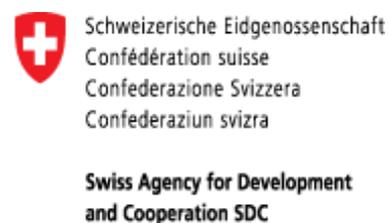


**Experts Meeting on
Global Compact on Migration:
Overview and Background Papers**
(Draft - To be completed)

June 8-9, 2017
Berlin, Germany



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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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Berlin Experts Meeting on Global Compact on Migration

8-9 June 2017

Manolo I. Abella

A. Challenges and potential benefits

1. How can growing movements of labour across national borders be accommodated through regular channels? Demographic trends already indicate the likelihood that the next decades will see rising migration pressures as a surge in young population is already forecasted in countries of the South especially in sub-Saharan Africa and parts of Asia where labour absorption remains weak. While 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 ageing of populations, 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 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 efforts of poor countries to provide their youth with 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 conditions for job growth in sending countries and mutually beneficial migration regimes?
2. How to meet increasing shortages of workers in sectors and occupations 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 to create labour shortages in agriculture, for 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 up avenues other than for seasonal workers and temporary contract workers for the regular or legal migration of low-skilled foreign workers. Recent discourse has in fact shifted to a reduction in admissions for all types of immigrants. While some jobs can be eliminated by mechanization or automation, many others such as in health care cannot. For

example, in many ageing societies there are emerging shortages for 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 over-burdened hospitals. Ageing populations and rising medical costs are undermining the financial viability of many social security systems, and are bringing up fiscal policy dilemmas aside from social tensions and political backlash. These are likely to rise as medical progress leads to lengthening life expectancy.

3. Migrants generally face discrimination in the labour 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 is also 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 of protecting native workers against being competed out of their jobs. What measures can counter discrimination in recruitment, in terms or conditions of employment, in opportunities for advancement?
4. 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 labour rights is widely reported. The demand for their services continue to grow as native women in rich countries as well as in rapidly developing economies prefer to work out of 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 labour laws in many countries, especially in less developed ones. Even where covered under such laws, application is seldom effective, reflecting lack of political will or weak governance.
5. How to reduce 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 KNOMAD/ILO surveys of migration costs revealed 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 a 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, forced to work long hours or in multiple jobs, and risk over-staying their periods of authorized stay in order 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.

B. Recommendations

For international organizations:

1. Contribute to a 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 fora like that of G7, G20, etc ;
2. Contribute to a better understanding of the social and economic impact of migration, especially of the low-skilled, on host countries/societies;
3. Put more concerted efforts and resources to promoting ratification of international migrant conventions especially by countries of destination;
4. Review how bilateral agreements have worked in various migration corridors with a view to drawing lessons for other countries;

For governments of destination countries:

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

For employers and their recruiters in destination countries:

1. Organize along industry lines for the purpose of implementing orderly recruitment and placement of foreign workers, meeting the cost of recruitment, providing accommodation and transport, and facilitating the workers' return and/or future re-engagement;
2. Adopt industry-wide codes of conduct for fair recruitment of foreign workers and cooperate with national authorities in combating trafficking and smuggling of persons.

For trade unions and civil society organizations:

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

For governments of origin countries

1. Enable direct hiring by employers to minimize the need for workers to use intermediaries, including removing legal barriers, and supplying information and skills testing facilities;
2. 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 to job-matching;
3. 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 fall victim to fraud and malpractice. Also, 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.
4. Require recruiters to follow industry-wide standard pricing of services to foreign employers in order to avoid price under-cutting that inevitably lead to passing on costs to the workers.
5. 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.

C. Existing Norms

International norms to protect the rights of migrants are already elaborated on 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), the 1990 UN Convention on the Protection of Migrant Workers and Members of Their Families, the 2000 Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention against 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, Equality of Opportunity and Treatment. The ILO also has a number of Conventions particularly relevant to migrant workers including the Protection of Wages, Labour Inspection, Occupational Health and Safety, Social Security, Employment Agencies.

In 1949 the 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 UN 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 towards a global agreement on protecting the rights of domestic workers, but it remains to be ratified by many countries.

While 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 who have signed up to the 1951 UN 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 to provide for a more equitable sharing of responsibilities over the protection of asylum seekers and refugees.

D. Global Institutional Architecture

The Global Commission on International Migration which submitted its report to the UN 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 the ILO and the UNHCR. In its 1919 Constitution the ILO was specifically charged with the responsibility to "...protect those working in countries other than their own". The UNHCR has in its statute the responsibility to supervise the implementation of the refugees 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 UN undergoes its reform process. The International Organization for Migration (IOM) has emerged as a major international organization promoting coordination of migration policies among states through so-called "regional processes", but it has not been assigned normative functions, which remain with the ILO and the UNHCR. What the recent decision by UN member states to bring IOM into the formal structure of the UN means in terms developing an integrated approach to migration remains to be seen. In the meantime various UN and international agencies with relevant functions and activities, including the World Bank, have already established the Global Migration Group (GMG) which today serves as a kind of mechanism for coordination of their respective activities. The inter-governmental Global Forum on Migration and Development, now on its 9th year, is also a response to the call for continuing consultations and dialogue on major migration challenges, originally only with a focus on how migration can promote development, but is increasingly being drawn to address other migration challenges.

E. Connection to GCM

A global compact on migration and refugees will no doubt focus on broad principles that can be accepted by member states of the UN but these will need to be underpinned by a deeper appreciation of what concrete measures may be necessary, at national and at 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.

F. List of desirable elements for Global Compact

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

1. Countries facing shortages of labour should open wider channels for the orderly admission of temporary migrant workers, offer a path to permanence for those employers wish to keep, and enable circular movements for those who wish to return home.
2. Countries must take measures or amend laws so as not to criminalize “irregular” migrants;
3. Guest worker programs should allow for mobility of the migrants in the labour market since this is the best guarantee that they will be employed most productively.
4. 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;
5. With a view to spreading good practice, international agencies should evaluate the experience of countries in managing labour migration including systems for identifying labour market shortages and gaining political support for admission programs.
6. Because it is a public good there is underinvestment in labour market information that can reduce migration costs. Governments of origin and destination countries must invest in providing information that support efficient recruitment.

Irregular Migration and Regular Pathways

Prepared for the KNOMAD Experts Meeting on Global Compact on Migration

8-9 June 2017, Berlin

Norbert Cyrus (European University Viadrina, Frankfurt/Oder)

1. Themes and Issues for the normative Guideline

Focussing 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 indicate that current policy approaches are inefficient and fail to accomplish their objective. This observation raises the question if this failure is due to insufficient policy implementation or due to fundamental inappropriateness of currently pursued approaches.

Until now, pursued policy approaches are shaped by the views of receiving countries' governments who frame unwanted primarily as 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 by establishing bi- 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 down or prevent irregular migration but first and foremost induce the status of an irregular migrant. Irregular migration is irresolvable linked with migration control and emanate from these efforts.

The hotbed for irregular migration is a discrepancy between demand for and supply of legal migration opportunities. Restrictive immigration policies exacerbate this discrepancy. Incidences and amount of unauthorized migration are shaped by the factors of *accessibility* and *connectivity*. Connectivity points to opportunities (a) to connect to income generating activities, (b) to join a family, community or social network, and (c) to 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 provide causes for irregular immigration. In a situation of given connectivity *without* accessibility, an informal market for unauthorized border crossing services occurs which 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 main target of migration control fails to address structural factors underlying the occurrence and persistence of the *markets* for smuggling services and of the markets for undeclared employment of migrant workers in the informal economy in receiving countries.

Migration researchers found that the top-down pursued command and control policy fails for several reasons. The state of economic globalization, transnational social connections, political interdependencies and requirement of international legal regimes, including trade agreements and human rights obligations, restricts the scope of national migration policies. Also 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 bi- 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 logics of migration processes. Unauthorized migrants see themselves as ‘travellers’, thus more or less implicitly expressing a sense for freedom of movement as a basic liberty that aggregate to an autonomy of migration.

A migration policy that neglects the processual logics 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 a ground for xenophobic fears and racist resentments 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 towards a set of interrelated thematic issues:

- The 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 process logics and dynamics of migration and the interests of the involved actors is a basic requirement for the design of regulations addressees will accept and can comply with.
- The GCM initiative should encourage a normative framework not imposing interdictions but regulation of standards which allow adjustments to ongoing migration processes with a particular attention to actors at the local level.
- The agency and autonomy of actors at the local level which directly experience migration processes should be recognized.
- The GCM initiative should abandon the language of management and apply a language of regulation of standards which 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 keep orientation towards the extension of free movement.

Commitment to a spirit of freedom

The GCM should include a commitment to the right to freedom of movement as 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 favour individual freedom. Thus, it is consistent to apply the respect for this guiding principle also onto the area of movement of people.

A commitment to ‘freedom of movement’ as 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. While ‘freedom of movement’ should explicitly inform every GCM initiative as guiding principle,

the utilization of this freedom can be – just like other basic liberties like freedom of speech - subject to restrictions.

The use of the term ‘free’ does not imply a complete lack of regulation, but express an orientation that regulations should serve the objective to enable individual transactions as free as possible and to prevent coercive transactions harmful for transaction partners and communities. A 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 does 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 but apply additional modes. Additional modes of steering are, for example, market-based incentives, strengthening of legal certainty and capability to conflict as kind of bottom-up and horizontal mutual control, and structural arrangements with nudging effects.

Proposed GCM Commitments

The GCM should include commitments that

- not only confirm a governments’ right to decide on entries and stays but also to account for governments to introduce a consistent policy approach that acknowledges freedom of movement as a general principle;
- recommend the development of a legal and institutional framework compatible with and enabling free movement;
- recommend the introduction of appropriate channels for labour market related immigration that corresponds with to the existing demand for labour at local level;
- recommend regulations and procedures which acknowledge that job placement is primarily in the responsibility of employers and employees and not subject of bureaucratic administration;
- recommend to establish an effective assistance structure that provides information and support to migrants in order to foster empowerment and prevent vulnerability;
- recommend to abandon the criminalization of irregular entry and stay;
- recommend to develop a more nuanced treatment of unauthorized migrants including opportunities for status adaptation (regularization) through employment;
- clarifies that domestic legislation should have the objective to protect human rights and labour rights of migrants irrespective of status;
- recommend to instruct law enforcement and labour inspection to protect human rights of all migrants.

2. Recommendations how to act

Recommendations for guidance of migration-related programs in development. Concrete, operational aspects of migration as topic for development actors.

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

As indicated, top-down implemented command and control policies which address factors of accessibility but neglect factors of connectivity fail to accomplish intended targets and 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 pull factor for irregular migration.

Strengthening *migrants'* legal certainty and ability to stand 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 realise legal claims, it is more likely that exploitation and abuse is reported to authorities.

An increased risk of detection and persecution disturbs expectations to make extra-profit from super-exploitation of irregular migrants and hampers willingness and readiness to organize undeclared exploitative employment. Consequently, informal labour markets loose relevance as 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 stand legal conflicts, which is considered to be the strategic key element for making migration safer, depends on adequate proliferation from a normative framework and institutionalised 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 establishing 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 situation.

- **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 UN Office for Migration, as a regular norm setting and monitoring UN body. However, given that governments are reluctant to commit to goals which bind them too strong and too long, especially at time when unwanted migration is a controversial issue in most countries, it is unlikely that a convention will receive a high number of 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 both 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?**

As for now, the technical capacity building for migration management is mainly provided by IOM. As an inter-governmental agency associated with the UN system, this agency outside the UN System is not formally bound to comply with UN commitments. It is unlikely that governments will abstain from IOM services. In addition, governments make use of the ILO for technical support and legal advice in the areas of labour migration.

One 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 (UNEG) norms and standards of evaluation. This requirement could be also included as one GCM commitment.

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

The monitoring procedure will depend on the status of the 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 new founded special UN Office for Migration with the same competencies as other comparable UN offices.

In case that GCM acquires a status of a non-binding 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. NGOs 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 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;
- to 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";
- to 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";
- to 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, guidelines

The themes and issues identified in this paper relate to already established normative frameworks at international, regional and national level. I point attention to only a set of selected documents.¹

¹ An extensive overview is provided by Ryan, Bernard: 2014, The Labour and Social Rights of Migrants in International Law, in: Human Rights and Immigration, edited by Ruth Rubio Martin, Oxford University Press

- 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 that ‘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 (CESCR)² and the *International Covenant on Civil and Political Rights (ICCPR)* both cover migrants. An important source for interpretation provide the recently published OHCHR report on Economic, Social, and Cultural Rights of Migrants in an Irregular Situation.³
- In practical terms, the UNDP report 2009 pointed to the significance of freedom of movement and stressed the importance and potential of free movement for development.⁴
- International Convention on the Rights of All Migrant Workers and Members of their Families, (‘Migration Workers Convention’ or ‘ICMRW’), adopted in 1990⁵
- UN Convention against Transnational Organised Crime which includes non-binding recommendations to protect victims of trafficking, and the related UN Trafficking Protocol providing specifications of victim’s rights
- The Council of Europe Trafficking convention no. 196 includes specifications on the rights of trafficking victims
- Several ILO conventions include provisions that cover also migrant workers in an irregular situation.⁶ The recent 2014 Protocol to the Forced Labour Convention including rights for victims of forced labour.
- The EU Employers’ Sanction Directive stipulating a right of undeclared employed irregular migrants to claim wages for work done
- Guidelines highlighting the human rights dimensions are provided by agencies like ILO⁷, IOM or OSCE.

4. Overlap between GCM and GCR

The meanwhile frequent reference to the concept of ‘mixed migration’ indicate 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 life conditions and economic migrants seeking to increase income.

² UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: <http://www.refworld.org/docid/3ae6b36c0.html> [

³ OHCHR (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

⁴ UNDP (2009) *Overcoming barriers: Human mobility and development*, New York: UNDP <http://hdr.undp.org/en/content/human-development-report-2009>

⁵ UN General Assembly, *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, 18 December 1990, A/RES/45/158, available at: <http://www.refworld.org/docid/3ae6b3980.html>

⁶ Convention concerning Migration for Employment 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

⁷ <http://www.ilo.ch/dyn/migpractice/migmmain.home>

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

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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 relations¹ Globally, the smuggling of migrants is the subject of controversial debate, polarises 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 in aid of 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 to pursue the hope of a better life abroad.

1. The terms ‘smuggling of migrants’ and ‘migrant smuggling’ are used interchangeably throughout this document. 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*.

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. Smuggling of migrants frequently entails great dangers to those involved and it 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 by supplying fraudulent documents to those willing or forced to migrate. Generating considerable profits for those involved, migrant smuggling fuels corruption and empowers organised crime.

Around the world, the number of forcibly displaced persons and of those willing to move abroad has grown considerably. A growing demand for international migration combined with non-existent or slow, expensive, and cumbersome avenues for legal migration has fuelled 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, however, be prevented and the uncontrolled flow of irregular migrants reduced, if source, transit, and destination countries cooperate, if migration is managed effectively, if coherent policies and laws are adopted, and if feasible avenues for seeking protection and for legal migration are created. To that end, several international organisations and experts expressly promote the

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position that States need to take on the role of smugglers by opening legal avenues for safe and controlled migration whilst 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 to 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 national, community, global, and regional level are also discussed. The main existing international frameworks and the main international organisations are briefly outlined. Synergies with the *Global Compact on Refugees* are explored in the final part of this note.

1 Issues: challenges and benefits

1.1 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 organisations, and the international community. It poses a particular problem for States seeking to address conflicting goals and competing priorities: honouring international obligations, protecting the rights of refugees and other migrants, exercising control over their borders, punishing migrant smugglers, and managing migration flows, whilst taking due account of budget pressures, labour market needs, population developments, and public sentiments.

The scale of the problem

The scale of migrant smuggling has elevated this topic to a key policy area in many countries and has dominated news headlines worldwide for many years. Law enforcement agencies in Europe estimate that some 90% of irregular migrants, many of them asylum seekers, who have travelled to Europe in recent years have been assisted by smugglers. According to UNODC, the United Nations Office on Drugs and Crime, approximately 80% of irregular cross-border migration in Asia is assisted by smugglers. Although accurate data on migrant smuggling is not available and, due to its clandestine nature perhaps impossible to collect, 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 often based on vague guesses rather than on methodical research. According to UNODC's 2016 Global Report on Trafficking in Persons, between 2012 and 2014, 63.251 victims of trafficking were identified in 106 countries.

A worldwide phenomenon

The smuggling of migrants is a global phenomenon that is of major concern to national governments and to regional and international organisations. Smuggling of migrants involves a myriad of means and methods and often follows complex and circuitous routes. Adding to the complexity is the fact 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 large numbers of migrants arrive at once and if public opinion towards 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’, though it has to be noted that 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

While 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 characterised 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 is almost non-existing. The causes and characteristics of migrant smuggling, the methods and routes, and the factors that drive would-be migrants into the hands of smugglers are only poorly documented and insufficiently analysed.

Policy vacuum; lack of sustainable responses

Presently, meaningful and durable solutions to this long-standing problem remain elusive. Despite many horrific events, most domestic laws and programmes aimed at stopping the smuggling of migrants remain short-term and tactical, not strategic, and certainly not focused at addressing the conditions that drive large numbers of 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.

1.2 Potential benefits

Developing sustainable solutions to smuggling of migrants and irregular migration is of immediate concern to governments and civil society worldwide. The loss of life attributable to 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 conceptualise new ideas that

- (1) incentivise the use of safe, lawful, feasible, efficient, and inexpensive avenues of migration and asylum seeking,
- (2) discourage the use of irregular avenues such as migrant smuggling, and
- (3) sanction those who take advantage of, or exploit migrants.

The creation of programmes and practical tools need to go hand in hand with the development of concerted immigration, labour, population, and criminal justice policies that take due account of States’ capacity to manage migration and protect refugees as well as their labour demand, existing migrant communities and the 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 recognise that migration is not a phenomenon that can be stopped or prohibited, but one that can be controlled and managed. If managed properly, migration can have tremendous benefit 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.

2 Policy priorities

2.1 National level

Developing comprehensive and coherent immigration and labour market policies

To maximise the benefits of international migration, protect the rights of refugees and other migrants, and to prevent the smuggling of migrants, States need to develop comprehensive national immigration and labour market policies that take due account of national economic developments, labour 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 labour 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 smuggling of migrants need to be communicated to would-be migrants. This has to be supplemented by greater efforts to criminalise, 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 to note in this context, that the focus of efforts to combat and criminalise 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 not criminalise migrants for being the object of migrant smuggling and States also need to respect the non-criminalisation principle enshrined in international refugee law.

Source countries; root causes; 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 those economies that offer few job opportunities or only jobs that are poorly paid in comparison to other countries. For this reason, the development of avenues for regular migration must be accompanied by the development of national labour migration policies that protect the rights of overseas workers, 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 maximise the benefits of labour migration, remittances, and of 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. While many policies and practical measures have sought to address the symptoms of irregular migration, the underlying factors, structural deficits, political and economic realities are often overlooked. Any meaningful attempt to reduce if not eliminate irregular migration has to 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 access to and the 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. A lack of education not only limits the employment opportunities at home, but also makes people more vulnerable to the promises of smugglers and traffickers. One important step in preventing smuggling thus involves improving school attendance, reducing early school leavers, and ensuring that both 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 and law enforcement; protection of migrants

The development of comprehensive legal frameworks and their consistent enforcement are central to any strategy aimed at preventing smuggling of migrants and promoting safe migration. In their absence,

irregular migration is likely to flourish as smugglers and traffickers take advantage of legal loopholes and of the inability or unwillingness of authorities and officials to enforce existing laws rigorously.

Law enforcement, border agencies, coast guards, immigration authorities et cetera, 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 powers and unnecessary infringements of human rights and civil liberties.

When apprehended by 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, and 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 are appropriately equipped to provide immediate assistance without further traumatising or harming victims.

2.2 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, generalised 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, young men and women are often the first to move abroad seeking to find protection, 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 to better profile smuggled migrants and identify 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 that empower those communities that are most vulnerable to 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 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 fuelled by sensationalised 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 sensationalised reports, and establish avenues for dialogue, informed discussion, and the development of solutions.

2.3 Global level

International cooperation at all levels of government is a crucial element in the fight against 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 underutilised and many criminal elements greatly benefit from the fact that investigations and criminal justice usually stops at the border.

The weak capacity of any one State to address the challenges posed by 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 Organised Crime* and the Protocols on 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 utilised 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 criminalise the smuggling of migrants, foster international cooperation, and protect the right of smuggled migrants. In the 17 years since its creation, the *Smuggling of Migrants Protocol* has garnered considerable support: as on 1 June 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 domestic levels, which can be integrated bilaterally, regionally, and multilaterally. Drafters of the Protocol were cognisant 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 a lack of 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 requirements. Regrettably, the Conference of States Parties, and UNODC, the “guardian” of the Protocol, are not well equipped to rectify these concerns; while they can assist in interpreting the Protocol and give 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 have advocated the creation of a review mechanisms for the *Smuggling of Migrants Protocol* and the *Convention against Transnational Organised Crime* but some States remain fiercely opposed to such moves. To strengthen the international system it is, however, important to promote and strengthen the Protocol and its implementation and, through the Working Group on Smuggling of Migrants established by the Conference of States Parties, examine possibilities to enhance the Protocol and foster further integration and harmonisation 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 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. Also of importance are the many treaties and principles that seek to protect the rights of migrant workers and that prohibit slavery and slavery-like practices, forced labour, child labour, exploitation, and trafficking in persons. The international organisations 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.

2.4 Regional level

While 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, and the means and methods employed by smugglers, the experiences of smuggled migrants, and the causes of irregular migration vary between countries and continents.

Some international organisations 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 (EU), binding measures have been adopted that require Member States to criminalise the facilitation of illegal entry, transit, and stay of third-party nationals in the EU. 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 to discuss and examine the many challenges associated with migrant smuggling, exchange ideas, explore opportunities for cross-border cooperation, and create 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.

Regional initiatives and the work of regional organisations should, however, align closely with the standards set by international law and must not serve as options to avoid international obligations. There are valid concerns, that non-binding discussion forums are used by some States as an excuse not to participate in binding treaties and that guidelines and laws developed by regional forums conflict with the requirements of international conventions.

3 Existing international frameworks

3.1 UN Protocol against the Smuggling of Migrants by Land, Sea and Air

The United Nations (UN) *Protocol against the Smuggling of Migrant by Land, Sea and Air* was opened for signature on 15 December 2000 and entered into force on 28 January 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 criminalisation of 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 rights of smuggled migrants

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

Of further significance in this context is the UN *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 Organised Crime*. The *Trafficking in Persons Protocol* was opened for signature on 12 December 2000 and entered into force on 25 December 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. While trafficking in persons and 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.

3.2 European Union Council Directive and Framework Decision

On 28 November 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 the criminalisation of smuggling of migrants in EU Member States, though they do not use the term smuggling of migrants. Council Directive 2002/90/EC serves to provide the definition of facilitation of unauthorised entry, transit and residence, whilst Framework Decision 2002/946/JHA sets out the ‘minimum rules for penalties, liability of legal persons and jurisdiction’ of the offences 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 to the Protocol requirements, the Commission nevertheless recommended to leave the European Council Directive and Framework Decision unchanged for the time being.

3.3 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 the fact 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.

3.4 Other international instruments

International labour 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 which organise, operate or assist in illegal or clandestine movements and on those which use violence, threats or intimidation against migrant workers or members of their family in an irregular situation. The *Convention concerning Migration for Employment*, supplemented by two annexes, deals with the recruitment, placing and the conditions of labour for migrants for 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 labour or labour trafficking, international treaties concerning slavery and slavery-like practices may also be relevant.

4 International organisations

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

- International Labour Organisation (ILO)
- International Organisation for Migration (IOM)
- Office of the United Nations High Commissioner for Human Rights (OHCHR)
- United Nations Children's Fund (UNICEF)
- United Nations Development Programme (UNDP)
- United Nations High Commissioner for Refugees (UNHCR)
- United Nations Office on Drugs and Crime (UNODC)

- Miscellaneous: international aviation and carrier organisations,
- Regional organisations including the African Union (AU), Association of Southeast Asian Nation (ASEAN), Council of Europe, European Union (EU), Gulf Cooperation Council (GCC), Organisation of American States (OAS), Pacific Islands Forum

5 Connection to Global Compact on Refugees

The smuggling of migrants involves mixed groups of migrants who may be forcibly displaced, who may flee from persecution, war, generalised 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 to look for new opportunities and a better life abroad. In many cases, the decision to migrate is less of a choice by the individual but more a decision by their parents or families who want to the migrate to find safety or employment abroad and support the remaining relatives through remittances or support them to follow later.

Smuggling of migrants may involve refugees, persons displaced for other reasons, labour migrants, and others without access to legal avenues of migration, either because such avenues are non-existent, or because they are 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 from their home communities because of factors that involve political as well as economic causes.

UNHCR's 'roadmap' *Towards a global compact on refugees*, dated 17 May 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, supporting host communities, to name but a few.

International Cooperation and Governance of Return Migration

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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. One key insight from migration studies is that return expectations – by both migrants themselves and by state authorities – are often upheld for extended periods of time without amounting to actual returns. This is due to the fact that migration often constitutes a fundamental shift in life course and individuals tend to adapt the length of their stay abroad – that may initially have 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 developmental perspective, voluntary return is clearly preferable to forced return. Most returns are spontaneous, i.e. individuals choose to return once their migration projects (e.g. a course of study or the plan to earn and save up a certain amount of money) have been completed. The state is not involved in these types of return. In other cases, individuals return are required to leave their host country because they have no right to stay there – e.g. because a temporary work visa has expired, because their asylum claim has been rejected, or because they did not have a legal residency title in the first place. Under these circumstances, they may benefit from assisted voluntary return (AVR) schemes like those run by the International Organization for Migration (IOM), or be subjected to forced return – either 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 (e.g. in the notoriously understaffed health sector), provides much-needed manpower 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, on the other hand, 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 – as was e.g. often the case in the aftermath of the Bosnian war. Further, forcibly returning large numbers of people into 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 who may be important business partners or donors.

Host countries can likewise benefit from voluntary return migration, e.g. 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 very difficult, with very tangible financial and social costs being weighed against the value of signaling resolve in upholding the laws

regulating the entry and stay of non-citizens. In addition, the developmental and political risks outlined above also constitute points of concern for host countries who pursue a long-term development agenda in partner countries and have an interest in stabilizing fragile regimes.

While actors on the ground agree that reintegration assistance greatly increases the chance of returns being successful and sustainable, there is both a shortage of well-planned reintegration programmes, 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 upon return. Countries like the United Kingdom, on the other hand, have experimented with offering very substantial cash grants upon return – but have reversed these measures as politically unpalatable and potentially counterproductive, since there has been anecdotal evidence of these reintegration schemes constituting an additional pull factor for potential migrants.

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, i.a. by including reintegration in national development plans;

- refrain from discriminating against returnees, and counteract negative stereotypes about forced returnees in order 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 into accepting back their own nationals, and instead engage in constructive discussions on how obstacles to return can be overcome;
- provide comprehensive and transparent information about political, economic and security situation in the countries of origin;
- provide open-ended counselling services that discuss the possibility of return among other options;
- offer reintegration assistance that starts prior to departure, i.e. by investing in trainings that match 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;

- in their planning of return activities, be realistic about the full cost of forced return (human, financial, political), rather than only taking into account the cost of transport and escort personnel;
- consider the developmental effects of voluntary and forced return activities;
- provide reintegration assistance upon return that is directed both at the individual returnee (e.g. financial assistance or credit schemes for setting up small businesses), and at the wider community (e.g. by opening up job counselling 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 flexibility for changes in life course.

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 in order to achieve any migrant returns. While 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 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 of origin 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, i.e., the prohibition to return individuals to countries where their life or freedoms may be in danger. While the 1951 Refugee Convention first the principle of non-refoulement, it 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 (that has been further strengthened through subsequent caselaw of the European Court of Human Rights), and also 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. EU-level Mobility Partnerships often entail readmission clauses, making the opening up of legal migration channels for individual third countries dependent on the readmission of unwanted foreigners – both 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 EU's Border and Coast Guard Agency FRONTEX carries out joint return flights with deportees from different EU member states, effectively pooling both material resources and the benefits of good bilateral relations with individual countries of origin in order 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 what standards state-induced returns have to adhere to.¹Second, from a developmental perspective it is problematic that return policies rarely take into account the broader economic and political impacts of forced returns in particular. Third, there is no international prohibition against returning individuals to a situation of internal displacement, despite the problems this can entail – both for the individuals concerned who may find themselves in a situation with no support network, and for society as a whole in instances where e.g. return exacerbates existing urbanization trends and further increases the number of the urban poor. States should cooperate in developing common standards on return, readmission and reintegration that are in line with the SDGs, and work together to put these standards into practice.

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 small number of AVR schemes from Western Europe in the late 1970s and early 1980s, the IOM has gradually expanded its return portfolio and today is by far the leading provider of structured return assistance, operating AVR schemes from over 90 countries all around the world.

Migrant return therefore constitutes a core field of the 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 the IOM putting the respective government's preferred scheme into practice. This points to the IOM's ambiguous identity of being both an advocate of migrants' rights, and being dependent on project-based funding from governments who often hold more restrictive views. The dilemma between the 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 the IOM having joined the UN 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 (RCPs), informal dialogue formats that bring together governments and other relevant stakeholders for best practice exchange and for the identification of common points of interest in migration-related policy-making. The IOM acts as a secretariat for many of the currently 14 active RCPs.

¹ This is different in the EU, where the 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 ought to be preferred over forced return (article 7), obliges member states to provide for an effective forced return monitoring system (article 8(6)), and sets out 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).

How is the theme of migrant return connected to the Global Compact on Refugees that addresses forced migration due to conflict and political persecution?

In the past, UNHCR 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 support the return of rejected asylum seekers or irregular migrants.

While the Global Compact on Refugees is not aimed at internally displaced persons (IDPs), a number of soft law instruments developed to protect the rights of IDPs can be instructive in thinking about the return of displaced persons more generally. The 1998 UN Guiding Principles on Internal Displacement spell out the right of refugees and displaced persons to voluntary return in safety and dignity, and the 2005 UN 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.

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

Steffen Angenendt, SWP

Germany is currently witnessing 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 large refugee inflows and their economic, social, cultural, and security implications. According to recent polls, there is still much support for protecting those who are persecuted or displaced by wars and violence. However, there is obviously growing public concern that many of the 746.000 asylum claims filed in Germany in 2016 (2015: 477.000)¹ are unfounded and that at least those who do not need international protection should return to their home countries. Now the debate is no longer focused on the failures of the common EU asylum policy, the lack of 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.

This rapid change of the political environment is also framing migration and refugee policies. Germany has now a far more restrictive national asylum policy, and the European Union (EU) is facing a substantial increase in external and national border enforcement (including a considerable upgrade of FRONTEX), a more or less temporary reintroduction of internal EU border controls, and a sharp increase in national and EU funds promoting return. And more and more political endeavor is focused on the external dimension of asylum and migration policies – be it through bilateral cooperation in the field of readmission agreements or through external EU policies, especially in the Rabat and Khartoum processes and the Joint EU-Africa Strategy.²

In addition, there is a general shift in national and European policies towards a regime change. It heads away from the traditional principle of granting individual protection through access to the territory of the host country towards an externalization of protection through external border enforcement, permanent refugee camps in third countries, and a successive resettlement to Europe as the main source of protection.³ This new system is not yet in place and it may take years or decades to set up a really effective external border control. Until then, it is pretty clear that Europe will further have large-scale mixed irregular inflows of refugees and migrants, and that many of the newcomers will not receive legal residence status.⁴ This means that we can expect an even growing demand for return policies.

¹. 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 (EMN). Nuremberg: Federal Office for Migration and Refugees.

². 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 ; 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

³. See Steffen Angenendt, David Kipp, Anne Koch (2016), Border Security, Camps, Quotas: The Future of European Refugee Policy?, SWP Comments 2016/C 32, June https://www.swp-berlin.org/fileadmin/contents/products/comments/2016C32_adt_kpp_koh.pdf

⁴. 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.

All in all, the political background of current return and reintegration policies is shifting, and we can expect that the political pressure on all stakeholders to provide solutions and to implement return and reintegration will only grow further. This trend will also influence the debate on the Global Compact on Migration (GCM). This has already become visible during the June 2017 Global Forum for Migration and Development (GFMD) in Berlin, an important element of the ongoing process towards the GCM: One of the core events of the Summit, Round Table 2.2, has been dedicated to “Return and Reintegration”, and the topic has been vividly discussed throughout the Summit.⁵

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, in order to clarify terms and concepts. This and other conceptual issues are discussed in Part One. Secondly, some criteria for “good” return policies have to be developed. Part Two presents criteria that can be applied to assess the quality of return regimes and to develop some suggestions for “good” policies. Finally, the core issues of conceptualizing and implementing reintegration policies are presented and discussed in Part Three. We attempt to approach these issues from the home countries’ perspective, since reintegration is mainly an issue of these countries.

Part One: Conceptual Issues

First of all, it should be clear that both topics – return and reintegration – are no *terra incognita* for development actors. In contrary, during the past decades, return migration has been conceptualized in all major socio-economic migration and development theories – be it neoclassical theories, structuralism, new economics of labour migration, or transnationalism and cross-border network theories. Nevertheless, the accepted definitions of return and reintegration lack universality, and there is also barely any reliable and comparable data on both issues. In addition, the drivers of return are difficult to access, and they include – as many colleagues have pointed out since the early 1970s – so highly different factors as failures to integrate in the host country, the migrant’s preferences for their home country, the achievement of saving goals, the opening of employment opportunities in their home countries, and, last but not least, their preparedness (willingness and readiness) for return. More recent studies, for example by Khalid Koser and Katie Kuschminder, identify three broader categories of return motives: structural factors, individual factors, and policy interventions by destination and origin countries.⁶

There is a growing body of theoretical and empirical work on the development impact of return and reintegration, especially with regard to 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 Priyanka Debnath has recently

⁵. 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; 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.

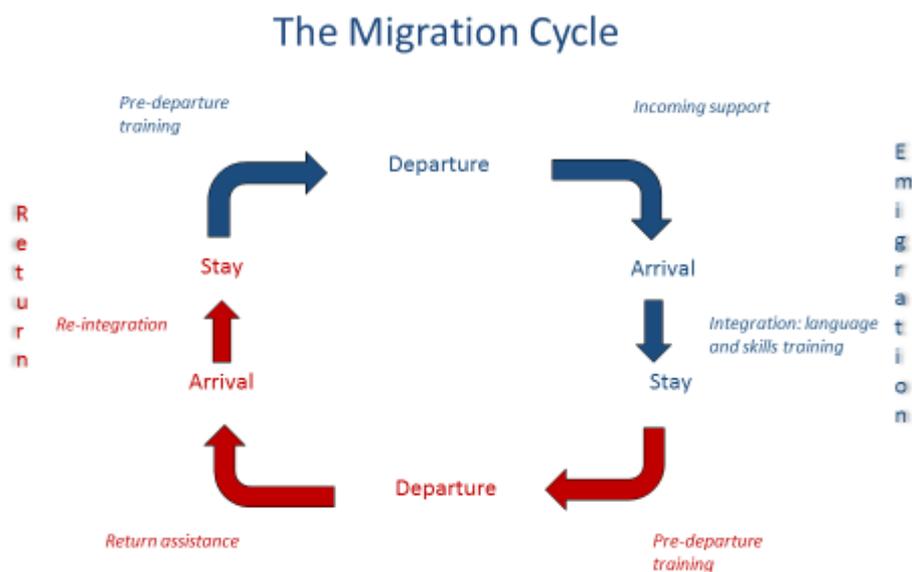
⁶. See Khalid Koser, Katie Kuschminder (2015), Return and Reintegration of Migrants, IOM Geneva. https://www.iom.int/sites/default/files/our_work/DMM/AVRR/IOM-KoserKuschminder-Comparative-Research-on-AVRR-2015.pdf; Katie Kuschminder (2017), Taking Stock of Assisted Voluntary Return from Europe: Decision Making, Reintegration and Sustainable Return – Time for a paradigm 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.

pointed out in a KNOMAD paper)⁷ also a growing research interest regarding the impact of policies on return and reintegration – for example on policies that foster brain circulation and returnees’ entrepreneurship, the role of return agencies, the impact of 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. There, instead of starting from scratch, it makes sense to take into account definitions and concepts that have been already developed. There are some already established concepts that one can use to address the challenges of return, reintegration, and development.

The first such concept is the so-called “migration cycle”. In Germany, this concept has been 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 a growing sensitivity for the development impact of migration, for the changing pattern of international migration towards repeated and circular migration, and for the idea that 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—this concept still remains extremely helpful, also for conceptualizing return migration.

Figure 1. The Migration Cycle.



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

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 subsidies support to returning experts; country information seminars; start-up counselling in Germany and upon return; support for migrant organization engagement; networking support to connect with employers and e-/job fairs; 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 in order to increase the migrant’s success in the respective migration phase, and that instruments for each of these phases have to be developed.

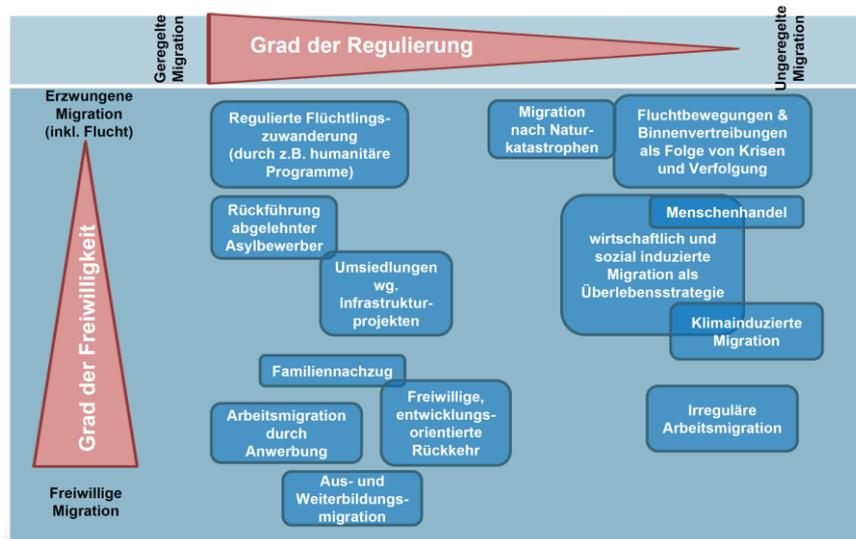
To be able to better conceptualize migration and displacement in development policies and to clarify what development cooperation could and should do with regard to mixed flows, this concept was complemented by a distinction the author proposed during a Parliamentary hearing on migration and development. It was suggested to distinguish between voluntary and forced flows as well as between regulated and unregulated flows. The result are four types of flows, each with specific implications for development.

Table 1. Types of Flows.

Type of flows	Voluntary	Forced
Regulated	Recruitment programs, highly skilled, return programs, family reunification etc.	Resettlement, relocation, compulsory change of residence etc.
Unregulated	Forced displacement and IDPs	Irregular migration

Germany’s development policy implementation agency GIZ added two important aspects to this simple model: time and gradation. Now, the new scheme can far better explain that in reality there is always a transition between the poles “regulated” and “unregulated” as well as between “voluntary” and “forced”, providing a broad variety of migration and forced displacement situations.

Table 1. The Voluntariness and Regulation Continuum.



Source: Globalvorhaben Flüchtlinge / Sektorvorhaben Migration. Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) (2016). „Flucht und Migration“

These two frameworks – the migration cycle and the migration flows model – are excellent starting points for the debate about “good” or “bad” return policies. They may indicate that a normative basis for developing proposals for “good” return policies is there and well needed too. Obviously, if we consider the respective types of flows, it is pretty clear that some refugees and migrants as well as their receiving and home countries are far better off than others – and, in general, that voluntary and regulated flows are far more likely to achieve better results than forced and unregulated flows.

With regard to voluntary return, IOM has already made a couple of proposals, especially for home countries that want to get their skilled migrants back. However, our previous experience with this specific type of return migration already clarifies what would be “good” return policy in such cases: A comprehensive voluntary return policy coming from the perspective of home countries that would focus on attracting high-skilled return migrants and would be directed towards removing obstacles to return. It would create conditions to realize the potential of the returnees, and it would set up regional and local development strategies.

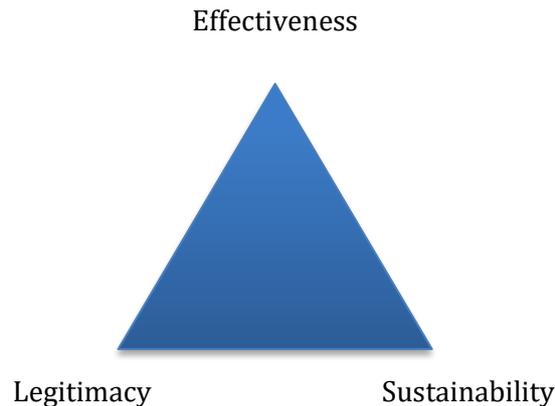
With regard to involuntary return, the challenges are different, but here it is at least possible to formulate some general criteria for a “good” return policy.

Part Two. Some criteria for “good” return policies.

In International Relations (IR) theory we have a long-standing debate on the quality of political regimes and it might be helpful to use such IR criteria to assess the quality of return regimes and to develop good

policies. Building on that, those policies should be considered “good” that are effective, sustainable, and legitimate.⁸

Figure 3. The “Good Governance” Triangle.



These three are equally important cornerstones for a “good” return policy. If a 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 – be it by the domestic electorate or the government of the returnee’s home country – it will neither be 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 – can’t be efficient since the probability of a new attempt of irregular migration remains high. Obviously, all three criteria are interlinked and mutually influencing the outcome of any return policy. Therefore one should apply these criteria together in order to develop good return policy schemes.

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 policy, and would therefore strengthen EU’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 with regard to return policies: There are some EU countries with hardly any people to return, and there are some with high numbers. There are also Member States with special relations to specific countries of origin and transit, and countries without 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 available would be much bigger 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.

⁸. See Tim Cadman (2012), Evaluating the quality of contemporary global governance: A theoretical and analytical framework, *International Journal of Social Quality*, Vol. 2, No.1, Summer, pp. 4-23(20); Schmelzle, Cord (2011), *Evaluating Governance. Effectiveness and Legitimacy in Areas of Limited Statehood*. Working Paper Series, No. 26, Research Center (SFB) 700, Berlin, November http://www.sfb-governance.de/publikationen/working_papers/wp26/SFB-Governance-Working-Paper-26.pdf.

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

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. On the individual, family, and community level 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, which are first of all related to economic, social and socio-cultural 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 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, socio-cultural reintegration is a major challenge for those migrants who have lost 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 take into account the diversity of possible reintegration patterns, which to a large extent depend on whether the migrants return voluntarily or are forced to return.

They 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 case of an 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 (with regard to local, national, and regional approaches and activities), and innovative, with regard to partnerships with private sector, Diasporas, development actors, and virtual networks.⁹

Part Three. Six 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 to address the factors determining successful return and reintegration here in full, some general suggestions which could help develop “good” return and reintegration policies are presented below.

Be reluctant with suggesting large development outcomes of return migration.

One aspect is to avoid unfounded expectations with regard to the development impact of return: As always in migration, the development impact of return migration will be smaller in the case of involuntary

⁹. 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.

migration, and it will be difficult for low skilled returnees to find access to their home countries' labor market.

Be careful with numbers, especially with promising return numbers.

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 (*Gesamtschutzquote*) in Germany has substantially increased during the last years, and stood in 2016 at 62 %. In addition, according to BAMF statistics, 85% of the 540,000 rejected asylum seekers living in Germany in 2015, had a limited residence permit and BAMF would be well advised to mention this fact again and again in its public communication.¹⁰ 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 migrant's rights in any return process.

As also 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 etc.

Cooperate with political and other institutions of the partner country.

As recruitment programs, also a "good" return migration policy depends on cooperation. Without cooperation and a fair balance of interests there will be no sufficient 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, i.a. on legal emigration channels, while abroad and before return, as well as after return. In this regard it would be helpful to introduce awareness raising campaigns providing reliable information on the risks and opportunities of migration. Here the respective county's Diasporas can play an important role. The partner country's government should be supported to intensify cooperation with its diaspora abroad.

¹⁰. Bundesamt für Migration und Flüchtlinge (BAMF) (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.

Integration of Migrants in Host Community

Implementing Integration Partnerships

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The Challenge of Migrant Integration

Despite the economic upturn that Europe is experiencing in the last couple of 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 to liberal secular democratic societies.

At the same time free movement within the EU has been perceived as an unwelcome challenge for national labour markets and welfare systems. Many of the transformations that the integration of global economy brings such as global supply chains, delocalisation and outsourcing of production, 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 latest asylum seeker flows of the last two years have not helped in appeasing these concerns. By contrast they have added a further insecurity and unpredictability dimension, questioning the effectiveness and resilience of both national and regional mechanisms of migration and asylum governance.

Along these political concerns, socio economic 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. With regards to employment, migrants suffer from low employment rates, concentration in specific segments of the labour market, low wages, poor working conditions, under-representation in skilled jobs and in senior positions in the workplace.

Their educational attainment is on average lower than that of other groups, they are under-represented in University track schools and in higher education, and tend to be concentrated in poorly resourced, ethnically and socially homogenous schools. Migrants are generally in worse health than their native counterparts, have higher death rates and are more likely to be exposed to health risk 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 and 2015; Heath and Cheung 2006, 2007).

In this tense landscape however migrant integration in host societies remains a pressing and important concern both from a principled (upholding our view of egalitarian democratic societies) and a policy (ensuring social cohesion and a well-functioning labour 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, European).

Nonetheless policies for migrant integration seem to have stalled in 'old' host countries, notably those that experience immigration since the 1950s and 1960s and thus have a long experience of immigrant integration policies. Actually migrant integration has been transformed into a migration flow management tool through the introduction by several EU countries like the Netherlands or Denmark, of pre-migration language and integration tests at the countries of origin of prospective migrants (see separate chapters in Triandafyllidou and Gropas 2014). In the meantime, recent hosts in southern Europe, notably countries that have experienced immigration predominantly as part of the wider post 1989 socio economic transformations, integration has been initially addressed as a 'luxury' they could not afford, and later as an evil that can lead to parallel societies. Civic and full assimilation have been preferred instead as appropriate alternatives.

Looking more closely at what is happening within Europe, one realises that 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 a renewed emphasis on pre-departure integration tests, effectively used as tools to manage migration inflows, and to longer periods of residence required for long term stay permits and for naturalisation.

Addressing the Challenge by bridging the Local and the Global: the Idea of Integration Partnerships

It is my contention that the best way to address the above 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, non-governmental organisations, trade unions, churches or mosques) at the local/regional level, mobilising however also their 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 local and regional level** 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, international organisations at both ends of the migration pathway: at origin and at destination. While the integration partnership takes place at destination it can mobilise resources both among the origin and the host community, as I explain below.

Recent research (Garces Mascarenas and Zapata Barrero 2016) has shown that while 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, organising 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 at host communities.

Integration partnership resemble what is called in the EU jargon an open method of coordination. They are not one size fit all solutions but offer a specific institutional framework. While the integration

partnership mostly happens at local level it benefits from transnational connections and could be best disseminated through international organisations such as the IOM or the 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 both in the Eastern and Southern Neighbourhood. Albeit the aim would be to avoid the unequal power relations and uni-lateral character of the Mobility Partnerships which are aimed to serve mainly the interests of EU member states. Also unlike Mobility Partnerships, integration partnerships do not involve a high level of funding and start from the ground up rather than from the state level downwards.

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 on specific economic activities**. They normally would not require a major state intervention or significant financial support. They are rather aimed at generating support both in terms of financial but most importantly in terms of 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 (e.g. work, welfare, education, housing) or be focused on a single issue (education)**.

It 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 time frames 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 socio economic integration of migrant populations**. Their advantages include:

- Economies of scale: by addressing several policy areas within a common institutional framework for cooperation and exchange, they can achieve cross-fertilisation and better mobilisation and use of resources.
- Multiplier effects: integration partnership can promote an overall climate of cooperation that recognises cultural diversity as an integral part of a given city's or region's identity and socio-economic 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 addressing similar challenges. The German Forum of Integration or several inter-faith initiatives in the UK can serve as examples of such multiplier effects.

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 marginalisation that often characterises Council Housing estates in major urban centres, (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 here can be alternative medicine therapies, new food products, new sports disciplines, ethnic music, only to name a few)

Education: While expanding provisions for support classes for migrant children may entail significant financial and organisational cost for local and regional authorities, when such courses are embedded in integration partnerships the costs can be significantly reduced. For instance, the integration partnership could provide the framework for volunteer teaching assistance by both 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 (e.g. 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, priests
- Workplace sensitivities – including dietary requirements, fasting and praying times, organisation of festivities, shifts and time off
- Business support: mobilise crowdfunding to support a new business that mobilises 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 of 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 the participating countries and actors will be specified.

Examples of cases that get close to this proposal for Integration Partnerships

Source: Triandafyllidou, A. Handbook of Cultural Diversity and Tolerance in Europe, available at: www.accept-pluralism.eu

Integrating Diversity in Sports: The Gaelic Athletic Association

One of the largest and most influential organisations in Ireland, the Gaelic Athletic Association coordinates a range of Irish sports such as hurling, Gaelic football and camogie at 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. Its aim: 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 the 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 the GAA.

The GAA set up an Inclusion and Integration Working Group. In December 2009, Equality Authority staff began a programme of equality workshops for GAA officials, first for members of the Working Group and

selected headquarters staff members. This was followed up in 2010 with workshops for full time staff of the four Provincial Councils of the Association around the country.

Other elements of the 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'; and**
- the development of a respect initiative for all involved in sports.**



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

Intercultural Dialogue in Denmark. Respecting the Difference of Minority Parents

In 2007 the city of Copenhagen created an 'Integration Taskforce' 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 enabling 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 open up to the perspectives of the parent. 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' the parents what is expected of them and which solution is the 'right' one. The



pragmatic, goal-oriented approach offered ways of 'bracketing out' discussions about fundamental principles or values in order to be able to deal with the concrete issue at hand.

Through this type of dialogue the minority parent is recognised 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 (e.g. the Danish Carnival celebrations), but should be also be 'involved' in their creation (the motto being: 'Do not invite, involve!').

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

The idea of professionalised 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 participation of minority children in key school and after-school activities.

What role for international organisations and the Global Compact

International organisations like the UNHCR and the IOM can be crucial partners for Integration Partnerships ensuring both the economies of scale and the multiplier effect. Their role would include

- to develop the legal framework and prototype for integration partnerships,
- train relevant personnel among migrant and natives,
- provide some seed funding,
- advertise the idea and organise good practice workshops with a view to mobilising stakeholders,
- act as intermediaries between communities at destination and communities of origin.

More specifically such organisations have the legal and financial know how for the management of such projects, they have culturally competent staff that can in the beginning cross fertilise and promote the initiative.

In addition international organisations can help identify common concerns within a given region and hence organise regional workshops so that stakeholders can learn from one another. They 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.

(this section can be further developed after the workshop)

References

- Heath Anthony and Cheung Sin Yi (2006) Ethnic Penalties in the labour market, available at <http://webarchive.nationalarchives.gov.uk/20130128102031/http://statistics.dwp.gov.uk/asd/asd5/rp>
- orts2005-2006/rrep341.pdf

- Heath Anthony and Cheung Sin Yi (2007) *Unequal Chances. Ethnic minorities in western labour markets*, Oxford: OUP.
- OECD Integration Report. *Settling In* (2012)
- OECD Integration Report. *Settling In* (2015) MIPEx Indicators (2015)
- Mouritsen, P and Olsen, T. (2013) Denmark between liberalism and nationalism, *Ethnicities*, 36, 4, pp. 691-710, <http://dx.doi.org/10.1080/01419870.2011.598233>
- Triandafyllidou, A and Gropas, R. (2014) *European Immigration: A Sourcebook*, second, new and expanded edition, Aldershot: Ashgate, published on 24 March 2014.
- Triandafyllidou, A. and Kouki, H. (2013) 'Muslim Immigrants and the Greek Nation: The emergence of Nationalist Intolerance', *Ethnicities*, 13, 6, 709-728, first published online on April 22, 2013 as doi: 10.1177/1468796813483287.

Migration and entrepreneurship in the context of future sectoral and demographic transformations in Europe and Africa

Background note¹ for the World Bank's Experts Meeting on a Global Compact on

Migration, 8 -9 June, Berlin

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1. Introduction

The Global Compact on Migration, proposed by the UN General Assembly in September 2016 is to be an “internationally negotiated framework of actionable commitments to guide member states and international organisations, to harness the benefits of migration and address the challenges”.

For the purposes of clarifying the discussion on the most conducive framework and governance architecture for a GCM this note summarises the current state of knowledge with respect to the relationship between migration and entrepreneurship².

Migration can potentially serve to improve the entrepreneurial dynamism of regions, both 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 its 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 taken into account when designing policies and protocols to support and regulate *migrants in-*

entrepreneurship. For instance, ageing, slow population growth and technological deepening are characterising labour market dynamics in Europe, while high population growth and urbanisation with large numbers of relatively unskilled young people leaving agriculture and entering (urban) labour markets, characterises Africa.

Moreover within regions much heterogeneity is found on a country and even subnational level in terms of cultures, ethnic-linguistic diversity, business practices, governance structures, and the 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” need to take into account that both migration and entrepreneurship are characterized by much

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

² For purposes of this note ‘entrepreneurship’ will broadly be defined as the occupational choice that involves self-employment and/or business ownership.

heterogeneity, serendipity and contingency. This will require flexibility, pragmatism, a bottoms-up (decentralised) approach, and should be based on the recognition that most migrants (and their leftbehinds) do not want to, and should not become entrepreneurs.

2. Six Relevant Questions on Migration-Entrepreneurship

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

- (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 urbanisation 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 generalised conclusions.

However, in line with the point that has been made in the introduction about the heterogeneity of entrepreneurship and migration on country and sub-national region, these are questions that each State should seek its own specific answers to, and moreover understand if and how it deviates from the generalised situation.

2.1 Are migrants more entrepreneurial than natives?

The short answer from the empirical evidence seems to be no. An OECD³ review found 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) amongst migrants and non-migrants across countries is the 2012 Global Entrepreneurship Monitor (GEM)⁴. It found start-up rates are similar between migrants and non-migrants, and that start-up rates of migrants are just as heterogeneous across countries as that of non-migrants.

Even if we focus the definition of entrepreneurship away from self-employment or start-up activity to only consider high-tech entrepreneurship, then the evidence seems to be largely similar. For instance a survey of high-tech entrepreneurship in the USA concluded that 'most previous studies have overstated the role

³ OECD (2010). 'Entrepreneurship and Migrants', *Report by the OECD Working Party on SMEs and Entrepreneurship*. Paris: OECD.

⁴ Vorderwülbecke, A. (2012). 'Entrepreneurship and Migration' (In Xavier, R., Kelley, P., Kew, L., Herrington, M. and Vorderwülbecke, A. eds. *Global Entrepreneurship Monitor 2012 Global Report*).

of immigrants in high-tech entrepreneurship⁵. A related study⁶ could not find any evidence that migrant owned high-tech firms in the USA spend more on R&D, or would be more likely to register patents than native owned firms, controlling for the usual suspects.

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

The roughly 1 billion international and internal migrants in 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% 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, remittances can

stimulate entrepreneurship. The empirical evidence is mixed. The evidence suggests that remittances are largely used to fund consumption⁷ (which is not necessarily a bad thing). And where evidence exist that they do use it to invest in productive capacity, it “takes years for these effects to play out”⁸.

Empirical work has also found that in case of rural-urban migration, remittances can be relatively low. Findings for rural Ethiopia for example suggest that because poverty is one of the main driving factors to migrate, migration (of this type) may not necessarily lead to immediate remittances from out-migrating household members to relatives left behind⁹.

More generally empirical research has asked not only how remittances affect start-up activities in sending countries, but also how the fact of having a member of a household migrate, affect 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 a number of studies have found negative impacts of migration on the labour market participation of the left behind¹⁰. Most frequently it is women who change occupations, and often reallocate their labor towards less productive occupations such as unpaid family work. This reflects attempts to deal with family labor constraints caused by the loss of skilled labor. For instance in Ghana¹¹ it was

⁵ Hart, D.M. (2009). ‘High-tech Immigrant Entrepreneurship in the US: A preliminary Report’, Industry Studies Annual Conference, 20 May. Chicago

⁶ Hart, D.M. and Acs, Z.J. (2011). ‘Immigration and High-Impact, High-Tech Entrepreneurship’, *Issues in Technology and Innovation*, 5, February: 1-10.

⁷ De Haas, H. (2007). ‘Migration and Development: A Theoretical Perspective’, *COMCAD Working Paper no. 29*.

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

⁹ De Brauw, A. (2014). Migration, Youth, and Agricultural Productivity in Ethiopia. Mimeo, IFPRI.

¹⁰ Mu, R. and Van de Walle, D. (2011). Left Behind to Farm? Women’s Labour Reallocation in Rural China’, *Labour Economics*, 18 (S1): S83-S97.

¹¹ Adaku, A.A. (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.

found that households with circular/seasonal migrants have lower farm production compared to non-migrant households, do not invest more, and moreover that the outflow of local labor negatively impacts on local labor markets and labor productivity of the left-behind through contributing to smaller local markets, labor bottlenecks, and a lack of skills.

2.3 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 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 also tends to suggest that the types of businesses started up by return migrants most often do not have a significant development impact¹², and that return migrants are not more productive after they returned back home than non-migrants¹³. 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 return¹⁴.

2.4 What is the relationship between urbanisation and entrepreneurial opportunities for migrants, particularly in Africa?

The majority of the world's population resides in urban areas. And 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 households¹⁵ for instance found that around 50 per cent of people who escaped from poverty in that country between 1991 and 1994 did so by migrating out of agriculture into non-farming and urban-based activities. Another study¹⁶ using data from Tanzania covering 1991 to 2004 found that out-migration from farming to non-farming activities, including urban entrepreneurship, could raise individual consumption by up to 36 per cent. In Ethiopia the returns to labour that migrate from rural to urban areas are 110 percent higher than that of non-migrant labour¹⁷.

¹² Black, R. and Costaldo, A. (2000). '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.

¹³ Gibson, J. and McKenzie, D. (2012). 'The Economic Consequences of 'Brain Drain' of the Best and Brightest: Microeconomic Evidence from Five Countries', *Economic Journal*, 122: 339-375.

¹⁴ Wabha, J. and Zenou, Y. (2012). 'Out of Sight, Out of Mind: Migration, Entrepreneurship and Social Capital', *Regional Science and Urban Economics*, 42: 890-903.

¹⁵ Christiaensen, L. and Todo, Y. (2014). 'Poverty Reduction During the Rural-Urban Transformation— the role of the Missing Middle', *World Development*, 63: 43-58.

¹⁶ Beegle, K., De Weerd, J. and Dercon, S. (2011). 'Migration and Economic Mobility in Tanzania: Evidence from a Tracking Survey', *Review of Economics and Statistics* 93 (August): 1010–1033.

¹⁷ De Brauw, A., Mueller, V. and Lee, H.L. (2014). 'The Role of Rural-Urban Migration in the Structural Transformation of Sub-Saharan Africa', *World Development*, 62:33-42.

Most entrepreneurs in the world are to be found in cities. Cities have been called ‘nurseries’ for entrepreneurship. In Africa, cities but also 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 labour.

Whether migrants can benefit from the entrepreneurial ecosystems in cities depend 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 amongst the most sorely needed in the emerging world today, and particularly so in Africa. This is particularly so as it is estimated that an additional 170 million workers will enter Africa’s labor force between 2010 and 2020¹⁸. 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, in particular to ensure a migrants-friendly and migrant inclusive environment, should be one of the most central pillars of a GCM.

2.5 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 Europe¹⁹.

While the causes and solutions to this predicament falls outside the scope of this present note to address, 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 had stopped growing in 2014. It will result in older entrepreneurs and also more people who enter entrepreneurship for the first time at an older age. The growth in self-employment amongst 50 to 65 years old is already significant in many European countries, particularly The Netherlands and the UK; in the latter one out of five persons in the 50 to 65 age category is self-employed compared to only one in seven in younger age categories²⁰.

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 labour, than younger firms.

As a consequence it has been predicted that European countries will have to enter into a ‘global race for talent’²¹. But there is in Europe also a significant demand for lowskilled, informal workers, many who have been migrating in recent years from Africa²².

¹⁸ Fox, L., Haines, C., Munoz, J. and Thomas, A. (2013). ‘Africa’s Got Work to Do: Employment Prospects in the New Century’, *IMF Working Paper no WP/13/201*.

¹⁹ Henrekson, M. and Sanandaji, T. (2017). Schumpeterian Entrepreneurship in Europe Compared to Other Industrialized Regions, IFN Working Paper, no. 1170; and Naudé, W. (2016). Is European Entrepreneurship in Crisis? *CESifo DICE Report 3/2016*, pp. 3-7. See also Erixson, F. and Weigel, B. (2016). *The Innovation Illusion*. Yale University Press.

²⁰ Hatfield, I. (2015). ‘Self-Employment in Europe’, *Institute for Public Policy Research*. London.

²¹ Münz, R. (2014). The global race for talent: Europe’s migration challenge. *Bruegel Policy Brief 2014/02*.

²² De Haas, H. (2009). ‘The Myth of Invasion: The Inconvenient Realities of African Migration to Europe’, *Third World Quarterly*, 29 (7): 1305-1322.

Migration therefore seems to be increasingly important for growth and entrepreneurial vitality in Europe and 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 towards giving preferential access to a particular type of migrant, 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.

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

From the aforementioned discussions the conclusion is that migrant entrepreneurs are inherently no different from non-migrant or native entrepreneurs in general. Where they are different in is in the obstacles that migrants face in terms of entrepreneurship.

These obstacles are even worse for forced migrants and refugees.

Migrants face three major different obstacles in relation to entrepreneurship and more generally their labour market participation: (i) discrimination; (ii) the temporary nature of their residence; and (iii) 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 seventy job categories. As entrepreneurs discrimination / xenophobia affect their business directly in terms of sales, access to credit and infrastructure, etc. 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 is concerned, one should bear in mind that if an entrepreneur has no longer-term prospects or plans in a country, that he or she is unlikely to make a sunken 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 are not going to have impact.

The legality of a migrant is obviously an issue, which as in the case of discrimination and the temporary nature of residence will discourage investment to create and run a productive business. Such migrants may also become involved in the informal/illegal economy – smuggling, and gangsterism.

One special case in this regard is the status of migrants that have entered a country as refugees. There are a number of factors, which makes refugees as migrant entrepreneurs even more difficult.

For one, refugees in particular face the following obstacles as entrepreneurs/selfemployed:

- 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 / conflicting demands on time

- Stress/ PTSD affecting productivity
- Competition from locals
- Xenophobia, harassment
- Lack of governance and support
- Regulatory obstacles
- Women may experience these as more binding, and may have more conflicts in terms of her time.

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 (i.e. a skills mismatch).

From the above, one may conclude that in order to foster the economic integration of refugees into labour markets either as wage-employed or self-employment, one need to consider their skills in relation to local needs, and also protect them from being marginalised. The importance of integration of refugees into the labour market is so that they can earn wages, which can be used to pay tax (hence paying the government

for the services rendered to them) and pay for goods in the local economy (thus benefiting local business).

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:

- Recognise that most migrants (and their left-behinds) do not want to, and should not become entrepreneurs or self-employed. Integration into formal labour markets for wage employment is the most desirable aim.
- Protect migrants from discrimination, xenophobia, marginalisation and exploitation.
- Make sure to understand the context, background and crises environment within which migrants and refugees reside.
- Promote integration of refugees into labour 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, creating inclusive environments and entrepreneurial ecosystems, and facilitate urbanisation.
- Build the skills of migrants and refugees in line with local labour 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, to cope, and provide services for counseling, dealing with PTSD and stress.

- Set up mechanism for learning. There are many gaps in our knowledge of what works and what works not in terms of entrepreneurship and migration.

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

Member states should however not:

- Hold exaggerated expectations about the entrepreneurial prowess or contribution of migrants and refugees.
- Expect remittances to substitute for financial and credit market constraints.
- Leave the legal status 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 be 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 person, in its assistance measures.

Finally, entrepreneurship promotion or more broadly private sector development (PSD) are already widely supported by the international development community including the various UN organisations, the World Bank and IFC, regional development banks and donors and NGOs. 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 PSD in fragile and conflict situations with the work on migrants as entrepreneurs is an area of recommended collaborations between all stakeholders in a GCM.

Vulnerable Migrants

A paper for the KNOMAD expert consultation
on the Global Compact on Migration

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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.” [See Appendix.] 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, 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, economic status.

The Declaration declares a commitment by states “to consider

developing non-binding 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 both by refugee advocates (who fear that opening up 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).

We think 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 are likely to be appropriate. Furthermore, the categories of refugee and vulnerable migrant overlap: refugees are surely “vulnerable,” and some categories usually identified as “vulnerable” (e.g., women trafficked for sex work) may also qualify as refugees.

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:

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, we suggest examining situations of precariousness that ought to be of concern to the international community as it pursues an agenda of safe, orderly and regular migration.

- 1. Migrants whose human rights have been violated or are threatened with violation*

As the GMG Principles and Guidelines on vulnerable migrants¹ 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 non-discrimination 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.²

2. The 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. So we can understand the Principles and Guidelines as based on (1) the conceptual view that the risk of denial of rights makes migrants vulnerable, and (2) 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—are norms relating to rescue at sea. As UNHCR has noted, while “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.”³ UNHCR has argued for a 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 that “there are a number of possibilities, which would need to be further explored to clarify this concept.”

¹ GMG, Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations within large and/or mixed movements.

² For a comprehensive study of the human rights of migrants, see the International Migrants Bill of Rights. See also the Migrant Workers Convention.

³ 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 fora have also highlighted the lack of clarity on this issue.”

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

3. 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 OAU convention or by 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, their livelihoods and their communities; they are often separated from family, and 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 IDPs, 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 while UNHCR has recently persuasively suggested that most persons who flee civil conflict and violence are likely to come within the existing refugee definition,⁴ affirmation of the agency’s guidance would be advisable. (The language of the OAU refugee convention, the Cartagena Declaration and the EU’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 GA Resolution stating that such forced migrants are “persons of concern” to the international community with specific protections elaborated, or amendment of the UNHCR statute to extend to additional classes of persons in need of international protection. And the need for one or more of these measures could be noted in either the Compact on Refugees or the Compact on Migration.

4. 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 IOM—produced a comprehensive review

⁴ 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 (Dec. 2016).

of migrants in countries in crisis in 2016, resulting in Guidelines to Protect Migrants in Countries Experiencing Conflict or Natural Disaster. The Guidelines noted 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.”⁵ So too disaster risk reduction planning (as called for by the Sendai Framework for Disaster Risk Reduction) should consider the special vulnerabilities of migrant and migrant communities.

The Compact on Migration should affirm the MICIC Initiative Guidelines, which are based on existing international norms and include suggestions for good practices,⁶ and call for recognition of the needs of migrants in disaster risk reduction planning.

5. Migrants with personal characteristics that may render them vulnerable

An issue that cuts across all the preceding categories are 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 migrant: the able-bodied male of working age—e.g., women, children, the aged, the disabled. As is well-recognized, persons in these groups may face challenges not considered in the crafting of general migration policies. To the extent that migration law and practice does 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.

A number of fundamental human rights instruments provide protections to persons disfavored or with special needs because of these kinds of characteristics, most notably CEDAW, CRC, CERD, and the Disabilities Convention. What is needed are mechanisms for ensuring that these norms are fully brought to bear in the migration process and with respect to migrants regardless of the administrative status. Beyond the international legal norms, there are a range of programs and practices that international organizations and states have developed and implemented that 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 SDGs, and therefore benefit from goals and targets directed at reducing vulnerabilities (eg., in health, education, 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.

* * *

⁵ Migrants in Countries in Crisis (MICIC) Initiative Guidelines to Protect Migrants in Countries Experiencing Conflict or Natural Disaster (2016) at p. 12.

⁶ The Guidelines expressly state that they do not purport to announce new international norms.

Rather than suggesting a single or universal definition of vulnerability or vulnerable migrants, this paper has identified situations likely produce vulnerability. Paying attention to these situations is necessary for ensuring safe, orderly and regular migration. A number of 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 (DDR and 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.⁷

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

- (1) recognize additional categories of forced migrants in need of international protection (without re-opening the definition of “refugee” in the 1951 Convention);
- (2) 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;
- (3) underscore that human rights apply to all migrants (by virtue of their humanity);
- (4) recognize the importance of programs of assistance and protection for categories of persons who are vulnerable because of particular characteristics (victims of trafficking, unaccompanied children, disabled migrants).

⁷ 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 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).

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 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

Note on issues for Experts meeting on Global Compact on Migration, 8-9 June,2017, Berlin

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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 both 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 a large number of 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 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, the intensity of tropical storms and the frequency and intensity of drought. Whilst 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 largely fall 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. That environmental factors need to be considered alongside *other drivers* of migration, and will not necessarily – in themselves – lead to increases in migration;
- b. That 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. That 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, with humanitarian problems and protection gaps emerging where migration as a form of adaptation is impossible or made more difficult – whether by political, economic, socio-cultural 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 programmes emerge that build on such a framing?

2. Recommendations

There are a number of thematic elements of a normative framework that might emerge from the above 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 numerous and ongoing examples around the world of land still being *reclaimed* from the sea, as well as of 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 or not.

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, to deploy family members in different places in order 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 organisations to provide support to and engage with populations on the move on the basis of need, rather than on the basis of a pre-formed 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 above 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. Just as, in the past, it was realized that the arbitrary requirement of the UN Convention on Refugees that individuals should have moved across a national

boundary in order to qualify for protection and assistance under the convention, leading to the development of the Guiding Principles on Internal Displacement, so too it is clear now that even those who do not move at all may be in dire humanitarian need. Our existing frameworks do not account for this need at all – 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 above action items, the first two are covered to a certain extent by existing norms, conventions, agreements, guidelines and practices, but the third – addressing the situation of those who are trapped – arguably is not. This section briefly considers these existing frameworks, and how any gaps in them might be filled.

If we look first 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, a number of migration frameworks provide for this implicitly, perhaps the most talked about of which is New Zealand’s Pacific Access Category, a temporary labour scheme that allows migrant workers from a range of Pacific Islands to live and work in New Zealand on a temporary basis. This scheme does provide 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 report¹ advocated 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 opening of free access is politically feasible in New Zealand and Australia – still less elsewhere in the world – is open to question. Nonetheless, this is an approach 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 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 move in this direction. In particular, whereas the UN Refugee Convention has a very tight definition of drivers of movement that must be met in order for an

¹ Curtain, R., Dornan, M., Doyle, J. and Howes, S. (2016), *Pacific Possible. Labour mobility: the ten billion dollar prize*,

<http://pubdocs.worldbank.org/en/555421468204932199/pdf/labour-mobility-pacific-possible.pdf>

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 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 harder is protection of those ‘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, to water, and to 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, UNHCR and IOM. These international organizations are already developing approaches to participation in the theme of climate and migration, with both 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 4th meeting in Mexico in 2010), even though these are both 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 OCHA, 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 with New Zealand and Australia than it is with a global initiative, and notwithstanding current arguments against free movement within the European Union, the EU’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 of the recommendations listed here are of relevance to the Global Compact on Refugees.

