



International Migration, Racism, Discrimination and Xenophobia

A publication prepared by:

*International Labour Office (ILO)
International Organization for Migration (IOM)
Office of the United Nations High Commissioner for Human
Rights (OHCHR)*

In consultation with
Office of the United Nations High Commissioner for Refugees (UNHCR)

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***WORLD CONFERENCE AGAINST RACISM, RACIAL
DISCRIMINATION, XENOPHOBIA AND RELATED
INTOLERANCE (WCAR)***



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This discussion paper reflects a preliminary inter-agency exploration of the subject matter. Publication does not necessarily constitute endorsement of the text in its entirety by the co-sponsoring agencies.

This preliminary edition has been prepared for distribution at the World Conference. Comments, suggestions and corrections are welcome and may be directed to the following contact points:

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Preface

JOINT INTRODUCTION BY ILO AND IOM DIRECTORS GENERAL AND UN HIGH COMMISSIONER FOR HUMAN RIGHTS

The twenty-first century promises to be a new age of migration. Intensifying international migration pressures present many societies with major policy dilemmas; most countries of the world are becoming more multicultural, multi-ethnic, multi-religious and multi-lingual. These changes challenge governments and civil society to accommodate and gain from this diversity in ways which promote peace and respect for human rights.

One in every fifty human beings – more than 150 million persons – live outside their countries of origin as migrants or refugees. They are highly vulnerable to racism, xenophobia and discrimination.

The extent and severity of these phenomena are becoming increasingly evident in the reports of mistreatment and discrimination against migrants, refugees and other non-nationals, which are emerging from every region in the world. The fact that an increasing proportion of international migration today is irregular and unauthorised, facilitates abuse and exploitation. But, even when their movements are legal and authorised, non-citizens face high levels of discrimination.

The World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban provides an unprecedented opportunity to take an open and honest look at the scourge of discrimination and intolerance against migrants and refugees and to make commitments to end this situation. The challenge before us is to work together towards a world of respect - respect for diversity. We must act to shape a world in which all human beings can live in safety and dignity, and enjoy access to decent work and living conditions.

The international community has agreed upon, and entrenched in law, basic standards to protect migrants and refugees. The UN Convention and Protocol relating to the Status of Refugees has become the globally recognized standard for treatment of refugees. ILO Conventions on migrant workers were the first international instruments to set minimum standards of treatment for migrant workers. They served as models for the UN Convention on migrant workers rights, which we expect will soon enter into force. We urge all countries that have not yet done so, to ratify these Conventions and to abide by their provisions. Implementation of these international standards is a basic step

in the development of a global society in which dignity is guaranteed to all and diversity respected.

Just as important is practical action at the national and local levels. This is everyone's business: governments, employers, workers, NGOs, politicians, parliamentarians, community leaders, the media, the private sector and other stakeholders.

The issues addressed in this discussion paper have received inadequate attention. As heads of agencies directly concerned with international migration, we believe it imperative to work together to seek understanding of and effective measures against racism, xenophobia and discrimination against foreigners. We present this paper as a work in process, intended to promote further analysis and to identify effective remedies, in cooperation with our constituencies. We welcome comments and responses.

The battle for universal human rights is a fight for hearts as much as it is a fight for laws or policies. We must strive to remember that we are all one human family, regardless of our race, our ethnic origin or any other difference. If this twenty-first century is to be the era of peace we all hope for, we have no choice but to respect each other's differences and recognize that we all share the basic traits of what it is to be human. Governments must recommit themselves to the principle that all persons, including migrants and refugees, have the right to be treated equally and fairly. Let us build upon shared values and see in diversity, not a threat, but rather an enrichment. Our daughters and sons deserve nothing less.

*Brunson McKinley
Director General, International Organization for Migration*

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United Nations High Commissioner for Human Rights*

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Core principles for action

It is the belief of IOM, ILO and UNHCHR that the following principles will best allow an effective engagement against the racism and xenophobia faced by migrants and refugees:

For all migrants regardless of status:

- Strengthen the rule of law by adoption and implementation in national law of relevant international standards, particularly those recognizing and protecting rights of non-nationals.
- Make racist and xenophobic discrimination, behaviour and action, including against non-nationals and state-less persons unacceptable and, as appropriate, illegal.
- Elaborate administrative measures, procedures and initiatives to ensure full implementation of legislation, and accountability of all government officials/employees.
- Establish independent national human rights/anti-discrimination monitoring bodies with power to (i) monitor and enforce anti-discrimination legislation; and (ii) receive and act upon individual complaints of discrimination from nationals and non-nationals against both public and private entities.
- Promote respect for diversity and multicultural interaction.
- Encourage political, community and cultural leaders to speak out to promote respect for all, and resolutely to condemn manifestations of racism and xenophobia.
- Encourage communications media to emphasize positive images of diversity and of migration to eliminate negative stereotyping
- Incorporate multi-cultural and diversity training in educational curricula.
- Mobilize civil society cooperation in promotion, implementation and monitoring of anti-discrimination standards.

1. Introduction: Issues for Discussion

Migrants, racism, racial discrimination and xenophobia

Today, one in every 50 human beings is a migrant worker, a refugee or asylum seeker, or an immigrant living in a 'foreign' country. Current estimates by the United Nations and the International Organization for Migration indicate that some 150 million people live temporarily or permanently outside their countries of origin (2.5% of the world's population¹). Many of these, 80-97 million, are estimated to be migrant workers and members of their families². Another 12 million are refugees outside their country of origin. These figures do not include the estimated 20 million Internally Displaced Persons forcibly displaced within their own country, nor tens of millions more of internal migrants, mainly rural to urban, in countries around the world.

Increasing ethnic and racial diversity of societies is the inevitable consequence of migration. Increasing migration means that a growing number of States have become or are becoming more multi-ethnic, and are confronted with the challenge of accommodating peoples of different cultures, races, religions and language. Addressing the reality of increased diversity means finding political, legal, social and economic mechanisms to ensure mutual respect and to mediate relations across differences. But xenophobia and racism have become manifest in some societies which have received substantial numbers of immigrants, as workers or as asylum-seekers. In those countries the migrants have become the targets in internal disputes about national identity. In the last decade, the emergence of new nation states has often been accompanied by ethnic exclusion.

As Governments grapple with the new realities of their multi-ethnic societies, there has been a marked increase in discrimination and violence directed against migrants, refugees and other non-nationals by extremist groups in many parts of the world. The lack of systematic documentation or research over time makes unclear whether there is a real increase in the level of abuse or in the level of exposure and reporting. Unfortunately, there is more than enough anecdotal evidence to show that violations of human rights of migrants, refugees and other non-nationals are so generalized, widespread and commonplace that they are a defining feature of international migration today.

The extent of racial discrimination and xenophobia is often played down and sometimes denied by authorities. Racial discrimination is defined in international law as being:

“any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on a equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”³

Racism and xenophobia are distinct phenomena, although they often overlap. While racism generally implies distinction based on difference in physical characteristics, such as skin coloration, hair type, facial features, etc, xenophobia denotes behaviour specifically based on the perception that the other is foreign to or originates from outside the community or nation. By the standard dictionary definition, xenophobia is “the intense dislike or fear of strangers or people from other countries.” As a sociologist puts it, xenophobia is “an attitudinal orientation of hostility against non-natives in a given population.”⁴

The definition of xenophobia, and its differentiation from racism and racial discrimination, are still evolving concepts. One of the regional Preparatory Meetings for this World Conference suggested that:

- *Racism* is an ideological construct that assigns a certain race and/ or ethnic group to a position of power over others on the basis of physical and cultural attributes, as well as economic wealth, involving hierarchical relations where the “superior” race exercises domination and control over others;
- *Xenophobia* describes attitudes, prejudices and behavior that reject, exclude and often vilify persons, based on the perception that they are outsiders or foreigners to the community, society or national identity.⁵

In many cases, it is difficult to distinguish between *racism* and *xenophobia* as motivations for behaviour, since differences in physical characteristics are often assumed to distinguish the ‘other’ from the common identity. However, manifestations of xenophobia occur against people of identical physical characteristics, even of shared ancestry, when such people arrive, return or migrate to States or areas where occupants consider them outsiders.

Globalization and migration

Globalisation has accentuated the unevenness of development between countries and thereby generated significant pressure for the movement of labour across borders. Some of this movement takes the form of the classic “brain-drain” with relatively skilled workers migrating to developed economies. But a significant proportion takes the form of low-skilled or even unskilled workers moving, sometimes illegally, to neighbouring countries with economies growing rapidly and thereby offering higher wages for relatively low skills.

In principle, the flow of labour between countries should be economically beneficial for all countries. However, while the unrestricted movement of goods and capital is accepted almost without qualification, the movement of labour tends to raise sensitive political and sociological issues. Still, it is necessary to recognise that migration can never be eliminated or even fully controlled. In fact, with rising globalisation, migratory pressures will most likely increase. The challenge for the international community will be to deal with this issue in the broader context of a coherent, human-centred and human rights based response to globalisation.

Future Trends

IOM predicts that the total number of international migrants will approach 250 million by the year 2050. Such a prediction has to reflect many probable factors. These include the effects of war, famine, drought and epidemics, the increasing economic gap between rich and poor countries and the differential between countries in which population is growing and those where it is decreasing. On the basis of data on fertility rates, UN projections show significant decreases in the populations of many countries in Europe and some in other regions, contrasting with large projected increases in parts of Asia, Africa and the Americas. The threat of rising sea levels and extreme weather conditions, associated with global climate change, may also emerge as major factors behind forced migration. Already international aid agencies, including the International Federation of Red Cross and Red Crescent Societies, are warning of the humanitarian impact of the unfettered growth of carbon dioxide levels in the atmosphere, caused mainly by the burning of fossil fuels in industrialized nations.

A human rights approach to International Migration

Human rights must be at the centre of any analysis of migration and xenophobia. Fortunately, more consideration is being given to the protection of migrant and refugee rights by NGOs and human rights organizations. Migrants' *rights* have emerged as a formal topic on the agenda of many migration-related conferences and forums, and news and communications media attention has increased substantially. The challenge is to turn this concern into concrete action. A long and slow trend of extension to migrants of basic human rights principles culminated a decade ago in the adoption of the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families which built on the ILO's 1949 and 1975 Conventions on the subject. Recently, NGO and UN initiatives have revived attention to these norms, notably by initiating a global campaign for ratification of the UN Convention. Appointment of a UN Special Rapporteur on Human Rights of Migrants has further focused attention on application of human rights to migrants. The Special Rapporteur, Ms Gabriela Rodriguez Pizarro, has pointed to the need to take a *human rights* approach towards migrants on these issues because it allows all parties to look at the reality of the situation from the perspective of the migrants.⁶

Human rights recognise that certain principles are true and valid for all peoples, in all societies, under all conditions of economic, political, ethnic and cultural life. Human rights are *universal* - they apply everywhere; *indivisible* - in the sense that political and civil rights cannot be separated from social and cultural rights; and *inalienable* - they cannot be denied to any human being. A human rights framework may help identify where racism, xenophobia and discrimination contribute to motivating or compelling migration. This framework also provides criteria to identify and measure where racism, discrimination and xenophobia affect the treatment of migrants and refugees.

A word about this discussion paper

This discussion paper explores subjects that have received inadequate attention in the past. Until recently, xenophobia and discrimination against foreigners was seldom differentiated from racial discrimination against nationals. This publication is an initiative by three international agencies directly concerned with international migration. It is intended to deepen understanding of the specific character of discrimination against migrants, refugees and other non-nationals, in order to better determine and implement effective remedies.

It is hoped that this paper will be the first step towards producing comprehensive resource materials to assist migrants, governments, social partners, civil society organizations, the corporate sector and concerned individuals to ensure protection of all migrants and encourage respect for diversity in a world of multi-cultural and multi-ethnic societies. Comments, suggestions and critiques are most welcome.

2. The Migration Process

The ease of travel today, the widespread awareness of conditions in other lands, family and ethnic ties, opportunities –even requirements for international experience to advance in business, in professions, in careers—all facilitate migration. In a globalising world, this should be encouraged and supported. Yet for many migrants, the migration process exposes them to racism and xenophobia, when leaving their own country, transiting another or entering their country of destination.

For some migrants, the choice to leave a country of origin is a full and well-informed one, based on the offer of employment or a social connection, such as marriage. For many others, there is little or no choice, due to political, social, economic or environmental pressure and necessity. It is clear that most people prefer to stay in their home countries when they can do so in safety, dignity and well-being. Perceptions of tolerable political, social and economic levels and conditions vary widely across different countries and communities, but the most basic consideration is the ability to survive above a local minimum standard of decent living. In essence, forced displacement today in no small part is the direct consequence of the breakdown or absence of sustainable community.

Although the right to leave one's own country is enshrined in Article 13(2) of the Universal Declaration of Human Rights, it is often thwarted in practice by difficulties of obtaining travel documents and visas to enter any other country. The past two decades have seen a dramatic realignment of international visa and direct airside transit visa regimes. In many parts of the world, such restrictions have cut across traditional bilateral and sub-regional routes limiting the movement of migrant labour and merchant traders where relatively free movement had existed before, sometimes for centuries.

Increasingly strict border control measures of many States and the absence of adequate provision for regular migration are linked by many observers to increased irregular migration.⁷ For many reasons, including the lack of a legal alternative, an increasing number of migrants leave their country of origin and enter another country in an irregular fashion. With the narrowing of opportunities for economic, social and humanitarian migration, irregular migration has given rise to pressures for greater migration control measures and provided anti-immigration political organizations with an issue to rally around.

Irregular or unauthorized migrants are vulnerable to racist and xenophobic hostility, whether in countries of transit or destination. Irregular migrants are easy and often tempting targets for such hostility. Lack of legal status leaves them reluctant to seek or be provided police protection, means to redress or access to justice. Irregular status impedes possibilities for community self-organization, unionization or other forms of association to collectively respond to racism and xenophobia and to call on government and civil society support. Irregular status may place migrants at considerable risk of abuse when dealing with or apprehended by government authorities, particularly where these are inadequately trained and supervised.

National Campaign Against Xenophobia

The *Roll Back Xenophobia* campaign established in **South Africa** in 1998 is a widely visible national effort to confront rising incidences of xenophobic hostility and violence in that country. It began as a joint initiative between national and international institutions: the South African Human Rights Commission, the National Consortium on Refugee Affairs and the office of the United Nations High Commissioner for Refugees. It emphasizes broad, multi-faceted activity by government, civil society and communications media, including information campaigns by national and local government, training of police, strengthening of labour rights protections for migrant workers, sensitization of trade union officials, awareness raising by religious organizations, factual reporting by news media, codes of conduct for civil servants and police, inclusion of migration and refugee concerns in primary, secondary and tertiary education, and a number of other measures. A broad range of civil society organizations now participate in the campaign.

Trafficking and Migrant Smuggling

Trafficking and migrant smuggling have increased in parallel with increasing obstacles to legal migration. This growth of trafficking and smuggling of persons by organized criminal groups presents compelling challenges for human rights advocates and humanitarian organizations as well as for law enforcement agencies. Racism and discrimination are factors in putting migrants at risk of trafficking, and racism and xenophobia influence treatment of victims of trafficking and smuggling in transit and destination countries.

International law has recently recognized a distinction between the concepts of trafficking and migrant smuggling. Until a few years ago, most agencies referred to organized irregular migration as ‘trafficking’ – using this term in a generic sense to distinguish harmful migratory processes from those that could be characterized as more humanitarian. The term ‘trafficking’ now refers principally to a migratory process which involves some form of coercion or deception and which is for an exploitative purpose.⁸ The term ‘migrant smuggling’, on the other hand, is now used to refer to the facilitated, illegal movement of persons across borders for profit.⁹

The international community has recognized that both trafficked persons and smuggled migrants are entitled to basic human rights protections. The *Protocol against Trafficking in Persons – Especially Women and Children* (Trafficking Protocol) and the *Protocol against the Smuggling of Migrants by Land, Sea and Air* (Migrant Smuggling Protocol) were both adopted by the General Assembly in November 2000 and have been widely signed. Information on the protection provisions of these two instruments is set out in 5.1.3. below.

Sometimes, racially-incited violence is directly related to the trafficking process itself. It is not always possible to infer xenophobia or racist motivation in the neglect or murder of migrants, but two legal cases involving stowaways probably only represent the tip of the ice-berg. The most infamous is arguably that of the 'MC Ruby' in which seven Ghanaian stowaways were brutally murdered and thrown overboard by the ship's Ukrainian crew before arriving at Le Havre in France in October 1992. The case would have never have reached court had not one stowaway, Kingsley Ofusu, survived to tell the tale:

“ The Ukrainian sailors say they were afraid of getting into trouble if they arrived in Europe with the stowaway aboard. They say that they, too, are poor and that some of them handed over stowaways in Rotterdam last year and that the owner of the boat was so angry at being fined under the new laws that he docked the money out of their pay to teach them a lesson. They seem to think there was nothing unusual in what they did to the black men.”¹⁰

Because migrants in an irregular situation are largely invisible to authorities during their migration, quantifying the number of racially-motivated acts by carriers or border authorities is impossible. It can only be flagged as an area of great concern requiring large-scale monitoring and research.

Arriving in destination countries

Entry into destination countries is subject to the immigration rules of that country. Whilst immigration controls may discriminate between nationalities, they need not result in racism or xenophobia. They do so, when procedures target particular ethnic groups, become arbitrary or lack transparency, or when the immigration process itself is made as grueling as possible so as to act as a deterrent. The systematic use of detention will often tend to single out specific nationalities or ethnicities more than others. Deterrence measures certainly raise the costs and risks of entry into destination countries. However, many people are so motivated or desperate that they will try to avoid border controls by hiding in the back of a lorry or the hold of a ship. Many refugees have no choice other than to use irregular entry, increasingly at the hands of smugglers, but they risk the fact of their irregular migration being held against them in any asylum claim. In the broader perspective, migrants who have entered 'illegally' are often perceived as 'illegals' and therefore as 'criminals'.

Immigration policy discussions are rarely separable from more general debates on race relations within host communities. Strong border control is often advocated as necessary for the acceptance of racial, cultural or ethnic minorities by the dominant culture.¹¹ But differences in admission based on ethnic or racial factors can set categories of migrants and refugees apart from other minorities and mainstream society. Temporary status for refugees or guest workers, for example, mitigates against integration.

Without a legal status, the migrant or refugee can be 'invisible' to the welfare, police, judicial, healthcare and other agencies of the state, heightening their risks of exploitation and discrimination. Prolonged periods of detention for asylum seekers and unauthorized migrants can also serve to isolate and stigmatize migrant communities.

Facilitating Integration and Intercultural Understanding

ISOP "human rights and integration" in **Austria** is a publicly and privately funded organisation implementing a holistic programme to facilitate integration of migrants and refugees into Austrian society. It offers training courses which combine social, educational, legal and political elements with vocational training and advice on labour market opportunities. ISOP also works to develop intercultural understanding by raising public awareness on anti-discrimination and anti-racism issues.

ISOP uses individual advisers to give appropriate ongoing support and advice to migrants and refugees on a one-to-one basis, both before and after employment. It assists both legal immigrants and new arrivals to secure necessary legal documentation, vocational training and the possibility of acquiring qualifications. It also arranges transitional one year jobs for migrants in long term unemployment. Its figures indicate 70% of the unemployed participants are successful in finding a job.

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3. Treatment of Migrants

The World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR) has brought into focus the worrisome dimensions of racism, discrimination and xenophobia in the treatment of migrants and refugees. The preparatory events for this conference in Europe, the Americas, Africa and Asia all highlighted that growing racist and xenophobic hostility directed at non-nationals, including migrants, refugees, asylum-seekers, displaced persons and other foreigners, is a serious denial of human rights, human dignity and security.

Manifestations of anti-foreigner hostility are being widely reported in all regions of the world. These include incitement to and actions of overt exclusion, hostility and violence against persons explicitly based on their perceived status as foreigners or non-nationals, as well as discrimination against foreigners in employment, housing or health care. Anti-foreigner hostility can also be symptomatic of a denial of deeper racist tendencies within the host society:

“ The ethnic or racial inequalities implied by discrimination or racism would be inconsistent with official ideologies of liberal democracies, and thus instead recognizing such ‘imperfections’, it is more expedient to deny them or explain them away as characteristic of the victims, or as temporary phenomenon of transition for new immigrants. Furthermore ... as long as the existence of racism is denied, it also denies the need for anti-racist and anti-discrimination legislation.”¹²

Research on concrete manifestations of xenophobia and discrimination against migrants, refugees and other non-nationals is still very limited, especially outside Europe and North America. There is very little data that allows for effective comparisons among countries, let alone across different regional contexts. Nonetheless, the research that has been done provides very clear indications of the breadth and depth of these phenomena. A very few examples are included below, with the caveat that the data presented is not intended to infer any conclusions regarding practices in a country cited, nor any comparative evaluation in relation to other countries. The absence of any data at all from most countries may be an indication that many serious problems remain unknown and unacknowledged.

Monitoring Racism and Xenophobia

The establishment of the **European Monitoring Centre on Racism and Xenophobia** (EUMC) in Vienna by the European Union in 1997 is an important initiative to develop a regional institutional mechanism to monitor xenophobia. The Centre is keen not just to try and record the seemingly growing amount of racial discrimination and violence directed towards migrants and other ethnic minorities in Europe, but to identify and highlight examples of good practice in challenging and remedying xenophobia and racism. In a recent report, the EUMC presents a detailed survey and analysis of public attitudes towards minority and immigrant groups across the 15 countries of the European Union.

Whilst the European Monitoring Centre is funded by the European Union, it is an independent body and aims to be unbiased and transparent in its activities. It gives no greater priority to European nationals than it does migrants, in fact many examples cited in its recent reports relate to recently established migrant communities.

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Xenophobia versus Diversity

A document prepared by the NGO Working Group on Migration and Xenophobia for the World Conference notes that tensions and manifestations of racism and xenophobia are fostered by severe economic inequalities and the marginalization of persons from access to basic economic and social conditions. Prime targets are those perceived to be outsiders or foreigners: migrants, refugees, asylum-seekers, displaced persons, and non-nationals.

The influx of migrants themselves is also sometimes cited as a cause of xenophobia amongst the host community. For example, some European studies conclude that a link exists between racism or xenophobia and immigration or the presence of minorities:

“It would be a serious error to say that immigrants or minority members ‘generate’ racism. In actual fact, they are the main victims of it, though not the only ones. Nor can it be said that the number of immigrants is proportional to the number of racist acts. The fact remains that, by definition, xenophobia is an attitude of rejection and stigmatism of foreigners, and that it can very quickly and very easily cross the line that divides it from racism.”¹³

Conversely, though, the presence of a large number of immigrants does not necessarily provoke xenophobic or racist reactions. For example, the National Advisory Committee on Human Rights which conducts public opinion surveys of French public opinion shows that the greatest fear of foreigners is strongest in areas where the number of immigrants was smallest. Similarly, there is little xenophobia in districts where large numbers of foreigners are mixed with French nationals.¹⁴ This observation is repeated across several other European countries and must surely hold for most metropolitan centres across the world.

The NGO Working Group on Migration and Xenophobia has concluded that the growth of often-violent racism and xenophobia against migrants and refugees is often fed by restrictive immigration policies; increasingly narrow interpretations of government obligations to protect refugees; the resulting reliance by all categories of migrants on often clandestine means of entry; the resultant criminalization of so-called illegal migrants; the stigmatization of refugees as "bogus asylum seekers"; and the scapegoating of migrants and refugees as criminals and the cause of unemployment.¹⁵

The deliberate association of migration and migrants with criminality is an especially dangerous trend, one which tacitly encourages and condones xenophobic hostility and violence. Migrants are commonly associated in news media coverage, by politicians and in popular discourse with crime, trafficking, drugs, disease, AIDS and other social ills. Migrants themselves are criminalized, most dramatically through widespread characterization of irregular migrants as 'illegal' implicitly placing them outside the scope and protection of the rule of law. More generally, migration is commonly characterized as problematic and threatening, particularly to national identity and security.

The official and popular self-understandings of many societies and States remain anchored in particular historical and often mono-cultural, mono-ethnic and mono-linguistic identities. Such concepts of national identity stand in contradiction to the consequences of increased migration, in which the populations of many if not most countries worldwide are becoming more diverse. Mono-cultural and mono-ethnic understandings by definition exclude or subordinate different racial and ethnic identities, cultures, languages, traditions, religious faiths, and national origins. The promotion or retention of such concepts not only often ignores changing national realities, but risks fanning the flames of exclusionary and xenophobic responses to immigration and diversity.

Municipal Action for Diversity

"Rotterdam Multicoloured City" is one of the key priorities of the Rotterdam (Netherlands) Municipality, endorsed by the city council in 1998. Diversity is set to become the normative basis for all municipal policies. 42% of the Rotterdam population is of immigrant origin, of which 27% are ethnic minorities. The percentage of ethnic minorities employed by the Municipal Authority is targeted to rise from 16.1% in 1998 to 22% in 2002.

Policy objectives include:

- Proportional participation by immigrants in Rotterdam society, in particular, proportional representation of immigrants in executive committees and personnel.
- Strengthening immigrant entrepreneurship and encouraging initiatives by immigrants.
- Making cultural diversity apparent in Rotterdam.

Implementation includes: reinforcing participation of ethnic minorities in subsidized institutions, including reporting on the number of migrants/ethnic minorities on institution's board, in the establishment and in product consumption; making cultural diversity palpable, visible and accessible, including in tourism; history and architecture; and strengthening immigrants' entrepreneurship.

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A promotion of “multiculturalism” and/or respect for diversity -- respect for the values and identities of others—is increasingly seen as one of the most effective approaches to changing attitudes and reducing expression of racist and xenophobic hostility against migrants, refugees and other non-nationals.

Exploitation

At the heart of the dilemma of protecting the rights and dignity of migrants, particularly migrant workers, is their usual position in the labour market. Many are unskilled foreign workers relegated to marginal, low status, inadequately regulated or informal sectors of economic activity. As observers in Asia have often put it, migrant labour fills the “three-D” jobs, dirty, dangerous and difficult. Migrant labour has long been utilized in both developed and developing economies to sustain economic enterprises, and sometimes, entire sectors that are only marginally viable or competitive. For example, foreign workers are commonly employed in small-scale manufacturing, in agricultural plantations, in households for domestic service, and in the “sex industry”.

For example, a survey of manufacturing firms in Korea undertaken by the ILO and the Korea Labour Institute found that foreign workers received less than half the wages earned by nationals. The following table indicates the extent of wage differentials between national and foreign workers by size of enterprise. There are many indications that the same situation exists to varying degrees in many countries:

Table 1. Foreign workers in total workforce (in per cent) and wage differentials between foreign and national workers, by size of firm and industry in 1993 in Korea (wages in won)

	Per cent	Wage of foreign workers	Wage of nationals	Ratio of foreign/national wages
Size of firm				
less than 30	22.6	327 800	686 170	0.48
30 to 99	9.0	373 000	635 100	0.59
100 to 199	7.2	390 430	606 740	0.64
200 and over	4.3	368 000	584 790	0.63

Source: Abella, M.I.; Park, Y.B; Böhning, W.R.; *Adjustments to Labour Shortages and Foreign Workers in the Republic of Korea*; ILO International Migration Papers, No.1, Geneva, 1995, p.13.

Migrants work long hours at low pay and do not enjoy access to benefits or other protections. Studies undertaken by the ILO and the International Confederation of Free Trade Unions (ICFTU) indicate that organizing migrants into unions or organizations to defend their interests and rights is often extremely difficult if not impossible. Those without proper authorization to work are easily intimidated against joining or organizing unions, by the threat or actual practice of deportation.¹⁶

They are usually at the margin of protection by labour workplace safety, health, minimum wage and other standards. They are often employed in sectors where such standards are non-existent, non-applicable or simply not respected or enforced. Vulnerability to exploitation and abuse is often exacerbated by problems with languages, unfamiliarity with local custom and culture, and lack of networks for social support.

Given their lack of legal recognition and precarious status in host countries, hiring migrants can often be done without payment of benefits, payroll taxes and other mandatory contributions, representing further savings to employers. An especially important aspect of vulnerability of irregular migrants to both exploitation and xenophobic abuse is that they are perceived as being removable from the territory of the country, for example when domestic unemployment rises and/or when rising political tensions prompt the targeting of scapegoats.

The weak position of migrants in the labour market is largely a consequence of their immigration status, of lack of it, in countries of employment. Many countries needing foreign labour are only willing to admit migrant workers for temporary periods, often to meet cyclical upturns in demand for labour, but with the possibility of repatriating them as soon as demand weakens. Temporary status, however, generally means explicit lack of entitlements to mobility in the labour market or to gaining entitlement to benefits such as social security. All too often, rights to family reunion and or union membership are explicitly proscribed.

Discrimination

The International Convention on the Elimination of All Forms of Racial Discrimination (1965) identifies racial discrimination as:

“... any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms.”¹⁷

Whilst this is an important international treaty for the general issue of racial discrimination, State parties are not prohibited from applying distinctions, exclusions, restrictions or preferences between citizens and non-citizens.¹⁸ There are no specific provisions in the Convention that tackle the specific issues of discrimination on the basis of nationality faced by migrants. This evidence of such discrimination is increasingly apparent through research conducted around the world:

“Serious studies have identified that in certain developed countries executives are allegedly more racist when recruiting staff than their counterparts in some other countries. For example, in one European study, 28% of (non-European Union) foreigners between the ages of 25 and 49 are unable to find work, the rates being as high as 35% for Turks and Pakistanis and 60% for recent immigrant groups such as the Somalis.”¹⁹

Comparative data on unemployment figures measuring different rates between national and employment-authorized non-national members of the work force may provide telling indications of discrimination in employment. The following example gives an indication for a European country; a situation replicated widely elsewhere according to other studies and anecdotal evidence.

Table 2. Unemployment rates by nationality in 1996 in Denmark

Nationality	Number Unemployed	Percentage of group
Pakistani	1,083	45.8
Turkish	6,572	47.6
Total foreign nationals	22,816	28.4
Danish	256,038	9.1

Source: Hansen, N.E.; McClure, I.; *Protecting Migrants and ethnic minorities from discrimination in employment: The Danish experience*; ILO International Migration Paper, No. 25, Geneva, 1998, p.2.

Promoting Integration

“Integration of immigrants on the labour market,” a project run at the *Kofoeds Skole* centre in Copenhagen, **Denmark**, is a targeted effort to overcome discrimination in employment by a combined approach of improving language competence, organising active job-seeking activities and practical training programmes for unemployed refugees and immigrants. (A recent study (2000) carried out for the Ministry of Labour indicated rates of unemployment of 16.5% for immigrants and their descendants compared with 5.5% for the rest of the population.)

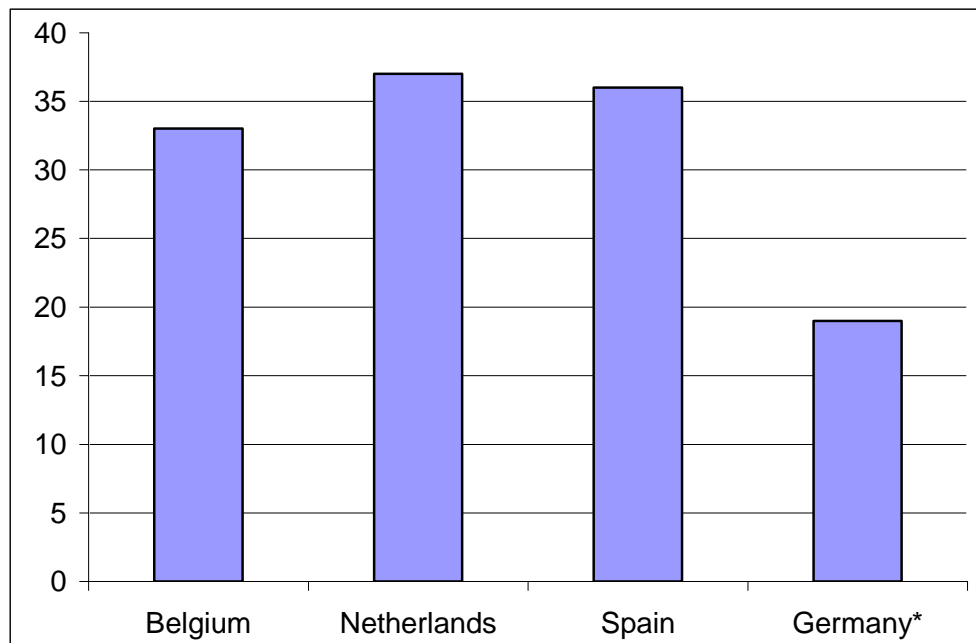
The project has involved a broad range of different actors in promoting recruitment of immigrants, including: the public employment service, municipal authorities, unemployment insurance funds, ministries, the Confederation of Danish Trade Unions, the National Association of Local Authorities, the Association of Engineers and various organisations representing immigrants. As one result, the integration of immigrants and refugees was mentioned for the first time in collective labour agreements in 2000, and formed part of the settlement drawn up by the Public Conciliator. 70% of participants obtained employment or went on to further education upon completion of project training.

High rates of unemployment have been registered among ethnic minority and immigrant workers in many Western European countries –and elsewhere—for a long time. With a view to helping States find solutions to this problem, the ILO initiated in 1991 a research project to examine the dimensions and causes of disparities between national and migrant workers in access to employment.²⁰ The research methodology isolated the effects of discrimination from other variables, such as differences in age, experience, education, language, skills, marital status and gender that could affect access to employment.

The initial project was focused on a number of countries in Western Europe and North America. Its findings²¹ showed discrimination in access to employment to be a phenomenon of considerable and significant importance in all countries covered by the research. Overall net-discrimination rates of up to 35 per cent were not uncommon, meaning that in at least one out of three application procedures migrants/minorities were discriminated against. As a consequence of the rigorous research methodology, the discrimination rates uncovered by the project were assumed to be conservative estimates of what is happening in reality.

The table below illustrates the rates of discrimination in access to employment found in four countries where detailed surveys were conducted:

Graph 1. Net discrimination rates in Belgium, Netherlands, Spain and Germany in 1998.



*In Germany, the figures are lower because the testing procedure did not extend to the third stage of the application process.

Source: Zegers de Beijl, Roger; *Migrant Discrimination in the Labour Market: A Comparative Study of Four European Countries*, ILO, 1999.

Combating Discrimination through Training

Anti-discrimination training in Louvriers, **France**, an initiative of PLIE, (Local Programme for Professional Integration) responds to perceived systematic discrimination by local employers – a view borne out by surveys of employers. Social partners requested that emphasis be placed on:

- Identification of discriminatory practices and efforts to combat occurrences;
- Understanding of immigrants, their social behavior and cultural perceptions;
- Develop appropriate methodologies to raise concerns with target groups and strategies to advance future careers;
- Increase employers' awareness of ethnic cultures and practices.

Training centered on three main themes: (1) cultural diversity and perceptions; (2) analysis of racial discrimination; and (3) compilation of tools to identify and fight against discrimination. Working groups developed collective responses towards these issues; the program took into France's immigration history, the impact of colonialism and particulars of the Maghreb and Black Africa regions.

National and international good practice models were drawn on, and legislation and regulations reinforced in case studies.

Participants assessed that the training permitted the identification of both cultural and non-cultural behaviour that prejudices access to employment, allowing these issues to be further addressed with employers.

Victimization and persecution

The global nature and specific characteristics of violence and discrimination against migrants, refugees and other non-nationals is now widely acknowledged and assisted by the restricted application or non-application of basic human and legal rights to non-nationals in laws and procedures of States. There is not yet wide acceptance by States of the basic rights and entitlements recognized for unauthorized migrants in the UN 1990 International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families. Under the ILO Conventions related to migrant workers, undocumented migrants are entitled to equal treatment in respect to rights arising out of present or past employments as regards remuneration, social security, and other benefits as well as regards trade union membership and exercise of trade union rights. Nonetheless, restrictions, or exclusions, of protection of rights of foreign nationals are usually accentuated for persons without authorization to enter, remain or be employed in the territory of a State. The undocumented are especially vulnerable to abuse, particularly because they are generally unwilling or unable to seek protection from authorities when confronted with xenophobic violence. Governments, too, may not always be as concerned about controlling irregular migration as they might suggest, with irregular entry sometimes being "tacitly permitted or even encouraged, just because irregular migrants lack rights and are easy to exploit."²²

Women and children migrants and refugees are especially at risk of exploitation and abuse, including xenophobic hostility. The "double jeopardy" of being both foreign and female often makes especially difficult recourse to public officials and legal processes

that in theory should protect their rights. The UN Special Rapporteur on Violence Against Women has emphasized the role of official anti-immigration policies in casting trafficked women migrants as culprits deserving sanction rather than victims needing protection and assistance.²³

‘The right to a nationality’, outlined in Article 15 of the Universal Declaration of Human Rights, has been called the ‘right to have rights’. It is both a right in itself and a key to other fundamental rights in the civil, political, social, economic and cultural realms. The 1954 and 1961 Statelessness Conventions provide a legal framework through which States can avoid and reduce cases of statelessness while ensuring that stateless persons have, at a minimum, the protection of legal status in a given country. The United Nations High Commissioner for Refugees (UNHCR) is the agency responsible for following up on statelessness issues within the United Nations.

National Anti-Discrimination Monitoring Body

In the UK, the 1976 Race Relations Act provided for the **Commission for Racial Equality** which has the mission of working towards abolishing discrimination, the promotion of equal opportunity, and proper relations between minority groups, of ensuring the updating of the Race Relations Act and recommending legislative changes, if necessary. This Commission is capable of helping those who wish to initiate proceedings in the event of discrimination and to carry out official investigations. Additionally, it conducts research, publishes guides for good practices, provides information and advice, and supports non-governmental organizations that work to improve inter-ethnic relations. All of these services are extended to migrants and refugees, and recent legislative changes mean that Government functions themselves, including the Immigration Service and Police, will come under increased scrutiny by the Commission.

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4. The Response Required

Entrenching a rights-based approach to protecting migrants and refugees from racism and xenophobia.

The Core Rights

Underpinning any response to the racism and xenophobia faced by migrants and refugees must be an understanding that, regardless of their legal status, refugees and migrants can never be denied their most fundamental human rights. These rights are contained in the Universal Declaration of Human Rights and the two major human rights treaties: the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. The majority of the member States of the United Nations have ratified these two instruments and are therefore under a legal obligation to ensure their effective implementation. Most of the ‘core rights’ in these instruments are applicable to non-citizens.²⁴ In addition, many of these same ‘core rights’ have been recognized as forming part of customary law, binding all States irrespective of whether or not they are parties to the relevant treaties. The human rights standards contained in the Universal Declaration and the two Covenants form the bedrock of any right-based solutions to racism and xenophobia.

A number of specialized human rights instruments provide further standards for the treatment of refugees and migrants. The Convention on the Elimination of all Forms of Racial Discrimination, referred to above, is of course, fundamental, together with ILO’s 1958 Convention concerning Discrimination in respect of Employment and Occupation (C.111). The Convention on the Rights of the Child (1989), ILO’s Convention on the Worst Forms of Child Labour, and the Convention on the Elimination of All Forms of Discrimination Against Women (1979) are of particular importance given the vulnerability of women and children during the migration process. Some countries are yet to ratify these instruments. Others have registered specific reservations to exclude migrants from the protection of certain articles and clauses. Given the particular inability of stateless people to enjoy these rights, all States must be encouraged to accede to the Convention Relating to the Status of Stateless Persons (1954) and the Convention on the Reduction of Statelessness (1961). All of the above require comprehensive endorsement as the platform for any international efforts to protect migrants and refugee from racism and xenophobia.

The principle of equal treatment of migrants in matters of employment has been enshrined in several ILO Conventions and Recommendations. The 1949 Convention No. 97 concerning Migration for Employment proscribed discrimination against immigrants in respect of nationality, race, sex, or religion in matters of remuneration, allowances, hours of work, overtime, holidays with pay, minimum age, restrictions on home work, apprenticeship and training, membership in trade unions and benefits of collective bargaining, accommodation, social security (subject to some limitations), employment taxes, dues or contributions, and legal proceedings. The ILO’s 1975 Migrant Workers

Convention (No. 143) further elaborated on the rights of migrant workers to family reunification, to preserving national and ethnic identity and cultural ties with their countries of origin, and to free choice of employment after two years of lawful residence for the purpose of employment. The 1958 ILO Convention No.111 on Discrimination in respect of Employment and Occupation proscribed “any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equal opportunity or treatment in employment or occupation”. All these Conventions have been ratified by a significant number of States, though the migrant workers Conventions should be more widely ratified by receiving countries in particular. Convention No.111 has received 151 ratifications, Convention No.97 has 41, and Convention No.143 has been ratified by 18 States.

1990 UN Convention on Rights of Migrant Workers and their Families

The 1990 International Convention for the Protection of the Rights of All Migrant Workers and Members of their Families provides a comprehensive legal framework for protection of migrants against all forms of racist and xenophobic hostility. The Convention applies both to documented (legal) and undocumented (unauthorized or irregular) migrant workers. It stipulates that migrant workers must not be held in slavery or servitude and that forced labour must not be demanded of them. States Parties must provide sanctions against persons or groups who use violence against migrant workers, employ them in irregular circumstances, threaten or intimidate them.

The importance and relevance of the provisions in this convention can be summarized in the following seven points. (1) Migrant workers are viewed as more than labourers or economic entities. They are social entities with families and accordingly have rights, including that of family reunification. (2) The Convention recognizes that migrant workers and members of their families, being non-nationals residing in states of employment or in transit, are unprotected. Their rights are often not addressed by the national legislation of receiving states or by their own states of origin. (3) It provides, for the first time, an international definition of migrant worker, categories of migrant workers, and members of their families. It also establishes international standards of treatment through the elaboration of the particular human rights of migrant workers and members of their families. (4) Fundamental human rights are extended to all migrant workers, both documented and undocumented, with additional rights being recognized for documented migrant workers and their families, notably equality of treatment with nationals of states of employment in a number of legal, political, economic, social and cultural areas. (5) The International Convention seeks to play a role in preventing and eliminating the exploitation of all migrants, including an end to their illegal or clandestine movements and to irregular or undocumented situations. (6) It attempts to establish minimum standards of protection for migrant workers and members of their families that are universally acknowledged. It serves as a tool to encourage those States lacking national standards to bring their legislation in closer harmony with recognized international standards. (7) While the Convention specifically addresses migrant workers and members of their families, implementation of its provisions would provide a significant measure of protection for the basic rights of all other migrants in vulnerable situations, notably those who are in irregular situations.

Ratification or accession by 20 states is required for this instrument to "enter into force," in other words, to become operative and part of international law. It may then be used as an authoritative standard of good practice, and thus may exercise strong persuasive power over non-party States as well, even though they have not agreed to be bound by its standards. As of mid-2001, 16 States have become States Party to the Convention; ten more have signed, a preliminary step to ratification. Other States have utilized provisions in the 1990 Convention as a guide to elaborating national migration laws. A notable example is Italy, which based much of its comprehensive national migration law adopted in March 1998 on norms in the 1990 Convention. It is important to note that the slow pace of ratifications of this convention in part reflects the absence until recently of organized international efforts to publicize and promote its adoption by States²⁵.

International Advocacy for Protection of Migrants

Recognizing that progress on human rights will only be achieved by broad cooperation among different sectors and different regions, an alliance of intergovernmental and international non-governmental organizations launched the **Global Campaign for ratification of the 1990 Convention on migrants' rights**.²⁶ The Campaign Steering Committee now includes 16 leading international bodies in human rights, labour, migration and church humanitarian fields, including ILO, IOM and OHCHR as well as Human Rights Watch, the Migrants Forum of Asia, the International Confederation of Free Trade Unions and the International Catholic Migration Commission. National ratification coalitions reflecting similar alliances have been established in some twenty countries in various regions to inform, advocate and convince governments that ratification of the Convention is necessary. These efforts focus on building awareness about the Convention with government officials, diplomats, politicians, NGOs and the public-at-large, nationally and internationally. Since the Global Campaign got underway in 1998, the number of ratifications and accessions has doubled, to sixteen, and the number of additional signatories more than tripled to ten, more than in the previous eight years combined.

New Protections for Trafficked Persons and Smuggled Migrants

The *Protocol against Trafficking in Persons – Especially Women and Children* (Trafficking Protocol) and the *Protocol against the Smuggling of Migrants by Land, Sea and Air* (Migrant Smuggling Protocol), adopted by the General Assembly in November 2000, contain important provisions aimed at protecting the rights of these particularly vulnerable groups of migrants.

In appropriate cases and to the extent possible under domestic law, States Parties to the Trafficking Protocol are to protect the privacy of trafficking victims and ensure that they are given information on legal proceedings and facilities to present their views and concerns during criminal procedures against offenders; consider implementing a range of measures to provide for the physical and psychological recovery of victims of trafficking; endeavor to provide for the physical safety of trafficking victims within their territory;

and ensure that domestic law provides victims with the possibility of obtaining compensation. The special requirements of children, including appropriate housing, education, and care, are to be taken into account in the application of these protection provisions. State Parties are also to consider adopting legislative or other measures permitting victims of trafficking to remain in their territories temporarily or permanently in appropriate cases with appropriate consideration being given to humanitarian and compassionate factors. The protocol also addresses the issue of prevention. States Parties are to endeavour to establish policies, programmes and other measures aimed at preventing trafficking and protecting trafficked persons from re-victimization. States Parties are also to endeavour to undertake additional measures including information campaigns and social and economic initiatives to prevent trafficking. These measures should include cooperation with NGOs, relevant organizations, and other elements of civil society. The application and interpretation of measures pursuant to the Protocol (including those related to border control and law enforcement): “*must be consistent with internationally recognized principles of non-discrimination*”.

Whilst the protection provisions of the Migrant Smuggling Protocol are not as extensive as those of the Trafficking Protocol, the former instrument does include a number of provisions aimed at protecting the basic rights of smuggled migrants and preventing the worst forms of exploitation which often accompany the smuggling process. When criminalizing smuggling and related offences, States Parties are required to establish, as aggravating circumstances, situations which endanger the lives or safety of migrants or entail inhuman or degrading treatment, including for exploitation. Migrants themselves are not to become liable to criminal prosecution under the Protocol for the fact of having been smuggled. States Parties are required to take all appropriate measures to preserve the internationally recognized rights of smuggled migrants, in particular, the right to life and the right not to be subjected to torture or other cruel, inhumane or degrading treatment or punishment. They are also required to protect migrants from violence and afford due assistance, as far as possible, to migrants whose life or safety has been endangered by reason of having been smuggled. The special needs of women and children are to be taken into account in the application of the Protocol’s protection and assistance measures.

Both protocols contain important savings clauses to the effect that nothing in them is to affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law, human rights law and refugee law.

The special character of the refugee protection regime

Giving better recognition to the human rights of all migrants should not dilute the particular protection needs of refugees, who are fleeing persecution. The principles enshrined in the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol may be undermined by policies aimed at combating irregular migration. For example, blanket border enforcement measures such as readmission treaties, carrier sanctions or the posting of Airline Liaison Officers around the world by governments of the major destination countries risk denying bona fide refugees the chance of escaping persecution, or being returned to the country of persecution by a neighbouring State.

Such practices must be reviewed in accordance with international obligations to uphold the right to asylum and combat racism and xenophobia.

The 1951 Convention relating to the Status of refugees and its 1967 Protocol were landmarks in the setting of standards for the treatment of refugees. Together they incorporate the foundation concepts of the refugee protection regime, which are as relevant in the contemporary context as they were in 1951. Refugee law is not static but a dynamic and action-oriented function. It has and must retain an inherent capacity for adjustment. The 1951 Convention and 1967 Protocol need to be upheld in their entirety and fortified by other provisions in other Treaties that prohibit *refoulement* to inhuman or degrading treatment, such as in Article 3 of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) or under regional arrangements such as the European Convention on Human Rights. The United Nations High Commissioner for Refugees (UNHCR) is the international agency which has the mandate to provide international protection to refugees and other persons of concern. It supervises in particular the application of conventions for the protection of refugees.

Developing a framework for national action

States should be encouraged and supported in the following actions:

- Elaborating comprehensive national anti-discrimination legislation, including provisions to prohibit direct and indirect discrimination on grounds of actual or presumed nationality or national origin (as well as other grounds), and to assure effective judicial, administrative and other remedies for non-citizens.
- Establishing or improving a national inter-agency consultative mechanism to facilitate coordination and coherent activity among all concerned government ministries and agencies. Such a mechanism should also incorporate representatives or observers from social partners, business and concerned NGOs, to ensure coordination nationally among all actors. Inclusion of observers from relevant international organizations may also strengthen coordination.
- Where non-existent, establishing a national independent human rights/anti-discrimination monitoring body with independent capacity to monitor implementation of laws and seek remedies to cases of violations.
- Elaborating a national Strategy and Plan of Action addressing migration, discrimination and integration, with specific designation of responsibilities for implementation of its component aspects as applicable to government entities, employers, trade unions and other organizations.
- Addressing through such a plan of action or other means, promoting respect for diversity and multiculturalism, combating negative stereotypes and disinformation regarding foreigners, promoting anti-discrimination measures at all levels, discouraging discriminatory treatment by authorities, responding to needs and issues related to employment, labour, health-care, education, housing, police protection, social protection and social security, social benefits, gender equality, access to supply of goods and services and to public places, as well as family reunion, residency and citizenship, etc.

Social partners and civil society actors

Common agency experience in cooperation with social partner and civil society actors suggests a number of complementary approaches for these partner organizations and their international networks:

- Advocacy for national adherence to basic international human rights standards, for elaboration of anti-discrimination legislation and for appropriate practices remains an appropriate responsibility for civil society organizations in most countries. Given wide ratification of UN and ILO anti-discrimination instruments, emphasis is needed on ratification of the ILO Conventions No. 97 and 143 on migrant workers and the 1990 UN Convention on the Rights of Migrant Workers and Members of their Families. Establishment of national committees or coalitions --where they do not already exist-- are essential mechanisms to take up promoting the convention as well as efforts to “roll back xenophobia.”
- Business, trade union, religious, civil society and community leaders and organizations, politicians and political parties, parliamentarians, as well as by sports, arts and cultural personalities, need to speak out publicly, take leadership and promote initiatives to: promote respect for diversity, condemn xenophobic attitudes and actions, discourage discrimination and support equality of opportunity.
- Elaborate and implement national employer, trade union, NGO strategies and programmes to explicitly address xenophobic behaviour, monitor conditions, and support and encourage government and non-government measures and remedies at all levels, in dialogue and cooperation with local and national government to the extent possible.
- Provision of direct services, attention to and support for migrants by employers, trade unions and NGOs is an essential component of solidarity.
- Develop institutions and personnel focused on and capable of professionally carrying out these activities, and promote attention by the broader civil society, particularly through public institutions --national human rights bodies, legal and judicial fora, parliamentary bodies and members-- as well as NGOs.
- Support, link with and engage in the several international initiatives mentioned earlier, including the Global Campaign, the Special Rapporteur, implementation of the programme of action of the World Conference Against Racism and Xenophobia, and celebration of International Migrants Day and Refugee Day.

5. Conclusion

Advancing the protection of migrants and refugees in the face of xenophobic hostility, discrimination and violations of human rights requires common approaches, strategies, coordination, and the ability to mobilize human and material resources. Officials and institutions of governments, international organizations, civil society organizations and migrant groups all have roles to play and contributions to make. Various initiatives described above demonstrate that dialogue and cooperation is possible and viable among governmental, corporate and international and civil society actors. All this and more will be required to generate alternative solutions, influence the course of events, contribute to the elaboration of national policies, and so on.

A rights-based approach needs to be more adequately incorporated in policies and activities of international agencies, particularly in the assistance and cooperation they provide to government. The recommendations in this paper are far from comprehensive and it is hoped that this resource book might lead to further thought, reflection and then definitive action. Political will or the lack of it is a fundamental issue that can make the difference between effective interventions to tackle racism and xenophobia or the continued exposure of migrants and refugees to its effects. If the 21st century is to avoid repeating some of the mistakes of the last, then the rights and dignity of all migrants and refugees must be respected.

As **International institutions**, we are committed to work together with the appropriately mandated agencies to support, facilitate and resource these processes and activities:

- Use of mass information campaigns in country of origin and destination to inform potential migrants and actual migrants of their rights and how to migrate in a regular fashion.
- Holistic approaches to development assistance. Recognizing the need to target such assistance at source countries, regions and communities from which people are being compelled to migrate in order to generate genuine alternatives to irregular and dangerous migration arrangements. Further recognizing the need to acknowledge the increasing feminization of international migration and the particular needs of female adult migrants and refugees, as well children (both girls and boys).
- Practical, task-oriented human rights and refugee law training for law enforcement officials (including border guards and immigration officials) in order to ensure that the refugees' right of *non-refoulement* is respected; that the rights to which all migrants are entitled are protected; and that victims of abuse such as trafficked and smuggled persons are treated as victims and not as criminal violators of national immigration law.
- Dialogue and coordination among international agencies dealing with migration and other related issues, in order to improve protection of refugees and migrants. Creation of fora for regular consultation and the material resources from donors to fund this initiative are necessary.
- Encouraging Governments to enter into formal agreements for more orderly, humane migration.

* * *

ANNEX I

MECHANISMS, MEASURES AND POLICIES AGAINST DISCRIMINATION AND FOR EQUALITY OF OPPORTUNITY

Action to prevent discrimination and xenophobia, and to promote equality of opportunity is the shared responsibility of all social partners, including government --national and local--, employers and their associations, workers' organizations and other civil society associations.

Research and models developed by ILO have identified nearly 50 types of measures in six main categories:

1) **Organizational initiatives**: measures adopted by employers and other organizations, including trade unions, focusing on internal policy and management; 2) **Collective action**: cooperative initiatives taken up by labour organizations, community groups, associations of employers and NGOs; 3) **Legislative and legal measures**: implemented by legislative and judicial institutions of government; 4) **Administrative measures, regulations and practices**: by local and national authorities; 5) **Political/educational action**: opinion shaping efforts by political leaders, educational institutions and communications media; and 6) **International standards and programmes**.

The measures identified below have been implemented in a number of different contexts, and have frequently proven useful and successful initiatives in reducing discrimination and xenophobia, particularly in employment. Experience in a number of countries has amply reaffirmed that measures within each of these different categories necessarily overlap and mutually reinforce measures in the other categories. A national effort to combat discrimination and promote equality could only hope to achieve results to the extent the various measures are implemented within each of these categories by all sectors concerned: employers, workers and community organizations, government, political and opinion leaders, in concert with international standards and programs.

Only a summary can be offered here; a much more detailed description of the various measures named below is contained in the ILO report: *Challenging Discrimination in Employment, a Summary of Research and a Compendium of Measures*, available from ILO at the address and website listed on the inside cover page of this publication.

I. Organizational Initiatives

Organizational initiatives is a term to identify those policies and practices established and implemented by employers in order to reduce discrimination and promote equality of opportunity in the work-place. The term *voluntary measures* has usually been used for workplace measures, often focusing on those established by businesses. Work-place measures may not always be *voluntary*, for example where established as the result of a binding collective agreement. They also can apply to trade unions, community organizations and government offices as employers.

1. Equal opportunities statements and action plans
2. Equality targets or benchmarks for recruitment and management
3. Recruitment initiatives to encourage ethnic minority applicants
4. Measures to improve the qualifications of minority applicants, trainees and employees
5. Elimination of arbitrary barriers
6. Job accommodation measures
7. Audits and ethnic monitoring of migrant/minority employees
8. Recruiter and Management Training
9. Diversity Management

II. Collective Action

This term is applied to the numerous and diverse measures worker organizations, employers and business associations, and community groups including concerned NGOs can implement, within their own institutions and networks, in the work-place and in society. Some of the measures outlined below focus on initiatives particularly relevant for trade unions and community groups.

1. Developing charters, guidelines and rules on equal opportunity
2. Encouraging minority participation within unions
3. Supporting minority self-organisation within unions and community groups
4. Identifying bias in hiring, in opportunities for training and advancement, in appraisals
5. Supporting action on grievances concerning discrimination
6. Collective agreements
7. Monitoring of equal opportunities practices
8. Organising and protecting migrants and minorities
9. Anti-harassment policies

III. Legislative And Legal Measures

Legislation plays an essential role in discouraging discrimination and promoting equal treatment. By establishing general standards and rules, legislation can positively influence the societal behaviour of individuals; persons can be persuaded to act in certain ways. For those who have already accepted such standards as just or self-evident, the legislation will reinforce their beliefs and actions.

Comprehensive anti-discrimination provisions are contained in international norms. States desiring to further enact or complete national legislation must decide how these can be incorporated into the domestic legal system. In particular, states must decide whether to enact substantive provisions into constitutional, civil, criminal and/or labour law. All of the following areas are important:

1. Constitutional law
2. Civil legislation
3. Criminal legislation
4. Labour law
5. Monitoring bodies
6. Judicial process and jurisprudence

IV. Administrative Measures, Regulations and Practices

Measures, regulations and practices established under the administrative authority of national, state, and local government can be effective tools for demonstrating and carrying out the will of the State to discourage discrimination and promote equal opportunity. A number of types of measures developed and practiced in different countries are outlined below.

1. Technical advice and guidance
2. Contract compliance
3. Training for migrant and minority applicants and employees
4. Incentives for entry jobs
5. Affirmative action
6. Positive action
7. Codes of practice
8. Labour force surveying

V. Political/Educational Action

The development, implementation and eventual success of anti-discrimination measures in the workplace depend to a significant degree on fostering a political and social climate that allows and reinforces workplace action. Political leaders, communications media and educational institutions each have key and highly influential roles in shaping or modifying public attitudes regarding discrimination. Key areas include the following:

1. Opinion shaping efforts by political leaders
2. Role of communications media.
3. Public education campaigns
4. Curricula for schools and universities
5. Research

VI. International Standards and Programmes

International standards, recommendations, mechanisms and services established by international inter-governmental institutions provide a comprehensive framework for and offer direct assistance with implementation of national and sectoral anti-discrimination measures. Relevant international resources include:

1. Conventions and treaty standards
2. Resolutions and recommendations adopted by inter-governmental bodies
3. Recommendations by international conferences
4. Rulings by international judicial bodies
5. Advisory functions of relevant international agencies
6. Training and capacity building offered through international agencies and other institutions

* * *

ENDNOTES

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⁵ Declaration on Racism, Discrimination, Xenophobia and Related Intolerance against Migrants and Trafficked Persons. Asia-Pacific NGO Meeting for the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance. Teheran, Iran. 18 February 2001

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⁷ Morrison, J. and Crosland, B. (2000) *The trafficking and smuggling of refugees: the endgame in European asylum policy*, New Issues in Refugee Research No.39, UNHCR, Geneva.

⁸ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized crime on the work of its first to eleventh sessions, U.N. Doc. A/55/383 (2000), Annex II, Article 2. Note that the force/coercion element does not need to be present for trafficking in children, the existence of an exploitative end-purpose is sufficient.

⁹ Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on the work of its first to eleventh sessions, UN Doc. A/55/383 (2000), Annex III, Article 2.

¹⁰ Nick Davies (1993) 'The Death Ship', *The Guardian* newspaper, 23 October 1993, London.

¹¹ See for example: Sarah Spencer (1994) in *Strangers and Citizens*, Spencer, S. [ed.], IPPR/Rivers Oram Press, London.

¹² Van Dijk, T. (1996) in *Racism and Migration in Western Europe*, Wrench, J. and Solomos, J. [eds.], Berg, Oxford, UK.

¹³ European Monitoring Centre on Racism and Xenophobia (1999) *Looking Reality in the face: The situation regarding Racism and Xenophobia in the European Community*, Annual Report for activities in 1998, EUMC, Vienna, Austria.

¹⁴ *Op. Cit.*

¹⁵ Migrants Rights International/NGO Working Group on Migration and Xenophobia: *Migration, Refugees and Xenophobia; a Global NGO Program of Action*. June 2001, available at www.migrantwatch.org or www.december18.net

¹⁶ See for example, Linard, Andre: *Migration and Globalisation - the New Slaves*. International Confederation of Free Trade Unions. Brussels. July 1998

¹⁷ Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination, adopted by UN General Assembly resolution 2106 A (XX) on 21 December 1965 and entering into force on 4 January 1969.

¹⁸ Subparagraph 2 of Article 1.

¹⁹ European Monitoring Centre on Racism and Xenophobia (1999), *ibid.*

²⁰ Summarized in “*Challenging Discrimination in Employment: A Summary of Research and a Compendium of Measures*” ILO, October 2000.

²¹ See F. Bovenkerk, M. Gras and D. Ramsøedh: *Discrimination against migrant workers and ethnic minorities in access to employment in the Netherlands*, ILO, Geneva, 1995; A. Goldberg and D. Mourinho: “Empirical proof of discrimination against foreign workers in labour market access”, in: A. Goldberg, D. Mourinho and U. Kulke: *Labour market discrimination against foreign workers in Germany*, ILO, Geneva, 1996; Colectivo IOE: “Discrimination against Moroccan workers in access to employment”, in: Colectivo IOE and R. Pérez Molina: *Labour market discrimination against migrant workers in Spain*, ILO, Geneva, 1996; M. Bendick Jr.: *Discrimination against racial/ethnic minorities in access to employment in the United States: Empirical findings from situation testing*, ILO, Geneva, 1997; B. Smeesters et A. Nayer (réd.) *La discrimination à l'accès à l'emploi en raison de l'origine étrangère: le cas de la Belgique*, ILO, Geneva, 1998.

²² Castles, S. and Davidson, A. (2000) *Citizenship and migration: Globalisation and the politics of belonging*, Macmillan, UK.

²³ UN Document, E/CN.4/2000/68.

²⁴ Wiessbrodt, David: “The Rights of Non-Citizens” Preliminary Study submitted to the 53rd session of the Sub-Commission on Promotion and Protection of Human Rights in accordance with Sub-Commission decision 2000/103 (July, 2001).

²⁵ For further discussion of the 1990 Convention and its entry into force, see *International Migration*; Quarterly Review Vol. 38 No. 6 Special Issue 3/2000, IOM; or its offprint titled *The Human Rights of Migrants* co-published in 2001 by IOM and United Nations.

²⁶ See Global Campaign website, at: www.migrantsrights.org