can come together with local authorities and construction companies to (a) devise information campaigns aimed at dissipating negative stereotypes; (b) develop cooperative housing projects that are affordable and promote a shared sense of responsibility, combatting the marginalization that often characterizes Council Housing estates in major urban centers; and (c) identify business and trade opportunities related to products and services that are characteristic of specific countries of origin, and which can have a market at destination (obvious

examples are alternative medicine therapies, new food products, new sports disciplines, and ethnic music, to name a few).

*Education.* Although expanding provisions for support classes for migrant children may entail significant financial and organizational costs for local and regional authorities, when such courses are embedded in integration partnerships, the costs can be significantly reduced. For instance, an integration partnership could provide the framework for volunteer teaching assistance by natives and immigrants in the courses/disciplines in which the volunteers are competent, or by parents and other local associations that may be willing to offer premises or educational materials (for example, that might bear the logo of a specific local company, thus advertising it).

Other policy areas that can benefit from integration partnership frameworks include

- Religious education provision and religious worship overall (temples and priests)
- Workplace sensitivities, including dietary requirements, fasting and praying times, organization of festivities, shifts, and time off
- Business support: crowdfunding to support a new business that mobilizes the transnational network and competence of the migrant population to the interest of the entire host community
- Training and lifelong learning of unemployed migrants
- Language courses for new migrants and asylum seekers.

An integration partnership can cover one or more of these domains and provides the framework within which the specific agreement and participating countries and actors will be specified.

### **3. Examples of Cases That Get Close to This Proposal for Integration Partnerships**

#### ***Integrating Diversity in Sports: The Gaelic Athletic Association***

One of the largest and most influential organizations in Ireland, the Gaelic Athletic Association (GAA), coordinates a range of Irish sports, such as hurling, Gaelic football, and camogie at the national, county, local, and school levels. It also promotes Irish culture and language. Founded in 1884, the GAA played a major role in the cultural and national revival that led to independence from Britain. Closely connected with the Irish language and Catholicism, it was at that time a key embodiment of national identity.

Today, the GAA's network of one million members extends to all areas of Ireland. GAA aims to strengthen "the national identity in a thirty-two-county Ireland through the preservation and promotion of Gaelic games and pastimes" (GAA Constitution 1.2). Increased immigration and the greater cultural and ethnic diversity of Ireland's population have presented important challenges for the work of GAA.

A response to this challenge came from the GAA itself, in conjunction with the Equality Authority, an independent official body responsible (along with the Equality Tribunal) for promoting equality. Starting in 2009, the Equality Authority held meetings with GAA officials to arrange appropriate equality awareness workshops for GAA.



The Gaelic Athletic Association, p. 34.  
Photographer: Pat Murphy/SPORTSFILE

GAA set up an Inclusion and Integration Working Group. In December 2009, Equality Authority staff began a program of equality workshops for GAA officials, first for members of the working group and selected headquarters staff members. This was followed in 2010 with workshops for full-time staff of the four Provincial Councils of the Association around the country.

Other elements of GAA's Inclusion and Integration strategy are

- Appointment of a dedicated inclusion officer
- Development of a welcome pack in a variety of languages for every club and school
- Inclusion training for all coaches
- Provision of local "have-a-go days"
- Development of a respect initiative for all involved in sports.

In articulating this program, the principal concepts invoked have been equality, integration, inclusion, respect, anti-sectarianism, and anti-racism. GAA is now regarded as a distinctive and pioneering Irish sporting organization in this respect.

### ***Intercultural Dialogue in Denmark: Respecting the Difference of Minority Parents***

In 2007, the city of Copenhagen created an integration task force to act as a contact unit between the city's central administration and its street-level professionals. These professionals included social workers, teachers, childcare workers, and employees of housing associations and sports clubs (collectively, "practitioners"). In its initial meetings with the practitioners, the task force found that they face a common problem when it comes to communicating with the parents of minority children.

The solution was to develop training courses for these practitioners and supply them with special tools to enable them to improve their dialogue with parents. A handbook was developed, complete with chapters on theory, concrete exercises, and management tools for implementing and developing good

parent dialogue. The emphasis was on conveying the theory in simple terms and converting it into practical knowledge for application in everyday situations.

The training courses and toolkit focused on rebalancing the otherwise asymmetrical relationship in dialogue between practitioner and parent. An essential step involved helping the practitioners to be open to the perspectives of the parents. Emphasis was placed on creating common solutions to concrete problems and setting clear and achievable objectives, such as getting minority pupils to participate in school excursions or gym classes. The desired mode of dialogue contrasted significantly with the standard hierarchical approach in which the practitioner speaks from a position of power. The initiative sought to provide alternatives to the situation in which the practitioner informs or tells parents what is expected of them and which solution is the right one. The pragmatic, goal-oriented approach offered ways to bracket discussions about fundamental principles or values, to be able to deal with the concrete issue at hand.



School to Receive Huge Upgrade, p. 44.  
<http://www.flickr.com/photos/bcgovphotos/5393326629/>  
Photographer: BCGovPhotos at Flickr.  
Reprinted in the Handbook by kind courtesy  
of the photographers.

Through this type of dialogue, the minority parent is recognized as an individual of equal standing and as a generally competent parent whose ideas, points of view, and feelings matter (and not just as a person with a particular minority identity). A parallel idea in the initiative is that minority parents should not only be invited to school events that may be culturally unknown to them (for example, the Danish Carnival celebrations), but also should be involved in their creation (the motto being “Do not invite, involve!”).

The initiative also sought to help practitioners become more aware of their sometimes unconscious prejudices or prejudgments. An effort was made to help them to see how these views may influence their interactions with minorities. The focus is not on changing convictions or eradicating prejudices, but establishing rules for professional behavior in connection with creating and maintaining dialogue.

The idea of professionalized dialogue with minority parents has been vindicated through the feedback of participants in the training courses. The general experience, supported by interviews with minority parents, is that continued contact with and involvement of parents can be hugely beneficial in facilitating the participation of minority children in key school and after-school activities.

Source: A. Triandafyllidou, 2012, *Handbook of Cultural Diversity and Tolerance in Europe*, available for free download at: <http://cadmus.eui.eu//handle/1814/20975>. For more information, see: <https://www.eui.eu/DepartmentsAndCentres/RobertSchumanCentre/Research/ArchivesMigration/AcceptPluralism>.

#### **4. Role for International Organizations and the Global Compact**

International organizations, like UNHCR and IOM, can be crucial partners for integration partnerships, ensuring economies of scale and the multiplier effect. Their role would include the following:

- Developing the legal framework and prototype for integration partnerships

- Training relevant personnel among migrants and natives
- Providing some seed funding
- Advertising the idea and organizing good practice workshops with a view to mobilizing stakeholders
- Acting as intermediaries between communities at destination and communities of origin.

More specifically, such organizations have the legal and financial know-how for the management of such projects, and culturally competent staff who can in the beginning cross fertilize and promote the initiative. In addition, international organizations can help identify common concerns within a given region and hence organize regional workshops, so that stakeholders can learn from one another. International organizations can also promote such activities through digital communities for sharing ideas and news, and through the introduction for instance of a prize or competition for integration partnerships.

Integration partnerships are not fixed and compulsory legal frameworks, and thus do not relate directly to any international Convention. They are inspired of course by the Global Compact's view for orderly and safe migration, focusing on migrant integration.

### **References**

Heath, Anthony, and Sin Yi Cheung. 2006. "Ethnic Penalties in the Labour Market," <http://webarchive.nationalarchives.gov.uk/20130128102031/http://statistics.dwp.gov.uk/asd/asd5/rp.orts2005-2006/rrep341.pdf>.

———. 2007. *Unequal Chances: Ethnic Minorities in Western Labour Markets*. Oxford: OUP.

OECD (Organisation for Economic Co-operation and Development). 2012. *OECD Integration Report: Settling In*. Paris: OECD.

———. 2015. *OECD Integration Report: Settling In MIPLEX Indicators*. Paris: OECD.

Garcés-Mascareñas, B. and R. Penninx. 2015. *Integration Processes and Policies in Europe. Context, Levels and Actors*. IMISCOE Research Series: Springer.

Mouritsen, P., and T. Olsen. 2013. "Denmark between Liberalism and Nationalism." *Ethnicities* 36 (4): 691–710. <http://dx.doi.org/10.1080/01419870.2011.598233>.

Triandafyllidou, A., and R. Gropas. 2014. *European Immigration: A Sourcebook*, second ed. Aldershot: Ashgate.

Triandafyllidou, A., and H. Kouki. 2013. "Muslim Immigrants and the Greek Nation: The Emergence of Nationalist Intolerance." *Ethnicities* 13 (6): 709–28, doi: 10.1177/1468796813483287.

# Migration and Entrepreneurship in the Context of Future Sectoral and Demographic Transformations in Europe and Africa<sup>1</sup>

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## 1. Introduction

The Global Compact on Migration (GCM), proposed by the United Nations General Assembly in September 2016, is to be an “internationally negotiated framework of actionable commitments to guide Member States and international organizations, to harness the benefits of migration and address the challenges.”

To clarify the discussion on the most conducive framework and governance architecture for a GCM, this note summarizes the current state of knowledge on the relationship between migration and entrepreneurship.<sup>2</sup>

Migration can potentially serve to improve the entrepreneurial dynamism of regions in sending, receiving, and transit countries. Entrepreneurship can be a vehicle to help alleviate the plight of migrants and their left-behind family members. But entrepreneurship also has downsides in this context: it can be a poverty trap for migrants and/or exacerbate social strains and demands on regulatory oversight. In the extreme case, “destructive” entrepreneurial practices can even support human trafficking, illegal migration, corruption, and crime.

The sectoral and demographic transformations of affected regions should be considered when designing policies and Protocols to support and regulate *migrants in entrepreneurship*. For instance, aging, slow population growth, and technological deepening characterize labor market dynamics in Europe. High population growth and urbanization, with large numbers of relatively unskilled young people leaving agriculture and entering (urban) labor markets, characterize Africa.

Moreover, within regions much heterogeneity is found at the country and even subnational level in cultures, ethnic-linguistic diversity, business practices, governance structures, and vulnerability to events that can trigger forced migration, such as natural hazards and violent conflict.

The consequence is that any framework and governance architecture for a compact on migration that is “global” needs to take into account that migration and entrepreneurship are characterized by much heterogeneity, serendipity, and contingency. This will require flexibility, pragmatism, a bottom-up (decentralized) approach, and should be based on the recognition that most migrants (and their left-behinds) do not want to and should not become entrepreneurs.

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<sup>1</sup> This background note draws on W. Naudé, K. Marchand, and M. Siegel, 2017, “Migration, Entrepreneurship and Development: Critical Questions,” *IZA Journal of Migration* 6 (5); W. Naudé, 2016, “Is European Entrepreneurship in Crisis?” CESifo DICE Report 3/2016, pp. 3–7; C. Mahé and W. Naudé, 2016, “Migration, Occupation and Education: Evidence from Ghana,” UNU-MERIT, Working Paper no. 2016-018.

<sup>2</sup> In this note, “entrepreneurship” is broadly defined as the occupational choice that involves self-employment and/or business ownership.

## 2. Six Relevant Questions on Migration and Entrepreneurship

To identify actionable commitments to harness the benefits of entrepreneurship for migration, there are six relevant questions that need to be answered:

- (i) Are migrants more entrepreneurial than natives?
- (ii) Can migrant remittances finance start-ups in their countries of origin?
- (iii) Will remigration bring valuable entrepreneurial skills to poor developing home countries?
- (iv) What is the relationship between urbanization and entrepreneurial opportunities for migrants, particularly in Africa?
- (v) Can migrants help regenerate Europe's stagnating entrepreneurial context?
- (vi) What are the additional obstacles that migrant entrepreneurs face that natives do not?

The remainder of this section provides some brief answers, based on a survey of the extant empirical literature. The answers are given as generalized conclusions. However, in line with the point about the heterogeneity of entrepreneurship and migration in country and subnational regions, these are questions for which each state should seek its own specific answers, and moreover understand if and how it deviates from the generalized situation.

### ***Are migrants more entrepreneurial than natives?***

The short answer from the empirical evidence seems to be no. An Organisation for Economic Co-operation and Development (OECD)<sup>3</sup> review finds that in about half of the OECD countries, migrants are less likely than natives to be self-employed. Moreover, in the countries with larger immigrant populations, such as Germany, Italy, Spain, Switzerland, and the Netherlands, migrants are much less likely than natives to be self-employed.

The only study to compare start-up rates (early entrepreneurial activity) among migrants and non-migrants across countries is the 2012 Global Entrepreneurship Monitor.<sup>4</sup> It finds that start-up rates are similar between migrants and non-migrants, and the start-up rates of migrants are just as heterogeneous across countries as those of non-migrants.

Focusing on the definition of entrepreneurship away from self-employment or start-up activity, considering only high-tech entrepreneurship, the evidence seems to be largely similar. For instance, a survey of high-tech entrepreneurship in the United States concludes that, "most previous studies have overstated the role of immigrants in high-tech entrepreneurship."<sup>5</sup> A related study<sup>6</sup> does not find any evidence that migrant-owned high-tech firms in the United States spend more on research and

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<sup>3</sup> OECD (Organisation for Economic Co-operation and Development), 2010, "Entrepreneurship and Migrants," Report by the OECD Working Party on SMEs and Entrepreneurship, OECD, Paris.

<sup>4</sup> A. Vorderwülbecke, 2012, "Entrepreneurship and Migration," in *Global Entrepreneurship Monitor 2012 Global Report*, edited by R. Xavier, P. Kelley, L. Kew, M. Herrington, and A. Vorderwülbecke, London: GEM.

<sup>5</sup> D. M. Hart, 2009, "High-Tech Immigrant Entrepreneurship in the US: A Preliminary Report." Industry Studies Annual Conference, Chicago.

<sup>6</sup> D. M. Hart and Z. J. Acs, 2011, "Immigration and High-Impact, High-Tech Entrepreneurship," *Issues in Technology and Innovation* 5.

development, or would be more likely to register patents than native-owned firms, controlling for the usual suspects.

### ***Can migrant remittances finance start-ups in their countries of origin?***

The roughly one billion international and internal migrants in the world today send remittances to their families worth more than US\$600 billion annually. Most flows are to developing countries, and by some estimates 40 percent of these are to households in rural areas. Hence, it has been asked whether, given that developing countries and especially their rural areas tend to be financially constrained, can remittances stimulate entrepreneurship? The empirical evidence is mixed. The evidence suggests that remittances are largely used to fund consumption<sup>7</sup> (which is not necessarily a bad thing). And where evidence exists that remittances are invested in productive capacity, it “takes years for these effects to play out.”<sup>8</sup>

Empirical work has also found that in the case of rural-urban migration, remittances can be relatively low. The findings for rural Ethiopia, for example, suggest that because poverty is one of the main driving factors for migrating, migration (of this type) may not necessarily lead to immediate remittances from out-migrating household members to relatives left behind.<sup>9</sup>

More generally, empirical research has asked not only how remittances affect start-up activities in sending countries, but also how having a member of a household migrate affects the well-being of family members left behind, including their decision to change an occupation and become self-employed, even if no remittances are received.

In the latter regard, several studies find negative impacts of migration on the labor market participation of the left-behind.<sup>10</sup> Most frequently, it is women who change occupations, and often reallocate their labor toward less productive occupations, such as unpaid family work. This reflects attempts to deal with the family labor constraints caused by the loss of skilled labor. For instance, in Ghana<sup>11</sup> it was found that households with circular/seasonal migrants have lower farm production compared with non-migrant households; they do not invest more; and moreover, the outflow of local labor negatively affects local labor markets and the labor productivity of the left-behind, through contributing to smaller local markets, labor bottlenecks, and a lack of skills.

### ***Will remigration bring valuable entrepreneurial skills to poor developing home countries?***

Mostly, migration is not permanent. It is only fairly recently that attention has been paid to the potential of return migrants to start up enterprises in their home countries. The expectation is that migrants may

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<sup>7</sup> H. De Haas, 2007, “Migration and Development: A Theoretical Perspective,” COMCAD Working Paper No. 29, Center on Migration, Citizenship and Development, Bielefeld University, Germany.

<sup>8</sup> J. E. Taylor and A. Lopez-Feldman, 2010, “Does Migration Make Rural Households More Productive? Evidence from Mexico,” *Journal of Development Studies* 46 (1): 68–90.

<sup>9</sup> A. De Brauw, 2014, “Migration, Youth, and Agricultural Productivity in Ethiopia,” International Food Policy Research Institute, Washington, DC.

<sup>10</sup> R. Mu and D. van de Walle, 2011, “Left Behind to Farm? Women’s Labour Reallocation in Rural China,” *Labour Economics* 18 (S1): S83–S97.

<sup>11</sup> A. A. Adaku, 2013, “The Effect of Rural-Urban Migration on Agricultural Production in the Northern Region of Ghana,” *Journal of Agricultural Science and Applications* 2 (4): 193–201.



learn while away from their home country or region, as well as gather savings and build foreign networks, all of which may alleviate constraints on starting a new enterprise.

The empirical evidence is, again, mixed and tends to suggest that the types of businesses started up by return migrants most often do not have a significant development impact,<sup>12</sup> and return migrants are not more productive after they return home than non-migrants.<sup>13</sup> It has also been found that the loss of social capital due to being out of the country does not outweigh the benefits of finance and experience in starting up a firm on return.<sup>14</sup>

***What is the relationship between urbanization and entrepreneurial opportunities for migrants, particularly in Africa?***

The majority of the world's population resides in urban areas. The rest is continuing to join them at a fast rate. Most internal and international migrants head to an urban area. This rural-urban migration, which also entails people leaving agriculture to take up a job or become an entrepreneur in an urban area, is a good thing.

A study of Tanzanian households,<sup>15</sup> for instance, finds that around 50 percent of people who escaped from poverty in that country between 1991 and 1994 did so by migrating out of agriculture into nonfarming and urban-based activities. Another study,<sup>16</sup> using data from Tanzania covering 1991 to 2004, finds that out-migration from farming to nonfarming activities, including urban entrepreneurship, could raise individual consumption by up to 36 percent. In Ethiopia, the returns to labor from migrating from rural to urban areas are 110 percent higher than for non-migrant labor.<sup>17</sup>

Most entrepreneurs in the world are found in cities. Cities have been called “nurseries” for entrepreneurship. In Africa, cities, secondary cities, and emerging rural agglomerations provide seedbeds for entrepreneurs, including household enterprises, to match opportunities and abilities better and hence improve the allocation of labor.

Whether migrants can benefit from the entrepreneurial ecosystems in cities depends on the particular city's political decision-making and governance institutions. In most rapidly developing and urbanizing countries, these are weak. Good urban planning and management skills, including urban policing, may be among the most sorely needed skills in the emerging world today, especially in Africa. It is estimated that

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<sup>12</sup> R. Black and A. Costaldo, 2009, “Return Migration and Entrepreneurship in Ghana and Côte d’Ivoire: The Role of Capital Transfers,” *Tijdschrift voor Economische en Sociale Geografie* 100 (1): 44–58.

<sup>13</sup> J. Gibson and D. McKenzie, 2012, “The Economic Consequences of ‘Brain Drain’ of the Best and Brightest: Microeconomic Evidence from Five Countries,” *Economic Journal* 122: 339–75.

<sup>14</sup> J. Wabha and Y. Zenou, 2012, “Out of Sight, Out of Mind: Migration, Entrepreneurship and Social Capital,” *Regional Science and Urban Economics* 42: 890–903.

<sup>15</sup> L. Christiaensen and Y. Todo, 2014, “Poverty Reduction during the Rural-Urban Transformation: The Role of the Missing Middle,” *World Development* 63: 43–58.

<sup>16</sup> K. Beegle, J. De Weerd, and S. Dercon, 2011, “Migration and Economic Mobility in Tanzania: Evidence from a Tracking Survey,” *Review of Economics and Statistics* 93 (August): 1010–33.

<sup>17</sup> A. De Brauw, V. Mueller, and H. L. Lee, 2014, “The Role of Rural-Urban Migration in the Structural Transformation of Sub-Saharan Africa,” *World Development* 62: 33–42.

an additional 170 million workers will enter Africa's labor force between 2010 and 2020.<sup>18</sup> Among them, 38 percent are projected to end up in household enterprises, at total of at least 65 million people, and the majority in urban areas, including secondary cities. Prioritizing urban management and planning, to ensure a migrant-friendly and migrant inclusive environment, should be one of the central pillars of a GCM.

### ***Can migrants help regenerate Europe's stagnating entrepreneurial context?***

Economic growth and productivity gains have been stagnating in Europe. One cause that has been identified is the stagnating nature of entrepreneurship in Europe.<sup>19</sup>

Although the causes and solutions to this predicament fall outside the scope of this note, what is relevant to mention for present purposes is that at the foundation of this situation is the demographic challenge that Europe is facing. Europe's population is in decline and aging. Its working-age population stopped growing in 2014. This will result in older entrepreneurs and more people entering entrepreneurship for the first time at an older age. The growth in self-employment among people ages 50 to 65 years is already significant in many European countries, particularly the Netherlands and the United Kingdom. In the latter country, one in five persons ages 50 to 65 is self-employed, compared with only one in seven in younger age categories.<sup>20</sup>

The age structure of business firms in Europe will also age along with its population, with the accompanying effect of older business firms being less innovative and less dynamic, and less likely to employ new labor than younger firms. Consequently, it has been predicted that European countries will have to enter a "global race for talent."<sup>21</sup> But in Europe there is also significant demand for low-skilled, informal workers, many of whom have been migrating in recent years from Africa.<sup>22</sup>

Migration therefore seems to be increasingly important for growth and entrepreneurial vitality in Europe. As such, immigration policy will increasingly become a central pillar of competitiveness policies and even industrial policies. In the past, European countries gave preferential access to migrants from particular countries. This is likely to change toward giving preferential access to particular types of migrants, for instance, to attract entrepreneurs. The challenge will be to ensure that these policies are consistent with the values and approach of a GCM, since the latter will put the migrant and his or her family first, and the former will put the business interests of national states first.

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<sup>18</sup> L. Fox, C. Haines, J. Munoz, and A. Thomas, 2013, "Africa's Got Work to Do: Employment Prospects in the New Century," IMF Working Paper No. WP/13/201, International Monetary Fund, Washington, DC.

<sup>19</sup> M. Henrekson and T. Sanandaji, 2017, "Schumpeterian Entrepreneurship in Europe Compared to Other Industrialized Regions," IFN Working Paper No. 1170, Research Institute of Industrial Economics, Stockholm; W. Naudé, 2016, "Is European Entrepreneurship in Crisis?" CESifo DICE Report 3/2016, pp. 3-7, Database for Institutional Comparisons in Europe, Munich; F. Erixson and B. Weigel, 2016, *The Innovation Illusion*, Yale University Press.

<sup>20</sup> I. Hatfield, 2015, "Self-Employment in Europe," Institute for Public Policy Research, London.

<sup>21</sup> R. Münz, 2014, "The Global Race for Talent: Europe's Migration Challenge," Bruegel Policy Brief 2014/02, Brussels.

<sup>22</sup> H. De Haas, 2009, "The Myth of Invasion: The Inconvenient Realities of African Migration to Europe," *Third World Quarterly* 29 (7): 1305–22.

***What are the additional obstacles that migrant entrepreneurs face that natives do not? And what additional constraints do refugees face?***

The conclusion is that migrant entrepreneurs are inherently no different from non-migrant or native entrepreneurs in general. Where they are different is in the obstacles that migrants face in entrepreneurship. These obstacles are even worse for forced migrants and refugees.

Migrants face three major obstacles in entrepreneurship and more generally labor market participation: (a) discrimination, (b) the temporary nature of their residence, and (c) their legality.

Migrants tend to face discrimination in formal labor markets, which then drives them into (necessity) self-employment. For instance, Palestinian migrants in Lebanon are legally excluded from employment in more than 70 job categories.<sup>23</sup> As entrepreneurs, discrimination and xenophobia affect their businesses directly in sales, access to credit and infrastructure, and so forth. Thus, when they have a choice, migrants may often prefer wage employment to being self-employed.

As far as the temporary status of most migrants, if an entrepreneur has no longer-term prospects or plans in a country, then he or she is unlikely to make a sunk investment in a business. This has many repercussions for policy interventions. For instance, if migrant entrepreneurs have no incentive to invest, then teaching them entrepreneurial skills or providing access to finance will not have an impact.

The legality of a migrant is obviously an issue that, as in the case of discrimination and the temporary nature of residence, will discourage investment to create and run a productive business. And it might lead to migrants becoming involved in the informal/illegal economy.

A special case is the status of migrants who have entered a country as refugees. Several factors make it even more difficult for refugees to become migrant entrepreneurs. Refugees in particular face the following obstacles as entrepreneurs/self-employed:

- Lack of assets and collateral
- Lack of networks
- Lack of access to markets
- Skills mismatches, including lack of local language skills
- Lack of information
- Cultural distance
- Lack of time and conflicting demands on time
- Stress or post-traumatic stress disorder (PTSD) affecting productivity
- Competition from locals
- Xenophobia and harassment
- Lack of governance and support
- Regulatory obstacles
- Women may experience these as more binding, and may have more conflicts with their time.

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<sup>23</sup> For an excellent discussion of Palestinian migrants (refugees) in Lebanon, see N. Stel, 2017, "Governing the Gatherings: The Interaction of Lebanese State Institutions and Palestinian Authorities in the Hybrid Political Order of South Lebanon's Informal Palestinian Settlements," PhD thesis, Utrecht University.

Moreover, refugees can constitute a market. In countries such as Jordan, Lebanon, Turkey, and Kenya, the large refugee settlements are attractive markets, and local traders may like to have this market for themselves. This means that they may have a vested interest in preventing refugees from being entrepreneurs and supplying goods and services to other refugees.

Furthermore, local (indigenous) businesses may want to employ refugees as workers, but at exploitative wages. If this is successfully prohibited, and refugees thus cannot compete against locals on wage costs, then they need to compete based on superior skills and productivity. This may not always be the case, due to lack of skills and local language (that is, a skills mismatch).

Thus, it may be concluded that to foster the economic integration of refugees into labor markets as wage-employed or self-employed, their skills must be considered in relation to local needs, and migrants must be protected from being marginalized. The importance of the integration of refugees into the labor market is so that they can earn wages, which can be used to pay taxes (hence paying the government for the services rendered to them) and pay for goods in the local economy (thus benefiting local businesses).

### **3. Recommendations for a GCM**

Member States should respond as follows to migration, from the point of entrepreneurship with the following do's and don'ts.

Member States should

- Recognize that most migrants (and their left-behinds) do not want to and should not become entrepreneurs or self-employed. Integration into formal labor markets for wage employment is the most desirable aim.
- Protect migrants from discrimination, xenophobia, marginalization, and exploitation.
- Make sure to understand the context, background, and crisis environment within which migrants and refugees reside.
- Promote the integration of refugees into labor markets, build local “bridges,” and promote tolerance and cooperation within local economies. Establish effective overarching official institutions responsible for the administration of emerging refugee conglomerations.
- Improve urban planning and management, create inclusive environments and entrepreneurial ecosystems, and facilitate urbanization.
- Build the skills of migrants and refugees in line with local labor market needs, and promote the entrepreneurial orientation of the entire community.
- Support the personal coping skills of migrants and refugees: help migrants to be resilient and cope, and provide services for counseling, dealing with PTSD and stress.
- Set up mechanisms for learning. There are many gaps in our knowledge of what works and what does not work in entrepreneurship and migration.

Therefore, creating mechanisms for learning, for instance, through research and evaluation, would be especially important. Little has been done in the way of controlled (or natural) experiments, and properly matched panel data on the topic are scarce.

Member States should not

- Hold exaggerated expectations about the entrepreneurial prowess or contributions of migrants and refugees.
- Expect remittances to substitute for financial and credit market constraints.
- Leave the legal and residency status of migrants and refugees ambiguous or uncertain.
- Engage in a race to the bottom for attracting scarce international entrepreneurial talent.
- Neglect to promote the local environment for doing business, for all entrepreneurs.
- Allow migrant entrepreneurs to be scapegoated, maligned, or limited to the informal economy.
- Create or maintain incentives for the “business of illegality” to become lucrative.
- Underestimate or neglect the special role and position of women among refugee and migrant households as breadwinner, entrepreneur, and household head, but also as particularly vulnerable persons, in assistance measures.

Finally, entrepreneurship promotion and more broadly private sector development are already widely supported by the international development community, including the various United Nations organizations, World Bank and International Finance Corporation, regional development banks and donors, and nongovernmental organizations. These have also been applied over the past decades in contexts of state fragility, conflict, and post-conflict reconstruction. The integration of this work on private sector development in fragile and conflict situations with the work on migrants as entrepreneurs is an area of recommended collaboration between all stakeholders in a GCM.

## **Vulnerable Migrants**

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The New York Declaration on Refugees and Migrants (including Annex II) makes seven references to “vulnerable migrants” or “migrants in vulnerable situations.” The Declaration offers no definition of the term “vulnerable.” At times, vulnerability is defined by the situation in which migrants find themselves—forced from home, trafficked, stranded in a country in conflict, aboard a sinking ship, or detained in the country of arrival. At other times, it is specific characteristics of migrants that are said to define their vulnerability—sex/gender, age, disability, race, or economic status.

### **1. Commitment by States**

The Declaration includes a commitment by states “to consider developing nonbinding guiding principles and voluntary guidelines on the treatment of migrants in vulnerable situations, especially unaccompanied and separated children who do not qualify for international protection as refugees and who may need assistance.” (Para. 52) The bifurcation of “refugees” and “vulnerable migrants” seems to be based on the idea that the concept of refugee should not be expanded—a position supported by refugee advocates (who fear that opening the refugee definition could lead to its weakening) and hosting and donor states (who would oppose the burdens assumed to be associated with a broader refugee concept).

It seems that political and jurisdictional concerns have gotten in the way of sound analysis. Categories of migrants who might be considered “vulnerable” or in “vulnerable situations” are many and varied, and do not constitute a uniform group for whom a single set of guidelines is likely to be appropriate. Furthermore, the categories of refugee and vulnerable migrants overlap: refugees are surely “vulnerable,” and some categories usually identified as “vulnerable” (for example, women trafficked for sex work) may also qualify as refugees.

### **2. Situations of Vulnerability**

Rather than attempting to define “vulnerability,” it would seem advisable to identify situations in which vulnerability may be present or likely to arise. These would include the following:

1. Migrants whose human rights have been violated or are at risk of being violated
2. Transit and reception
3. Forced migrants
4. Migrants in countries in crisis or at risk of disasters
5. Migrants with personal characteristics that may render them vulnerable.

That is, the suggestion is to examine situations of precariousness that should be of concern to the international community as it pursues an agenda of safe, orderly, and regular migration.

### ***Migrants Whose Human Rights Have Been Violated or Are Threatened with Violation***

As the Global Migration Group (GMG) Principles and Guidelines on vulnerable migrants<sup>24</sup> note, by being a migrant one does not lose the protection of human rights to which all human beings are entitled. Thus, migrants—like non-migrants—benefit from well-established norms of nondiscrimination and due process and protections against cruel and degrading treatment and other human rights guarantees. A state cannot threaten a migrant with torture any more than it can threaten one of its own citizens. Migrants within the jurisdictional authority of a state that does not recognize that migrants possess human rights or does not comply with established norms can be said to be “vulnerable.”

It would therefore be appropriate for the Global Compact on Migration to affirm that human rights are fully applicable to migrants, and to call on the state-led process for developing guidelines to provide a comprehensive catalogue of migrants’ rights.<sup>25</sup>

### ***Migration Process: Migrants in Transit and at Reception***

The first situation of vulnerability arises when states do not apply human rights norms to migrants as they would to their own citizens. But the fact of being a migrant—and the migration process—calls for specific application of human rights norms that would not apply to a state’s citizens. For example, norms against arbitrary detention will apply in a particular way to migrants interdicted in transit, detained at a border, or held for deportation—situations that do not apply to citizens. The GMG Principles and Guidelines provide a thorough examination of human rights norms as applied to the migration process. Although they purport to focus on migrants in vulnerable situations (primarily persons in precarious situations who do not come within the definition of refugee), they in fact pertain in general to all migrants in transit. Thus, the Principles and Guidelines can be understood as based on (a) the conceptual view that the risk of denial of rights makes migrants vulnerable, and (b) the practical recognition that many states fail to comply with existing norms, thus placing migrants in vulnerable situations.

The GMG Principles and Guidelines note potential gaps in practice, but do not identify legal gaps in protection (that is, they rely on existing human rights norms drawn from a variety of Conventions, declarations, and resolutions). One area in which legal gaps exist—and on which the Global Compact on Migration might focus—is norms relating to rescue at sea. As the United Nations High Commissioner for Refugees (UNHCR) has noted, although “the obligation to come to the aid of those in peril at sea is beyond doubt,” there is “a lack of clarity, and possibly lacunae, in international maritime law when it comes to determining the steps that follow once a vessel has taken people on board.”<sup>26</sup> UNHCR has argued for a

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<sup>24</sup> GMG, Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations within large and/or mixed movements.

<sup>25</sup> For a comprehensive study of the human rights of migrants, see the proposal for an International Migrants Bill of Rights, <http://www.law.georgetown.edu/academics/centers-institutes/isim/imbr/>. See also the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

<sup>26</sup> UNHCR, Background Note on the Protection of Asylum-Seekers and Refugees Rescued at Sea (2016). UNHCR explains: “The SAR definition of rescue implies disembarkation since the requirement of delivery to a place of safety cannot be considered to be met by maintaining people on board the rescuing vessel indefinitely. Neither SAR nor other international instruments elaborate, however, on the criteria for disembarkation. Recent discussions at IMO forums have also highlighted the lack of clarity on this issue.”

norm of “prompt disembarkation at the next port of call,” although the agency recognizes that “the next port of call” is not clearly defined and “there are a number of possibilities, which would need to be further explored to clarify this concept.”

The Global Compact on Migration could affirm the GMG Principles and Guidelines and call for the development of new norms relating to gaps in protection, most notably, those relating to rescue at sea.

### ***Forced Migrants***

The term refugee was given a meaning thought to be capacious at the time of the drafting of the 1951 Refugee Convention. It has subsequently been recognized that a strict reading of the definition does not extend to groups of forced migrants in need of assistance and protection. In practice, the international community has responded to many situations of forced migration by invoking extra-Convention norms—relying, for instance, on the Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Convention), or employing the concept of *prima facie* refugee to provide protection to persons fleeing civil war and violence. So too persons displaced within their home states (due to violence and natural disasters) have been assisted by the international community’s emergency response “cluster system.” There are no binding international norms that protect these categories of forced migrants from non-refoulement, nor are states obligated to offer them rights to work, education, or free movement, or to include them in social programs (rights protected by the Refugee Convention). Other groups of forced migrants are sometimes, but not generally, recognized as coming within the refugee definition by state adjudicators—such as persons fleeing gangs, criminal organizations, and domestic abuse.

These categories of forced migrants are surely “vulnerable migrants”: they have lost their homes, livelihoods, and communities; they are often separated from family; and they are likely to have no means of support other than that provided by a hosting state and the international community. Accordingly, the analysis mandated by the New York Declaration will need to consider how to extend protection and assistance to groups and persons in such situations—particularly the norm of non-refoulement when warranted by circumstances in countries of origin. Guiding principles exist for internally displaced persons, although they have not been formally adopted by the General Assembly. No such principles apply to persons who are forced across international borders due to natural disasters or climate change. And although UNHCR has recently persuasively suggested that most persons who flee civil conflict and violence are likely to come within the existing refugee definition,<sup>27</sup> affirmation of the agency’s guidance would be advisable. (The language of the OAU Refugee Convention, the Cartagena Declaration, and the European Union’s definition of persons entitled to “subsidiary protection” provide appropriate models.)

The recognition of the gaps in protections for forced migrants not included in the refugee definition could be accomplished in a variety of ways—with a Protocol to the Convention, a General Assembly Resolution stating that such forced migrants are “persons of concern” to the international community with specific

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<sup>27</sup> UNHCR, Guidelines on International Protection No. 12: Claims for refugee status related to situations of armed conflict and violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees and the regional refugee definition (December 2016).



protections elaborated, or amendment of the UNHCR statute to extend to additional classes of persons in need of international protection. The need for one or more of these measures could be noted in the Compact on Refugees or the Compact on Migration.

### ***Migrants in Countries in Crisis and at Risk of Disasters***

It is not infrequent that states in which migrants are living and working fall into conflict or experience devastating natural disasters. In such situations, the primary focus of the state will be on its own citizens, and migrants may face a precariousness based on their migrant status. A consultative process led by the United States and the Philippines—with major assistance from the International Organization for Migration—produced a comprehensive review of migrants in countries in crisis in 2016, resulting in Guidelines to Protect Migrants in Countries Experiencing Conflict or Natural Disaster. The Guidelines note particular challenges that migrants in such situations may face—including “[l]anguage barriers, restrictions on mobility, irregular immigration status, confiscated or lost identity or travel documents, limited social networks, isolation, and attacks and discrimination”—that limit their ability “to access protection, move out of harm’s way, or otherwise ensure their own safety and wellbeing.”<sup>28</sup> Disaster risk reduction planning (as called for by the Sendai Framework for Disaster Risk Reduction) should consider the special vulnerabilities of migrants and migrant communities.

The Compact on Migration should affirm the Migrants in Countries in Crisis (MICIC) Initiative Guidelines, which are based on existing international norms and include suggestions for good practices,<sup>29</sup> and call for recognition of the needs of migrants in disaster risk reduction planning.

### ***Migrants with Personal Characteristics That May Render Them Vulnerable***

An issue that cuts across all the preceding categories is particular “embodied” characteristics of migrants that may render them vulnerable. The New York Declaration has several separate lists of these characteristics, but they can roughly be summarized as those characteristics that distinguish certain migrants from the usual model of a migrant: the able-bodied male of working age—for example, women, children, the aged, and the disabled. As is well-recognized, persons in these groups may face challenges that were not considered in the crafting of general migration policies. To the extent that migration law and practice do not take into account the particular needs of these groups, they should be considered as potentially vulnerable.

Migrants may also be members of racial, ethnic, religious, or other groups that are discriminated against in their home state, in transit, or in their state of destination. Plainly, such discrimination can create, and be a marker of, vulnerability.

Several fundamental human rights instruments provide protections to persons disfavored or with special needs because of these kinds of characteristics, most notably, the Convention on the Elimination of All Forms of Discrimination Against Women, United Nations Convention on the Rights of the Child, Committee on the Elimination of Racial Discrimination, and Disabilities Convention. What is needed are mechanisms for ensuring that these norms are fully brought to bear in the migration process and with

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<sup>28</sup> Migrants in Countries in Crisis Initiative Guidelines to Protect Migrants in Countries Experiencing Conflict or Natural Disaster (2016, 12).

<sup>29</sup> The Guidelines expressly state that they do not purport to announce new international norms.

respect to migrants regardless of their administrative status. Beyond the international legal norms, there is a range of programs and practices that international organizations and states have developed and implemented, which seek to provide enhanced protection and assistance for groups with embodied characteristics of vulnerability.

Migrant vulnerabilities exist outside the migration process. Thus, it is of major significance that migrants are fully included in the Sustainable Development Goals (SDGs), and therefore benefit from goals and targets directed at reducing vulnerabilities (for example, in health, education, and employment).

The Compact on Migration can affirm that international legal norms and the SDGs apply to migrants regardless of legal status and to all aspects of the migration process.

### **3. Conclusion**

Rather than suggesting a single or universal definition of vulnerability or vulnerable migrants, this paper has identified situations that likely produce vulnerability. Paying attention to these situations is necessary for ensuring safe, orderly, and regular migration. Several approaches have been identified: fully applying existing norms (GMG Principles and Guidelines), developing new norms (law of the sea; forced migrants), recognizing that migrants are included in more general norms and processes (Disarmament, Demobilization, and Reintegration; SDGs), and identifying best practices (Nansen and MICIC). Most of these measures are appropriate for the Global Compact on Migration; some could be mentioned in the Global Compact on Refugees; and all could be part of a comprehensive set of guidelines adopted in a state-led process outside the Global Compacts.<sup>30</sup>

Several specific recommendations for the Global Compact on Migrants and Global Compact on Refugees follow from this analysis:

- a. Recognize additional categories of forced migrants in need of international protection (without re-opening the definition of “refugee” in the 1951 Convention).
- b. Do not attempt to define a new category under the label of “vulnerable migrants” with a single set of applicable norms; rather, ensure that legal norms are appropriate to the range of categories of migrants who are in vulnerable situations.
- c. Underscore that human rights apply to all migrants (by virtue of their humanity).
- d. Recognize the importance of programs of assistance and protection for categories of persons who are vulnerable because of particular characteristics (such as victims of trafficking, unaccompanied children, and disabled migrants).

#### ***References in the New York Declaration to “Vulnerable” Migrants***

Para. 12 [on root causes]: movements caused by instability, marginalization, poverty, “with particular attention to the most *vulnerable populations*.”

Para. 23 [persons in transit]: “We recognize and will address, in accordance with our obligations under

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<sup>30</sup> The Sutherland Report appears to recognize that “migrants in vulnerable situations” may be forced migrants and non-forced migrants (paras. 21-22), yet it recommends that guidelines pertaining to all categories be included in the Global Compact on Migration (paras. 49-52). This seems to replicate the dichotomy (refugee/(irregular) migrant) that the report states that it finds problematic (para. 19).

international law, the special needs of *all people in vulnerable situations* who are travelling within large movements of refugees and migrants, including women at risk, children, especially those who are unaccompanied or separated from their families, members of ethnic and religious minorities, victims of violence, older persons, persons with disabilities, persons who are discriminated against on any basis, indigenous peoples, victims of human trafficking, and victims of exploitation and abuse in the context of the smuggling of migrants.”

Para. 51 [protection]: “We take note of the work done by the Global Migration Group to develop principles and practical guidance on the protection of the human rights of *migrants in vulnerable situations*.”

Para. 52 [develop guidelines]: “We will consider developing non-binding guiding principles and voluntary guidelines, consistent with international law, on the treatment of *migrants in vulnerable situations*, especially unaccompanied and separated children who do not qualify for international protection as refugees and who may need assistance.”

Para 58 [return]: “Particular attention should be paid to the needs of *migrants in vulnerable situations* who return, such as children, older persons, persons with disabilities and victims of trafficking.”

Para 61 [role of civil society]: “While recognizing the contribution of civil society, including non-governmental organizations, to promoting the well-being of migrants and their integration into societies, *especially at times of extremely vulnerable conditions*, and the support of the international community to the efforts of such organizations, we encourage deeper interaction between Governments and civil society to find responses to the challenges and the opportunities posed by international migration.”

## **Annex II**

II(8)(i) [Global Compact could include]: “Effective protection of the human rights and fundamental freedoms of migrants, including women and children, regardless of their migratory status, and the specific needs of *migrants in vulnerable situations* . . .”

## Migration and Climate Change

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### 1. Issues

The New York Declaration on Addressing Large Movements of Refugees and Migrants of September 2016 set out a clear international commitment to protect the rights of refugees and migrants worldwide, regardless of their status; to support those countries affected through a comprehensive response involving humanitarian and development assistance; and to improve the global governance of migration. Implicit in much of the Declaration is the notion of migration throwing up many challenges, including rising xenophobia, increased sexual and gender-based violence, limited access to education, and problems of access to jobs and housing. However, the Declaration also mentions the “positive contribution” made by migrants (not refugees) to host societies.

This tension in the Declaration between migration in general as a problem to be fixed, but also as something that contains a positive contribution, is reflected in debates surrounding migration associated with climate change. One version of the story about migration and climate change is that climate change will progressively worsen the factors that lead to large-scale movements of migrants and refugees, through increasing the incidence of flooding, intensity of tropical storms, and frequency and intensity of drought. Although a distinction might be drawn between “slow-onset” events such as drought, and “rapid onset” events, such as floods and cyclones, overall the expectation is that millions more people will be forced to move over the coming decades. In turn, such movement is expected to fall largely outside existing international governance mechanisms, implying a gap in protection for those who move, and a lack of institutional architecture to deal with the consequences for host societies.

However, the Declaration also comments that “We favour an approach to addressing the drivers and root causes of large movements of refugees and migrants.” In this context, a rather different version of the story on migration and climate change emerges from the UK government’s Foresight study on Migration and Global Environmental Change, which was based on such a “drivers of migration” approach. This study suggested three principal conclusions:

- a. Environmental factors need to be considered alongside *other drivers* of migration, and will not necessarily—in themselves—lead to increases in migration.
- b. Many individuals may find themselves in humanitarian need or lacking protection because of their *inability* to move—in other words, they may find themselves trapped in the face of climate-related shocks.
- c. Migration may represent a sensible *adaptation* to climate change, especially if this can be part of the development of a comprehensive livelihood strategy.

In other words, far from seeing migration as one of the negative consequences of climate change, it is entirely possible to see it as one of the more positive and appropriate responses to climate change. Humanitarian problems and protection gaps would emerge where migration as a form of adaptation is impossible or made more difficult—by political, economic, sociocultural, or other factors. This note

concentrates on this issue: how is it possible for a new normative framework for the global governance of migration to allow such positive forms of adaptation to emerge, and how can migration-related programs emerge that build on such a framing?

## 2. Recommendations

Several thematic elements of a normative framework might emerge from these observations. A first and important point is that it should *not* be assumed that anywhere in the world is simply uninhabitable, such that arrangements need to be put in place for people to live elsewhere. Much attention has been put on the potential fate of Pacific Islands, for example, which are extremely close to sea level and vulnerable to sea level rise and storm surges. It is surely prudent that such island nations, and people living in them, are looking at other options for where they might live—individually or collectively—should a major storm event arrive.

Yet there are many and ongoing examples around the world of land still being *reclaimed* from the sea, as well as major cities and indeed countries that are being *protected* from sea level rise through sophisticated engineering solutions. Such solutions are not appropriate everywhere, but it is usually cost-effectiveness (and ability to pay that cost) that is the major consideration, rather than the physical feasibility of the work that determines whether a city is protected.

This leads to a first recommendation for any normative framework—that it should *offer choices to those facing climate shocks*—to move or to stay, or deploy family members in different places to minimize risk—rather than dictating a particular course of action. Offering migration choices in advance should help to avoid a situation developing in which large-scale movements occur because families lack the resilience to withstand climate shocks.

Second, where large-scale movements do occur, it is important, as far as possible, to *avoid privileging one driver of migration over another in terms of the substantive response of governments and the international community*. Once people are moving in large numbers, there is likely to be a substantive humanitarian need, regardless of what drove the original movement. It is also likely to be highly difficult to track a clear path of causation between a particular form of movement and environmental drivers. A well-adjusted normative framework would allow and encourage governments, local communities, and international organizations to provide support to and engage with populations on the move on the basis of need, rather than on the basis of a preformed and at least partly arbitrary determination that one cause of their movement is more important than any other cause.

Third, an important implication of the second point should be to *pay attention to the humanitarian needs of those who do not migrate* because they are effectively prevented from doing so. Whereas the previous recommendations are primarily of importance to receiving countries, this recommendation clearly applies to sending states. In the past, the United Nations Convention on Refugees had an arbitrary requirement that individuals should have moved across a national boundary to qualify for protection and assistance under the Convention. This led to the development of the Guiding Principles on Internal Displacement, to address the humanitarian and protection needs for those who are in refugee-like circumstances who had not been able to move to another country. It is clear now that even those who do not move at all may be in dire humanitarian need. The existing frameworks do not account for this need—reflecting their

(erroneous) assumption that mobility is the exception that needs to be addressed by public policy, and lack of mobility the norm that does not require intervention.

### 3. Existing Frameworks

Of the action items, the first two are covered to a certain extent by existing norms, Conventions, agreements, guidelines, and practices. The third—addressing the situation of those who are trapped—arguably is not. This section briefly considers the existing frameworks and how any gaps in them might be filled.

Looking at the recommendation to provide greater migration choices to those facing climate shocks, there is currently no framework that *explicitly* seeks to do this. However, several migration frameworks provide for this implicitly. Perhaps the most talked about is New Zealand’s Pacific Access Category, a temporary labor scheme that allows migrant workers from a range of Pacific Islands to live and work in New Zealand on a temporary basis. This scheme provides a degree of migration choice for those in Pacific Islands seeking to become more resilient in the face of climate threats. Yet it falls short of what many in the Pacific Islands would prefer, and what a recent World Bank report<sup>1</sup> advocates for—a comprehensive scheme providing permanent and structured access for workers and families from Pacific Islands to New Zealand (and Australia).

The extent to which the opening of free access is politically feasible in New Zealand and Australia—still less elsewhere in the world—is open to question. Nonetheless, this approach is consistent with the notion of increasing choice. By contrast, another response to the idea of migration as a form of adaptation to climate change arguably does not meet this criterion of increasing choice. Specifically, one of the consequences of the inclusion of migration as adaptation in the Cancun Framework of the United Nations Framework Convention on Climate Change (UNFCCC) has been the rise of schemes to *relocate* populations away from places considered to be in danger from climate threats. Such schemes—which again are significant in relation to Pacific Islands—are well-intentioned, but too easily can represent a restriction of choice. They shut off the option of remaining in situ, and determine that migration will be of whole families, to a particular place. Too often the destination for such resettlement schemes is an inferior location from the point of view of those relocating, and can leave people effectively trapped in those locations. Quite often, such schemes have been viewed as involuntary on the part of those who move.

Turning to the second recommendation, that particular drivers of migration should not be privileged in public policy over others, there has been some movement in this direction. In particular, whereas the United Nations Refugee Convention has a very tight definition of drivers of movement that must be met for an individual to be protected (and which exclude environmental drivers altogether), the Guiding Principles on Internal Displacement facilitate an international response to a much wider set of drivers, including environmental drivers. In turn, the Nansen Initiative on Cross-Border Displacement seeks to extend the protection afforded under the Refugee Convention to those who cross international boundaries to those who do so in the face of national disasters. Thus, although it does specify particular

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<sup>1</sup> R. Curtain, M. Dornan, J. Doyle, and S. Howes, 2016, “Pacific Possible. Labour Mobility: The Ten Billion Dollar Prize,” <http://pubdocs.worldbank.org/en/555421468204932199/pdf/labour-mobility-pacific-possible.pdf>.

drivers of migration, its intention is to broaden the range of types of forced migration that are the subject of international protection and assistance.

What is much more difficult is protection of those who are trapped in the face of climate shocks (or, indeed, those trapped in conflict zones). Of some relevance here are fundamental rights, such as the right to food, water, and housing and shelter, that form part of the Universal Declaration on Human Rights and are unaffected by whether individuals move or do not move in the face of threats to those rights—of which climate shocks are a particular and growing threat. However, the key question is which organization—governmental or international—is best placed to assure these rights in emergency situations, and in particular, whether they could by definition fall within the remit of the Global Compact on Migration.

#### **4. Global Institutional Architecture**

A range of international organizations are addressing issues related to this theme, including UNFCCC, the United Nations High Commissioner for Refugees (UNHCR), and the International Organization for Migration (IOM). These international organizations are already developing approaches to participation in the theme of climate and migration, with IOM and UNHCR for example participating in discussions around the Nansen Initiative and the Global Forum on Migration and Development (which has also covered migration and climate since its fourth meeting in Mexico in 2010), although these are essentially state-led processes. The question of which institution is best placed to take an overview on trapped populations is more complex, although this could be seen as sitting within the remit of the United Nations Office for the Coordination of Humanitarian Affairs, which does not have a remit specifically linked to migration.

However, it is also important to bear in mind the potential role for regional organizations in seeking and brokering regional solutions. For example, a lasting solution to the problem of climate change in the Pacific Islands is arguably much more likely to be found through a regional agreement led by New Zealand or Australia than it is with a global initiative. And notwithstanding current arguments against free movement within the European Union, the European Union's example of how free movement can be achieved at a regional level arguably still has relevance and applicability within other regional groupings worldwide.

#### **5. Connection to the Global Compact on Refugees**

A logical consequence of the suggestion that one form of driver of migration should not be privileged or separated from others is that the distinction between migration and refugee flows is itself problematic. In this context, the decision to develop separate Global Compacts on Migration and Refugees is arguably problematic, and all the recommendations listed here are of relevance to the Global Compact on Refugees.





