



## ***Migration and Development: a Human Rights Approach***

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1. Respecting human rights is not only a legal obligation and a legitimate aspiration of all human beings. It is also a pre-condition for our societies to grow and prosper in peace and security. This paper looks at the contributions made by migrants to development, and asks in what ways the respect for human rights enhances migrants' capacity to contribute to development – of their own and their families' lives, and of their countries of origin and their 'host' country. It also examines – conversely – the ways in which a lack of respect reduces that contribution. It argues that human rights are central, not ancillary, to the migration-development process, and that the effect of a respect for rights goes far beyond the individual migrant, and benefits their home societies and those in which they live and work. It identifies a direct link between respect for the human rights of migrants and greater – maximised - development benefits from migration, and conversely between a lack of respect for human rights and reduced - minimised - development contribution by migrants.

### ***I. The human rights framework***

2. The prohibition on discrimination, which is at the centre of all the human rights treaties, gives equal protection to citizens and migrants. The fundamental rights protections contained in the two International Covenants [ICCPR and ICESCR], and in the conventions protecting the rights of children [CRC], and prohibiting racial discrimination [ICERD], discrimination against women [CEDAW], and torture [CAT] apply universally to citizens and to all migrants, regardless of their immigration status. Thus the ICCPR protects the rights of 'all individuals within its territory and subject to its jurisdiction' without distinction; it guarantees to all persons equality before the law and equal protection by the law without any discrimination.<sup>1</sup> The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW) applies these universal rights to the specific situation of migrant workers and members of their families.
3. Thus the ICMW does not depart substantively from the fundamental rights protected in the ICCPR, ICESCR, and the other universal human rights treaties, but it does articulate these rights in ways which take into account the particular situation of migrant workers and their families. It seeks to establish basic principles for their treatment; and to establish norms which will contribute to the harmonisation of states' attitudes towards migration through acceptance of these basic principles. It also requires action by states to 'prevent and eliminate clandestine movements and trafficking', and to 'eliminate' the employment of irregular migrants by employers.
4. Migrants, of course, just as citizens, have the obligation to abide by the laws and regulations of receiving states.
5. In the exercise of their national sovereignty, states may determine who enters and remains within their territory. In the words of the Global Commission on International Migration:

*'Entering a country in violation of its immigration laws does not deprive migrants of the fundamental human rights provided by human rights instruments..... nor does it affect the obligation of states to protect migrants in an irregular situation'.<sup>2</sup>*

6. Where a state determines to deport or remove a migrant, the means it employs must respect the migrant's rights, for example to be protected against cruel, inhuman or degrading treatment.
7. The Human Rights Committee has set out the general rule that each of the rights under the Covenant must – with narrow exceptions - be guaranteed without discrimination between aliens and citizens. It has noted that the Covenant does not recognise the right of aliens to enter or reside in a State's territory; that consent for entry may be given subject to conditions relating, for example, to movement, residence and employment; and that a state may also impose general conditions upon an alien who is in transit. However, once within the territory of a state, they are entitled to the rights set out in the Covenant.
8. The Committee has been explicit that enjoyment of these rights is not limited to citizens,

*'but must also be available to all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party'.<sup>3</sup>*

9. Similarly, in its 2004 General Recommendation on discrimination against non citizens, CERD has urged states to ensure that legislative guarantees against racial discrimination 'apply to non citizens regardless of their immigration status'.<sup>4</sup>
10. States' duties under international law are not limited to respecting, protecting, and fulfilling human rights through the acts of state institutions and officials. There is also a positive obligation on states to protect individuals against violations by private persons. This is of great importance to migrants, since many migrants work for private employers, in the informal economy and in domestic work.

## **II. *Human Rights, Migration and Development: the links***

11. International migration has tended to be seen primarily in development terms, as a response to disparities in income levels and employment opportunities between countries. Unemployment and poverty are often indicated as the main 'push factors' which impel individuals to leave their home countries, and cross border differences in wage levels and employment opportunities are among the 'pull factors' which direct them to more developed economies.<sup>5</sup> Migrants contribute to development in their home country in a

number of ways, notably through remittances, and to their new countries through their work, and – in some countries – in demographic terms.

12. Less attention has been paid to the role of human rights during the migration process or to the ways in which a lack of respect for human rights of migrants reduces their ability to contribute to development. Unless migration is also approached through this perspective, two difficulties arise: first – and self evidently – that the protection of migrants' rights is not given priority; secondly, that where migration is seen only in economic terms, migrants may come to be regarded as commodities, rather than as individuals entitled to the full enjoyment of their human rights.<sup>6</sup>
13. There has been relatively little research from a human rights perspective into the reasons why migrants [as opposed to refugees] move. There is a need to go beyond economic explanations of migration which focus on *income* poverty, and focus also on *human* poverty, which also takes into account – eg - a lack of health care, food, and education, and inequality of opportunity, including gender discrimination.<sup>7</sup> Seen in this way, the link between poverty and human rights is clear.
14. The Human Development Report defines human development as a process of enlarging peoples' choices, of which the most critical are to lead a long and healthy life, to be educated and to enjoy a decent standard of living. Additional choices include political freedom, human rights and self respect. In these terms, growth in income is seen as a means to an end, and not an end in itself, and the well being of a society depends on the uses to which income is put, not on the level of income itself.<sup>8</sup>
15. Accordingly, this paper uses the term 'development' in both senses: as economic development which leads to economic growth; and as human development, which focuses on the individual, his family and community and seeks to expand individual capabilities and choices through health, education, a decent standard of living and political freedom.
16. The two are complementary concepts. The basic idea of human development – that enriching the lives and freedoms of ordinary people is fundamental – has much in common with the objects of human rights. Human rights and human development are thus 'close enough in motivation and concern to be compatible and congruous, and they are different enough in strategy and design to complement each other fruitfully'.<sup>9</sup>
17. There is also a complementary relationship between the human rights principles of equality and non discrimination, and strategies which focus on equity and equal opportunity: both assist development by giving all members of society similar chances to become economically productive. Thus from a development perspective, greater equity in the long term underpins faster growth.<sup>10</sup>
18. The Declaration on the Right to Development recognises denial of civil, political, social, economic and cultural rights as a serious obstacle to

development. Thus, policies recognising the close relationship between human rights and development are needed to address the underlying causes of migration.

### **III. *Deficits in Human Rights and Development: Causes of Migration***

19. As mentioned above, discrimination, extreme gender inequality, and abuses of social and economic, as well as civil and political rights are often central factors in the decision to emigrate. The Cairo Conference identified the following factors:

*(I)nternational economic imbalances, poverty and environmental degradation, combined with the absence of peace and security, human rights violations and the varying degrees of development of judicial and democratic institutions .<sup>11</sup>*

20. Where poverty and lack of opportunity is a major cause of migration, human rights can contribute to remedying these factors such as gender discrimination and lack of equal access to education, health and housing.
21. Another important cause for migration is the demand for migrant labour in destination countries. This demand is often not sufficiently recognized by destination countries and this denial of the existence of demand is one of the main factors leading to irregular migration with its ensuing risk of serious human rights violations.<sup>12</sup>
22. These multidimensional links between demand, human rights abuses, deficits in development, and migration can clearly be seen in the contexts of trafficking of migrants and the migration of indigenous people.

#### **A. Migration and Trafficking**

23. The specific vulnerability of persons faced with poverty, discrimination, lack of opportunity and human rights violations increases the risk of being trafficked. Their desire to leave a desperate situation may make them agree to the services of smugglers in order to reach a country where they can find work. Once at their destination however, many of them find themselves in a situation of exploitation from which they cannot escape. The job they were promised does not exist and instead they are forced to work under conditions to which they never agreed.
24. Analyses of trafficking in human beings in Africa typically recognise poverty as the most visible cause for trafficking. But poverty is not the only determinant, and not all who are trafficked are poor. Patterns of instability, oppression and discrimination may place women and children at greater risk everywhere, with social and cultural prejudices and the prevalence of gender violence presenting additional challenges to their effective protection. Trafficking of girls and women can also be connected to a high prevalence of overall violence in public and private spheres against women. Under

extreme circumstances, poor families, unable to support their children may be induced to sell or hire them out. Trafficking is also facilitated by lack of education.<sup>13</sup>

25. The Special Rapporteur on Violence against Women found that women and girls left their homes and were trafficked 'in such large numbers' in Asia because of lack of economic opportunities and social discrimination. Discrimination against women was present in inheritance laws, land laws and employment regimes, traditional practices whereby young girls were sold into concubinage for feudal lords or into prostitution, and the practice of polygamy. All these made women 'an easy prey for traffickers'<sup>14</sup>. She reported that this growth in trafficking had been paralleled by an increase in undocumented migration in the region, encouraged by inequality, poverty and all forms of gender discrimination.
26. Another example of how a lack of rights protection facilitates trafficking is birth registration, which is a right under the CRC<sup>15</sup>. The absence of birth registration, where children are not given a name and legal identity, increases their vulnerability because traffickers will find it easier to keep such children hidden and unprotected. Without any proof of age, nationality – or even existence – police may then be less able or willing to take active steps to trace missing children. Research by UNICEF suggests that geographical areas where registration levels are low are more likely to be targeted by traffickers.<sup>16</sup>
27. In addition to the several factors of vulnerability in countries of origin outlined above, there are some key causes of trafficking linked to destination countries. The principal amongst these are the demand for cheap, exploitable labour and the existence of forced labour and slavery-like-practices. Since the trafficked person realizes that she or he is a victim of trafficking mostly upon being trapped in situations of forced labour and exploitation in the country of destination, governments of destination countries need to take on an added responsibility. This includes addressing the causes of the demand for exploited and forced labour, establishing enforceable labour standards, creating mechanisms for proper victim identification, efficient prosecution of traffickers and above all, extending support and assistance to trafficked persons which is not based upon conditions of cooperation with the criminal justice system. Countries of destination need to revisit those policies which might inadvertently contribute to the human rights violations of trafficked persons. They also need to put in place special provisions which will enable the trafficked persons to recover and reclaim their lives through human rights based integration and settlement policies.

## **B. Indigenous People**

28. Indigenous people face the same pressures as other migrants when they decide to seek new opportunities outside their communities and the territories where they have traditionally lived. However, they often face these pressures in a situation of greater vulnerability due to the conditions of

extreme poverty, exclusion and discrimination that they have traditionally suffered. Some of the reasons for the migration of indigenous people relate to conflict, issues of development and loss of land – for example where lands are taken over for business development.<sup>17</sup>

29. Other – but not necessarily unrelated - reasons include poverty, which encompasses lack of basic social services, such as education and health care. In the face of high rates of disease and mortality, especially among mothers and young children, migration becomes a way to improve living conditions and ensure survival. However, in the integration processes in the place of destination, indigenous people are often unable to enjoy aspects of their traditional culture which are integral parts of their identities.

### C. Migration out of Choice

30. The Cairo World Conference urged governments to make the option of *not* migrating – ‘remaining in one’s country’ – a viable one for ‘all people’. To this end, it called on governments to respect the rights of minorities and indigenous people, and the rule of law, to promote human rights and good governance, and to strengthen democracy; it urged greater support for food security, education, nutrition and health.<sup>18</sup> Endorsing this approach, the Global Commission on International Migration urged that

*‘Women, men and children should be able to realise their potential, meet their needs, exercise their human rights and fulfil their aspirations in their country of origin and hence migrate out of choice, rather than necessity.’<sup>19</sup>*

31. At a recent workshop on indigenous peoples and migration, experts said they felt it was ‘difficult to consider as wholly voluntary migration processes that are spurred by poverty, lack of education or disparities in employment opportunities’.<sup>20</sup>
32. The Committee on Migrant Workers has emphasised that full protection of human rights will remove many of the root causes of migration, such as violations of economic and social rights, discrimination and violence.<sup>21</sup> In this situation, policies which protect and respect human rights are not only legal duties for states, but also a means to the end of making migration a matter of choice.
33. States which are parties to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, have formally agreed to adopt policies to alleviate ‘lack of equal opportunity’, which the Protocol identifies as among the factors which make persons vulnerable to trafficking – along with poverty and under development.<sup>22</sup> States which have ratified CEDAW have undertaken to implement its provisions, by – eg - empowering women, preventing violence against women, and promoting non discrimination. Priority should also be given to other policies which will lessen key ‘push’ factors for migration, through universal birth registration, and equal access to education and health.<sup>23</sup>

34. Thus, addressing the deficits in human rights that can be one of the main causes of migration should be one of the priorities in any migration policy.

#### ***IV. The Contribution of Migration to Development***

35. Migrants now number an estimated 191 million, of whom 90 million are migrant workers.<sup>24</sup> They contribute to economic and to human development in their home countries – through their remittances, skills and knowledge - and to the economies and the cultures of the countries in which they work and live.
36. The Global Commission on International Migration identified two broad types of contributions; first, to growth, development and poverty reduction in countries of origin. Second: *‘to the countries of destination by filling gaps in the labour market, by providing essential skills, and by bringing social, cultural and intellectual dynamism to the societies that migrants have joined’*.<sup>25</sup>

##### **A. Countries of origin**

37. Some of the most visible forms of contributions to countries of origin are the remittance of private funds and material goods, by individual migrants to their families; the support given by diaspora organizations to their home towns or areas; and the return of migrants who have gained qualifications abroad, on either a long or short term basis. The impact of ‘brain drain’, where skilled migrants leave poorer countries to take up employment in richer countries, is more ambiguous. While it takes skills away from the country of origin, it also means that highly skilled migrants can earn higher incomes and gain added skills which enable them to contribute to their home countries.<sup>26</sup>
38. Remittances are private money; states should work together to reduce the costs of transfers, and encourage their use in ways which strengthen the enjoyment of human rights and development on countries of origin.
39. Although measuring the impact of remittances in terms of poverty reduction is difficult,<sup>27</sup> there appears to be a positive link between remittances and strengthening human rights because many families use remittances to pay school fees and health costs, and thus are able to exercise their rights to education and health.<sup>28</sup> At the household level, remittances help improve children’s education, contribute to better health, housing and family welfare. Similarly when migrants’ associations raise and transmit funds to build schools or community health centres, this increases the availability and accessibility of education and health. The same is true of projects which assist teachers, doctors or lawyers in diaspora communities to contribute the skills they have gained abroad to their home countries, for example through IOM’s Migration for Development program through which migrant professionals provide short term technical assistance in their home countries. These projects strengthen education, health provision and the rule of law.

40. Migration can also have a positive impact on the society of origin through other effects. In general, migration may lead to an enriching exchange with other cultures. Women who migrate can influence the societies of origin by disseminating new values about the rights and opportunities of women. Women who remain behind when their husbands migrate may experience new decision-making roles with respect to their households.

### **B. Countries of Destination**

41. Migration also brings a range of gains to countries of destination, including the greater social benefits - better welfare and increased social services for citizens - which flow from migration, and are the result of a larger tax base and greater social security funds, higher levels of entrepreneurship, and a younger population in demographic terms.<sup>29</sup>
42. Migrants, especially women migrants, also contribute to development by allowing women in countries of destination to lead professional lives by taking their place as caregivers for children and the elderly. Until a few years ago, there was a virtual absence of gender as an analytical category in policy interventions on migration. This exclusion was based on the assumption that women did not migrate independently but only as members of family units. However today it is evident that a specific demand for female labour exists, generated by the global growth of the service sector requiring personalized services, including but not limited to domestic work, care of the elderly and sick
43. In conclusion, as indicated by the World Bank : ‘There is considerable support for the view that migrants create new businesses, jobs and fill labour market gaps, improving productivity and reducing inflationary pressures’.<sup>30</sup>

### **C. Maximising migrants’ contributions**

44. To a great extent, it appears that the contribution of migrants – of individuals and communities - to development in both their countries of origin and destination is conditioned by their integration in the country of settlement. Contributions to development are more limited from communities in which many members have no secure legal status, are not incorporated in the formal labour market, do not get an education of quality – all conditions which make it likely that their resources will be meagre and largely absorbed by their own daily survival needs. Rights based policies which tackle migrants’ social exclusion are a pre-condition for their ability to lead economically productive and culturally and socially enriching lives. In the broadest sense policies which promote access to health care and adequate housing, training, and language acquisition all strengthen equality and build the capacity of diaspora communities to access the labour market and lead productive and fulfilling lives.
45. Conversely, exploitative working conditions, particularly where workers suffer physical, psychological or sexual violence, have a negative cost in productivity terms: lost hours of work, greater health care costs, and

impaired output. Migrants who are socially integrated and do ‘decent’ work are more productive and contribute more to society than those who are exploited and socially excluded. These contributions are greater – are maximised - where states take effective measures to protect migrants’ rights.

46. The International Convention on the Protection of the Rights of All Migrant Workers and their Families is a useful guide to action that could be used by states to strengthen migrants’ ability to make different forms of contributions. In addition to protecting all migrants’ fundamental human rights and equal treatment in respect of labour rights, the ICMW lists a number of rights which address the specific needs of migrant workers. These include: information about their immigration status and employment, and rights and obligations – in a language they can understand; respect for their cultural identity; transfer of earnings and savings during and at the end of their stay.
47. Migrant regularisation programmes may also strengthen contributions. They typically have two complementary goals: on the one hand, they incorporate workers who are in the ‘underground’ economy into the formal economy, and so increase their contributions to national tax and social security revenues; on the other hand they are designed to limit worker exploitation and abuse. This approach recognises that migrants who do legal and decent work are likely to contribute more to development than those who are economically exploited and socially excluded.<sup>31</sup>

#### **D. International Consultation and Co-operation**

48. Since migrants’ contributions to development directly affect at least two, and sometimes more, countries, this is an area in which state consultation and co-operation within a human rights framework is important and needed. Existing international instruments defining the rights of migrant workers, including the ICMW, provide many of the necessary principles.
49. The ICMW also creates a framework for joint action by requiring states to consult and co-operate to promote ‘sound, equitable and ‘humane’ migration conditions, paying due regard to the ‘needs’ of migrant workers, and to the consequences of migration for the communities concerned.<sup>32</sup>
50. Co-operation between States is especially important in respect of the establishment of circular migration programmes. Circular migration can generate significant benefits for countries of destination, assisting them to fulfil the demand for migrant labour; to migrants, helping them to have better access to the labour markets; and for their countries of origin, assisting them in their efforts to maximize the positive impact from emigration. In order to achieve these objectives it is extremely important that those programmes are in strict compliance with the relevant international human rights instruments, in particular to ensure non discrimination with regard to remuneration and other conditions of work.

51. There is a wealth of experience and good practice available from countries of high emigration and from countries of high immigration. Sharing these could be a starting point for co-operation.
52. Good practices in high emigration countries for instance include extensive and active consular networks which allow consuls to visit prisons, detention centres and hospitals, and provide advisory services on labour, criminal, civil, immigration and administrative matters. These include assistance in recovering unpaid wages, securing compensation payments, repatriation of the sick, and transfer of remains of those who have died. Consular registration cards can serve migrants as identification to open bank accounts, receive medical care and obtain drivers' licences.<sup>33</sup> Other practices include the regulation of recruiting agencies to ensure that migrant workers are not abused or exploited, and that excessive fees are not charged.
53. Good practices in high immigration countries include integration policies, which place emphasis on finding ways to integrate cultural differences in a pluralistic society through – inter alia - the extensive provision of language teaching. Other good practices include paying migrants' transportation costs, flexi- time instruction, and services tailored to women migrants<sup>34</sup> and services to investigate and prosecute charges of discrimination.<sup>35</sup>
54. An example of a situation which urgently calls for international co-operation and solutions, which can reflect the common interests and shared responsibilities of countries of origin and destination, is brain drain through the migration of health workers. The problem is that the migration of doctors, nurses, teachers and other skilled workers has asymmetric consequences, because it results in a brain drain from poorer countries, and a brain gain by the richer countries to which these professionals move.

▪ **Health Worker Migration**

55. The Special Rapporteur on the Right to Health has described the devastating impact on the right to health of the migration of health professionals, in particular doctors and nurses but also midwives, pharmacists, dentists, and technicians. The problem is most acute for countries with understaffed health sectors: 34 countries, mainly in sub Saharan Africa, have fewer than 10 doctors per 100,000, while OECD countries average 222 doctors for the same population. Many are countries where 'the HIV/AIDS epidemic increases the work burden, sickening and killing health workers, and stigmatising those who care for patients'. In 1999, Ghana lost more nurses than it trained. In Malawi, only 1,824 of 6,620 established posts for nurses were filled. Between 30% and 50% of South African health graduates each year leave South Africa for the UK and USA, and the needs of both countries will increase over the next decade. When a country has a fragile health system, the loss of its workforce can bring the whole system close to collapse, with the consequences measured in lives lost. In these circumstances, the calculus of international migration shifts from brain drain/gain to "fatal flows."<sup>36</sup>

56. Three clusters of human rights are here relevant: freedom of movement - which underpins migration; labour rights – where poor terms and conditions of work are a primary cause of the migration of health professionals; and the right to health which is undermined in poorer countries of origin, and strengthened in richer countries of recruitment.
57. The Special Rapporteur on the Right to Health suggests approaches which should inform international assistance and co-operation. It is ‘disingenuous’ for developed countries to provide overseas development assistance, debt relief and other forms of international assistance and co-operation to developing countries, while simultaneously hiring health professionals who have been trained at the expense of, and are desperately needed in, the developing countries of origin.
58. When the Special Rapporteur points to the contradiction of ‘giving with one hand and taking with the other’, he is not alone. Others have described it as ‘unfair, inefficient and incoherent for developed countries to provide aid to help developing countries to make progress... on health and education, whilst helping themselves to the nurses, doctors and teachers who have been trained in, and at the expense of, developing countries’.<sup>37</sup>
59. The Special Rapporteur suggests that: human rights should be integrated into all skills drain policies; health systems in countries of origin should be strengthened; destination countries should adopt ethical recruitment practices, as some have already done; and there should be compensation for the ‘reverse foreign aid’, or ‘perverse subsidy’, which developing countries are providing to the health systems of developed countries through migration.<sup>38</sup>

#### V. *Violations of Migrants’ Rights: negative impacts on development*

60. Many migrants engage in some form of work, and their ability to be productive, and contribute to their own and their families’ welfare, to the national economy through social security and tax contributions, and also to their home communities is directly related to their conditions of work. ILO research shows that for many, migrating for work may be a rewarding and positive experience. But

*‘for an unacceptably large proportion of migrants, working conditions are abusive and exploitative, and may be characterised by forced labour, low wages, poor working environment, a virtual absence of social protection, the denial of freedom of association and union rights, discrimination and xenophobia, as well as social exclusion, all of which rob workers of the benefits of working in another country.*

*‘The development of labour institutions for the protection of migrant workers has lagged behind the growth of migration.’<sup>39</sup>*

#### A. **The Vulnerability of Migrants**<sup>40</sup>

61. At one end of the migration spectrum are the highly skilled who voluntarily leave their home country to take employment in another country, to which they travel and which they enter legally, and in which they have a regular immigration status. At the other end of the spectrum are the women, children and men whose decision to move is made at the instigation of a trafficker, or who engage the services of a smuggler; whose journey is undertaken along illegal and dangerous routes; who enter the country of destination illegally; whose immigration status is irregular and who are likely to work in conditions of exploitation which breach human rights and labour standards.
62. The degree of vulnerability differs between these two extremes. But both are more vulnerable in human rights terms than if they were citizens, for a number of complex reasons. These start with the fact that they have crossed an international border, and are not citizens of the country in which they live. Unlike citizens – they may generally enter and live in another country only with the express consent of its authorities.<sup>41</sup>
63. This dissociation between nationality and physical presence has many consequences. As strangers to a society, regular migrants may be unfamiliar with the national language, laws and practice. This may make them less able than others to know and assert their rights. They may face discrimination, unequal treatment and unequal opportunities at work, and in their daily lives. Irregular migrants may be reluctant to seek protection against rights abuse from police or employment authorities because they fear deportation. In some countries, national employment law does not protect migrant workers, and in any case migrants are more likely to work in those parts of the informal employment sector where labour standards are not applied. Many migrants face racism and xenophobia. At times of political tension, they may be the first to be suspected – or scape-goated – as security risks; by linking anti terrorism and immigration control in the context of the ‘war on terror’, many governments have encouraged – however unintentionally – xenophobia against migrants from particular regions of the world.
64. By giving equal protection of fundamental rights to migrants and citizens, human rights law seeks to rectify imbalances between citizens and aliens in the enjoyment of rights. In his study on the rights of non citizens, David Weissbrodt notes that the ‘architecture’ of human rights law was built on the premise that all persons, by virtue of their essential humanity, should enjoy all human rights, unless exceptional distinctions, for example between citizens and non citizens, can be justified. Justification requires a legitimate state objective and the distinction must be proportional to the achievement of that objective.
65. But he found a large gap – a ‘disjuncture’- between the rights that international law guarantees, and the realities which non citizens face. The situation has worsened in response to fears of terrorism, and the ‘narrow exceptions to the principle of non discrimination that are permitted by international human rights law do not justify such pervasive violations’.<sup>42</sup>

## **B. The Problem of Data**

66. Inadequate data on international migration is a general problem; it is acute in the case of human rights. Violations have been generally under recorded. In the case of migrants, under-recording is the greater to the extent that they are socially excluded from the host society because of language or culture, or where they are irregular, and so less able – or willing – to report their difficulties, and seek redress through formal procedures. Migrants' lack of familiarity with the laws and procedures of their host countries can also contribute to under-reporting of abuse and consequent lack of data.
67. Even destination countries with sophisticated data collection capacities do not know the scale of trafficking flows. The obvious difficulty is that conventional methods of data collection cannot easily be adapted to situations involving trafficking, smuggling and other forms of illegality, or to situations where people fear to report rights abuses. As a result, there is a lack of accurate data - on types of violation, the places where they occur, and their characteristics.
68. Nonetheless, there exists within the UN human rights system a growing body of reporting on migrants' rights. This has developed through the work of the Human Rights Commission's [now the Human Rights Council's] special procedures, including both the Special Rapporteur on the human rights of migrants, and also other mandates, such on trafficking, indigenous people, violence against women, the sale of children, and the right to health. Through their examination of country reports, the treaty bodies examine how international human rights law protects migrants' rights in different countries. Of other UN agencies, the ILO in particular has a distinguished history of research and standard setting on migrant workers, and particularly on the prevention of forced labour and exploitation.

## **C. Violations of migrants' rights**

69. This research and reporting show that right abuses in all regions reduce – sometimes even nullify – migrants' ability to do decent work, support themselves and their families, live a life in which their personal rights are respected, and contribute generally to the development of their home and their host societies. They also show a strong connection between a migrant's legal status and the degree to which his or her rights are respected, with irregular migrants enjoying less protection than regular migrants.<sup>43</sup> Similarly, the legal status of migrants affects their integration into society.
70. Migrants can acquire irregular status in a number of ways. They may enter a country illegally, either by avoiding border controls or by entering with false documents. Even if they enter legally, they may overstay their visas and thus become undocumented. Or they may have entered on a non working visa and then started to work; in some countries, this may make the entry illegal retroactively, since the act of seeking or accepting work is construed as deception of the authorities on entry – by posing as a student or tourist while

intending to work.<sup>44</sup> Where asylum seekers are refused recognition as refugees, they may then spend years awaiting removal as irregular migrants.

71. National protection mechanisms are often unused or ineffective where irregular migrants suffer abuse, because of fears that arrest or removal will be the result if the migrant reports them to the authorities. The Committee on Migrant Workers has called on states to establish effective and accessible channels which would allow all migrant workers to lodge complaints for violations of their rights ‘without retaliation against them’ if they are irregular.<sup>45</sup>
72. The tightening of geographical borders by many governments is another cause of irregular migration, because of the ensuing lack of legal migration opportunities. At the same time as borders are being enforced, the activities of traffickers and smugglers have expanded, routes have become more hazardous, and the dangers facing migrants during illegal travel and transport have grown exponentially<sup>46</sup>. The majority of irregular migrants are seeking an opportunity to support their families and their home communities through their work and earnings. The experience of the last decade has shown that restrictive approaches, based on efforts to obstruct or deter people from moving from one country and region to another, have not succeeded<sup>47</sup>.
73. Once migrants are settled in the country of destination, human rights protection must go beyond their employment conditions, and take into account the wider context of their daily lives. Equally, protection is needed not only by those in legal, and – in the ILO’s terminology – ‘decent’ work in the formal employment sectors, but also by those who are irregular in status and who work in the informal sector, including in various forms of domestic labour.
74. During 2005 the Special Rapporteur on Migrants communicated allegations of abuse to 34 countries. These cases illustrate the wide range of situations in which the rights of migrants are violated. The nature of some of the alleged abuse is evident in the fact that in some cases action was undertaken jointly with the special rapporteurs on Extrajudicial Executions, Torture, Trafficking, Violence against Women and the Sale of Children.<sup>48</sup>

○ **Women Domestic Workers**

75. A significant number of these communications concerned women domestic workers. As the UN Special Rapporteur on Violence against Women has reported,

*‘[i]n astonishingly large numbers, women are migrating great distances against international boundaries to engage in poorly remunerated labour that isolates them in a subordinate position in a private realm, exposing them to acute risks of physical and psychological violence and to expropriation of their economic gain’.*<sup>49</sup>

76. Because of their condition both as migrants and as women – a status sometimes characterised as ‘double marginalisation’ – female migrant workers are particularly vulnerable to exploitation and ill treatment. Distinctions between trafficked women and voluntary women migrants may be difficult to make because both may end up in comparable situations of exploitation, violence and abuse.
77. From its review of country situations, the CERD Committee has noted that serious problems commonly faced by migrant domestic workers include debt bondage, passport retention, illegal confinement, rape and physical assault.<sup>50</sup> Reports by non governmental organisations confirm that many women work without contracts, or – if contracts exist – that they are on unfavourable terms, are paid low salaries, have no insurance, no control over working hours, and that employers may forbid domestic workers to leave the house, in effect confining them for the period of the employment to the house or apartment building in which they work.<sup>51</sup>
78. The Special Rapporteur on Trafficking also described problems which exist in a number of countries, affecting women who seek to contribute through their work to their families and home societies, but are prevented from doing so by systematic violations of their rights. Often, the domestic migrant worker is completely dependant on her sponsor, and hence vulnerable to exploitation, because the validity of her visa depends on her continued employment.<sup>52</sup>
79. Some women are able to leave abusive employment. Many do not, and the reasons they give illustrate the helpless situation of many domestic migrant workers: a lack of alternative employment; ignorance of rights; financial obligations to family and the fact of their dependence on the worker’s income; lack of financial resources; fear of deportation; restrictions on movement; lack of identity papers; fear of arrest; fear of violence by agents/traffickers/employers; debt bondage; a fear of retaliation against the family if the debts are not paid; and a general fear of reprisals<sup>53</sup>.
80. It must be recognised that the nature of domestic work gives rise to complex rights protection issues, since the unregulated nature of informal labour translates into minimal or no legal protection for migrant workers. In many countries, labour, safety and other laws do not cover domestic workers, so there are no legal norms for their treatment or offices or inspectors to enforce them. Even if they are protected by legislation, it can be very difficult for domestic workers to learn about or benefit from available protections, the result being widespread violations of labour laws.<sup>54</sup>
81. The situation of domestic migrant workers illustrates the nullifying effect of human rights violations on an individual migrant’s ability to contribute to her own, her family’s or her society’s development. These abuses are not new. When international human rights law was being drafted, states sought to prevent such violations by proscribing – eg - cruel, inhuman and degrading treatment, and protecting rights to safe and healthy working conditions and fair wages, and to fair trial and due process. They anticipated

that migrant workers would be especially vulnerable, and therefore included these rights in the ICMW in terms which took into account the situation of migrants.

***V. Creating conditions for migrant's contributions to development: respect for human rights***

82. Over the last three decades, as more states have become bound by international human rights treaties, a major change has taken place in the way in which the rights of aliens are protected. This has involved a shift beyond the classic system of diplomatic and consular protection by the alien's state of nationality, to the direct protection of the individual alien's rights under a set of reformulated international norms'.<sup>55</sup> Today, while states may expel or remove migrants who are illegally in their territory, international human rights law is clear in its requirement that the State should generally protect their rights without discrimination for as long as they remain on its territory.
83. It follows that migrants are entitled to protection of their fundamental rights regardless of their immigration status, or whether they have been legally admitted to a country.

**A. National Implementation**

84. If migrants are to enjoy these protections, international law must be implemented by states. As noted with respect to indigenous migrants, the main difficulty

*'is not the absence of international law, but the weakness of its implementation at the national level [which] .... has made it difficult for indigenous peoples to access legal services and to seek legal recourse when needed.'*<sup>56</sup>

85. States are under an 'unqualified and immediate' duty to give effect to the civil and political rights – eg - in the ICCPR; these duties are binding on all branches of government [executive, legislative and judicial], at national, regional and local levels. States must adopt legislative, judicial, administrative, educative and other appropriate measures, making such changes to domestic laws and practices as are needed to ensure their conformity with the treaty. In relation to economic, social and cultural rights, states may not discriminate, and must take immediate steps towards their progressive realisation.<sup>57</sup>
86. In this regard, National Human Rights Institutions (NHRIs) can play an important role in promoting ratification of relevant international instruments and the harmonization of national legislation, and ensuring that States respect their international human rights obligations. Moreover, NHRIs can

promote programmes and information campaigns on human rights awareness for migrant workers, both prior to departure and after arrival. In addition NHRIs can provide assistance to migrants in detention centres and to victims of smuggling and trafficking.

87. Of the different questions that can arise regarding implementation, two areas particularly influence a migrant's ability to contribute to development, economically and in other ways: one is the international prohibition on trafficking for forced labour; the other involves the integration of migrants.

**▪ Proscribing Forced Labour, Trafficking and Exploitation**

88. Forced labour has been proscribed as a breach of international labour law since 1930.<sup>58</sup> It is a violation of the ICCPR, the ICMW, and other human rights treaties. The practice is defined to include both 'work or service which is exacted ... under the menace of a penalty' by the state, and also forced labour which is 'for the benefit of private individuals, companies or associations'. Trafficking of human beings was made an offence under international criminal law in 2000; the offence has three elements: movement of a person, with deception or coercion, into a situation of exploitation, which includes forced labour as well as sexual exploitation<sup>59</sup>.
89. Through their accession to one or more of the international human rights treaties all UN member states have agreed to 'abolish, forbid and counter' forced labour as a human rights violation. All ILO member states have pledged to 'eliminate all forms of forced or compulsory labour'<sup>60</sup>. States which have acceded to the Palermo Protocol have undertaken to prosecute trafficking. Since both forced labour and trafficking involve the exploitation of workers, there is thus a clear overlap between the two practices.
90. But the number of national prosecutions which have so far taken place appears to be relatively small. While many states are still in the process of incorporating the Trafficking Protocol into their national laws, it is surprising that there have not been more prosecutions in the case of forced labour. ILO research examined why there had been so few prosecutions of trafficking for forced labour purposes in European countries. It found that, with few exceptions, forced labour is not defined in any detail in national legislation, making it difficult for law enforcement agents to identify and prosecute the offence, and there had been few prosecutions for forced labour offences in any country.<sup>61</sup> It is also the case that in some countries, employment tribunals have no jurisdiction to enforce contracts where the worker has an irregular immigration status.
91. But, as the ILO has also pointed out, states whose criminal justice systems do not yet define forced labour can nonetheless prosecute the offence under their existing criminal laws if they address such component elements as: threats or actual physical harm to the worker; restriction of movement and confinement, to the workplace or to a limited area; debt bondage: where the

worker works exclusively to pay off a debt to the employer or loan, and is not paid for his or her services; withholding of payment or excessive wage reductions; retention of passports and identity documents, so that the worker cannot leave, or prove his/her identity and status; threat of denunciation to the authorities, where the worker is in an irregular immigration status.

92. Each of these acts, if committed intentionally or knowingly by an employer, is also likely to be a criminal offence under national law: in many jurisdictions, threats or actual physical harm may be prosecuted as assault; the act of withholding wages may be the criminal offence of theft, subject to proof that the worker was entitled to the wages, and that the employer intended to withhold them permanently. Similarly, withholding of passports may also be theft. In many countries the threat of denunciation to the authorities can come within the criminal law definition of blackmail.
93. In conclusion, it is clear that implementation can be hindered by a number of different factors, including gaps in knowledge, capacity and commitment<sup>62</sup>.

▪ **Facilitating the Integration of Migrants**

94. While integration is not a legal concept in itself, it is both a goal and an outcome of human rights principles such as equality and non discrimination.
95. There is no necessary link between migration and difficulties in integration. Problems in receiving countries may be largely absent where migrants have close cultural, including language and religion, and family ties to the host country, or where they have a secure legal status, are well educated, prosperous and socially accepted as a group which enriches the cultural and economic life of a country. But problems may arise, and they may include difficulties of reintegration when migrants return to their home country.
96. Human rights principles can contribute in different ways to integration; economic, social and cultural rights are particularly important as they address issues such as education, labour, housing and health, together with the protection of family life. These rights impose three levels of obligation on states: to respect, protect and fulfil. The duty to respect obliges states 'not to take any measures that result in preventing' access to – eg – work, education and other goods and services. The duty to protect requires measures by states to ensure that private enterprises or individuals do not deprive individuals of access. The obligation to fulfil – facilitate and provide – means that states must proactively engage in activities to strengthen access and – in some circumstances – provide the right directly.<sup>63</sup>
97. Building on these obligations, Walter Kalin identifies four principles which should inform the integration policies of states. States must: not interfere with the efforts of migrants to integrate – by obstructing access to services, institutions and goods relevant to their social, economic and cultural rights; protect the efforts of migrants to integrate against interference by third parties; actively promote the integration of migrants by providing necessary

services and goods; and integration policies must respect the prohibition of discrimination.<sup>64</sup>

98. Clearly racial discrimination, its public expression through media, race hatred, and racially motivated crime are the antithesis of integration. International human rights law places a duty on states to protect migrants against these manifestations of discrimination, to be active in encouraging respect for their rights, and in countering all forms of racial hatred.
99. The GCIM has pointed to the dangers associated with the exclusion and marginalisation of migrants, noting that '(i)n the absence of effective integration, destination countries will not be able to capitalise on the contribution that migrants can make to society'.<sup>65</sup>

## ***VII. Policy Conclusions***

100. The research and reporting reviewed in this paper shows that migrants make very significant contributions to development. It also shows that rights abuses in all regions reduce – sometimes even nullify – migrants' ability to do decent work, support themselves and their families, live a life in which their personal rights are respected, and contribute generally to the development of their home and their host societies.
101. Through their voluntary accession to human rights treaties, all UN member states have undertaken to protect the fundamental civil, economic, social, and cultural rights of all migrants in their countries, regardless of their immigration status. A human rights framework would contribute to migration policies through the acceptance of common basic principles. International co-operation and consultation should take place within this framework. Rights based policy making should take into account the vulnerability of many migrants and their human rights protection needs throughout the migration process. It should focus on the causes of migration and on the need to ensure respect for human rights in the countries from which most migrants originate. It must further reflect the vulnerability of all migrants - irregular as well as regular – and recognise both the link between legal status and human rights, and the negative correlation between irregularity of status and exploitation.
102. A number of conclusions can be drawn, which should form the basis for a rights based migration policy:
- **Migration out of choice.** Migration policy making must have as its over-riding priority the creation of a situation in which migration not only can take place in conditions of dignity, but also becomes an informed choice rather than a strategy of survival in an economically asymmetric world. This takes forward the Cairo Conference's priority of making the option of not migrating – remaining in one's country – a viable one for 'all people'.

- **Secure livelihoods.** Acknowledging that among the root causes of migration is the drive to seek out secure livelihoods, states as well as non state actors must step up their responses to create alternative forms of sustainable livelihoods for disadvantaged groups, women and young people. This would include skills training, partnerships and creation of quotas, bursaries and incentives. Pro-active and intensified schemes for expanding and strengthening sustainable forms of livelihoods need to be urgently developed.
- **Access to Information:** Countries of origin and destination must urgently consider developing programmes which provide sound and easily accessible information on safe channels for legal migration, the possible harms of illegal migration including trafficking, and information concerning destination countries and cities, for instance on travel, job placement, legal rights and health. Information should also be provided on assistance available to migrants in the countries of destination, such as those provided by women's groups and human rights organisations, legal aid services, various governmental services and counselling services.
- **Simplify Procedures:** Sending countries relying on overseas migration and remittances must simplify procedures to facilitate the safe mobility of migrants including women. Considering that the literacy and exposure levels of especially migrant women may be low, assistance must be extended to them to expedite procurement of passports, visas and all necessary travel and employment documents.
- **Regulate Labour Recruitment and Travel Agencies:** Agencies involved in labour recruitment and transportation of migrants must be regulated in efficient ways. Procedures for accountability as well as those which ensure safe living and working conditions must be developed and monitored. This would go a long way in preventing all kinds of harms and abuses, including trafficking.
- **Anti-Trafficking Measures:** States have a responsibility under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons. Anti-trafficking measures must protect the human rights and dignity of persons, in particular the rights of those who have been trafficked, and of migrants, internally displaced persons, refugees and asylum-seekers.
- **Harmonize Policies in Relation to Demand:** As the denial of demand for labour in specific sectors of the economy is one of the causes of irregular migration, countries of destination should assess the demand for migrant labour in the various sectors and proceed to harmonize their immigration, migration and labour policies in commensuration with demand for labour. In furtherance of this, a serious review of existing immigration laws and policies must be undertaken.
- **Data-base:** In order to base migration policies on facts, it is imperative and urgent that a sound evidence base be available to countries of origin and destination on migration. This data should be disaggregated on basis of gender, age, region, etc., and should

among other factors pertain to the demand sectors, supply, and volume of remittances.

- 103.. The political will which led to the adoption and enforcement of human rights instruments dealing with other vulnerable groups, such as women (CEDAW) and children (CRC), needs to be reinforced and recreated to implement the existing human rights law applicable to migrants and to promote the adherence to the International Convention on the Protection of All Rights of Migrant Workers and Members of Their Families.

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<sup>1</sup> ICCPR Art. 2(1) and Art.26.

<sup>2</sup> Global Commission for International Migration, *Migrating in an Interconnected World: new directions for action*, Geneva, 2005, page 55.

<sup>3</sup> HRC *The Nature of the General Legal Obligation Imposed on States Parties*, General Comment No. 31, para. 10.

<sup>4</sup> CERD General Recommendation XXX, *Discrimination against Non Citizens*, para. 7.

<sup>5</sup> See, eg, *Making Global Trade Work for People*, Earthscan, 2003, p.273.

<sup>6</sup> See, eg, Committee on MWs, press release 16 December 2005.

<sup>7</sup> The HDR defines 'human poverty' as impoverishment through deprivations: in a long and healthy life [including health and food], in knowledge [education], in a decent standard of living, and in participation. HDR 2000, p.17

<sup>8</sup> See generally UNDP *Human Development Report 1990*, pp. 9-10.

<sup>9</sup> UNDP *Human Development Report 2000*, p. 19.

<sup>10</sup> *Equity and World Summit Outcome Document*, #11.*Development*, World Development Report 2006, Overview, World Bank, 2005, p.2, p.17..

<sup>11</sup> Cairo Conference Programme of Action 1994, para.10.1.

<sup>12</sup> See the report of the Special Rapporteur on the Human Rights of Migrants, Mr. Jorge Bustamante, E/CN.4/2006/73.

<sup>13</sup> *Trafficking in Human Beings, especially women and children, in Africa*, UNICEF, Innocenti Research Centre, 2003, p.5.

<sup>14</sup> E/CN.4/2001/73/Add.2, para. 26.

<sup>15</sup> CRC, Article 7.

<sup>16</sup> *Birth Registration: right from the start*, UNICEF Innocenti Research Centre, 2002.

<sup>17</sup> Report of Special Rapporteur on Indigenous People, E/CN.4/2003/90, para. 7.

<sup>18</sup> Cairo Programme of Action, 1994, paras 10.1 & 10.3.

<sup>19</sup> Global Commission for International Migration, *Migrating in an Interconnected World: new directions for action*, Geneva, 2005, p.4.

<sup>20</sup> Report of Expert Workshop on Indigenous People and Migration: Challenges & Opportunities, April 2006, para. 35. E/C.19/2006/CRP.5.

<sup>21</sup> CMW/C/4/CRP.2, para4.

<sup>22</sup> Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Art. 9(4).

<sup>23</sup> The right to health requires states to adopt policies which will lead to the provision of health services which are 'within safe physical reach' for all sections of the population, especially vulnerable or marginalised groups, including indigenous populations. See CESCR General Comment No.14: The right to the highest attainable standard of health, para. 12(b).

<sup>24</sup> Some 90 million out of an estimated total international migrant population of 191 million in 2005. Source: SG's report.

<sup>25</sup> GCIM Report, page 23.

<sup>26</sup> In monetary terms remittances, mostly sent north-south, but also some south-south, constitute the largest measurable migration benefit for developing countries, with an estimated total in 2005 of \$167 billion. This figure outstrips ODA, and has doubled in the past 5 years. The actual amount is probably significantly higher because payments made through informal channels are not recorded. World Bank, *Global Economic Prospects 2006: economic implications of remittances and migration*, page xii.

<sup>27</sup> See generally, *Migrants' Remittances and Development: myths, rhetoric and realities*, Bimal Ghosh, IOM, 2006.

<sup>28</sup> World Bank supra.

<sup>29</sup> ...it is estimated that migrants in the UK contributed £31.2 billion in taxes, and increased public expenditure by £28.8 billion through their receipt of public goods and services, resulting in a net fiscal contribution of around £2.5 billion. In other words, migrants in the UK reduced the amount that the existing population paid in taxes, or increased the amount they received in welfare and public services, by £2.5 billion. *The Migrant Population in the UK: fiscal effects*, Home Office RDS Occasional Paper No. 77, 2002, p.11.

<sup>30</sup> *Global Economic Prospects 2006: economic implications of remittances and migration*, World Bank, p. xii.

<sup>31</sup> One example is the 2005 Spanish immigrant amnesty; *Regularising Immigrants in Spain: a new approach*, Joaquin Arango & Maia Jachimowicz, Migration Information Source, September 2005.

<sup>32</sup> ICMW Art 64(2).

<sup>33</sup> See Annual Report of Inter American Rapporteur on Migrant Workers, 2003, paras 361 – 364. Migrant Workers Act 1995 [RA 8042]; Absentee Voting Act 2003 [RA 9189].

- <sup>34</sup> Special Rapporteur on Human Rights of Migrants, E/CN.4/2001/83/Add.1, para. 72; Report of Canada to CERD Committee, CERD/C/409/Add.4, paras 92 – 101.
- <sup>35</sup> Report of USA to the CERD Committee, CERD/C/351/Add.1, para 362.
- <sup>36</sup> WHO Fact Sheet No. 301, *Migration of Health Workers*, April 2006.
- <sup>37</sup> UK Parliament Select Committee on International Development, *Report on Migration & Development*, 8 July 2004, # 7.
- <sup>38</sup> See generally, Report of the Special Rapporteur on the Right to Health, A/60/348, paras 18 – 90.
- <sup>39</sup> ILO, *Towards a Fair Deal for Migrant Workers in the global economy*, 2004, para. 126
- <sup>40</sup> See, eg, CHR resolution 2001/52.
- <sup>41</sup> Exceptions include those with diplomatic status.
- <sup>42</sup> E/CN.4/Sub.2/2003/23, para. 2.
- <sup>43</sup> The Special Rapporteur on the Human Rights of Migrants has reported ‘a steady deterioration of the human rights situation of migrants, particularly those with irregular ... status... it appears that the most frequent abuses... occur in the context of discriminatory, xenophobic and racist practices, administrative detention of undocumented migrants and different forms of exploitation of migrant workers’. Report to General Assembly, 2004, A/59/377, para. 30.
- <sup>44</sup> ILO, *Towards a Fair Deal for Migrant Workers in the global economy*, 2004, paras. 195 & 397.
- <sup>45</sup> Respecting the Rights of All Migrant Workers as a Tool to Enhance Development, CMW/C/4/CRP.2.
- <sup>46</sup> The UN Special Rapporteur on Migrants reports that over five years more than 4,000 irregular migrants had been drowned in the Strait of Gibraltar attempting to cross from Morocco to Spain. UN Special Rapporteur on Migrants, E/CN.4/2004/76/Add.3, para 25 These reports are consistent with reports from other regions where irregular migrants, using the services of criminal agents, have lost their lives in the course of dangerous journeys – not only by ships, but also by land, including in refrigerated trucks, and by air in the undercarriage of aircraft.
- <sup>47</sup> Reports from the Inter American Commission on Human Rights, and its Rapporteur on Migrant Workers, show that irregular migration between Mexico and the USA continues and has not been halted by tightened border control, but that tighter controls have been followed by increased loss of life among migrants. In order to evade the controls, more migrants have placed themselves in the hands of traffickers or smugglers, the routes have changed, entailing longer, more expensive and more dangerous journeys, in which riskier means of transport are used. These new border controls have had the effect of curbing ‘circulatory migration’, with its considerable development benefits, but have not diminished the number of persons who enter the US as irregular migrants.
- <sup>48</sup> The allegations included: assault, rape and death at the hands of employers; deportation of regular migrant workers; imposition of excessive working hours and the refusal to pay wages; confiscation of passports and identity papers by the employer; many forms of trafficking; violent racist attacks; misleading or fraudulent information from recruitment agencies, and the failure by an agency to act on complaints of ill treatment prior to the death of the worker; access to health benefits being made dependant on a trafficked worker’s willingness to testify against the trafficker; lengthy periods of detention; failure to pay court awarded compensation to a trafficked person because she had been deported and had no local bank account; assaults by an employer on workers to deter them from complaining to a workers’ rights NGO; refusal by an employer to allow sick leave after surgery following an accident at work; detention in the company compound of workers, who had sought payment of unpaid wages, without food or water, after the telephone line had been cut. E/CN.4/2006/73/Add.1
- <sup>49</sup> Special Rapporteur on Violence against Women, E/CN.4/1997/47, # 123.
- <sup>50</sup> CERD General Recommendation No. 30 # 34.
- <sup>51</sup> See, eg, *Help Wanted: abuses against female migrant domestic workers in Indonesia and Malaysia*, Human Rights Watch, 2004.
- <sup>52</sup> See Special Rapporteur on Trafficking, Report on Mission to Lebanon, E/CN.4/2006/62/Add.3
- <sup>53</sup> Special Rapporteur on violence against Women E/CN.4/1997/47 #133.
- <sup>54</sup> ILO FDMWs, paras 187-194.
- <sup>55</sup> See Richard Lillich, *The Rights of Aliens*, Manchester University Press, p.,
- <sup>56</sup> Report of Expert Workshop on Indigenous People and Migration: Challenges & Opportunities, April 2006, para. 16. E/C.19/2006/CRP.5.
- <sup>57</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 3, *The Nature of States’ Obligations*.
- <sup>58</sup> ILO Forced Labour Convention [No. 29] 1930. The 1998 ILO *Declaration on Fundamental Principles and Rights at Work* commits all ILO member states to eliminate all forms of forced or compulsory labour.
- <sup>59</sup> Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children art.3(a)
- <sup>60</sup> Declaration on Fundamental Principles and Rights at Work, 1998.

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<sup>61</sup> *Legal Aspects of Trafficking for Forced Labour Purposes in Europe*, Rohit Malpani, Working Paper, International Labour Office Geneva April 2006, p. iii; referring to ILO Global Report 2005 *A Global Alliance against Forced Labour*.

<sup>62</sup> See Plan of Action submitted by the United Nations High Commissioner for Human Rights, A/59/2005/Add.3

<sup>63</sup> See CESCR General Comments No. 12 [the right to food], and No. 13 [the right to education].

<sup>64</sup> See generally Walter Kalin, 'Human Rights and the Integration of Migrants', in *Migration and International Legal Norms*, ed Aleinikoff and Chetail, Netherlands, 2003, pp. 271 – 287.

<sup>65</sup> GCIM, *supra*, p.45.