



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

**INFORMAL CONSULTATIONS ON
INTERNATIONAL DIALOGUE ON
MIGRATION**

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***“Human Rights and Migration: Working Together for
Safe, Dignified and Secure Migration”***

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1. This discussion note provides a brief summary of the substantive outcomes of the International Dialogue on Migration (IDM) in 2008 and information about the IDM for 2009. In view of the mandate in the IOM Constitution¹ and activity 7 of the IOM Strategy, IOM is also seeking the views of the membership on how best to serve it through the IDM and strengthen the IDM's effectiveness for the membership. A survey to this end will be provided at the consultation.

IDM 2008: Lessons learned on Return Migration

2. In 2008, the International Dialogue on Migration was guided by the overarching theme selected by the membership: **“Return Migration: Challenges and Opportunities”**. Two intersessional workshops were convened in 2008 based on the memberships' preferences: “Managing Return Migration” (21-22 April) and “Enhancing the Role of Return Migration in Fostering Development” (7-8 July).² High-level panel discussions were held in the framework of the IDM during the 96th Council Session³ on Return Migration, Migration Highlights of 2008, and on Mixed Migration Flows. Special focus was also given to World Migration 2008 and to a discussion with the Global Migration Group (GMG) on the implications of the financial crisis for migration and on the role and activities of the GMG more generally.

3. With reference to the overarching theme of the IDM 2008, the following represents a summary of **key policy principles on return migration** emanating from the discussions that have taken place during the course of the IDM 2008.

- (a) **Return migration is neither a secondary nor ancillary phenomenon, but rather an integral and crucial component of much international migration** and concerns nearly every State, albeit to differing degrees. Migration does not always and necessarily culminate in return, and where it occurs return may not be permanent. When and if return takes place is not always predictable, for governments or for migrants themselves. As a phenomenon, however, that can potentially have both positive and negative consequences for countries of origin, transit and destination, as well as for migrants and their families, return migration merits closer attention from various angles of policy making.
- (b) Most returns are “spontaneous”, whereby the migrant returns voluntarily and without the involvement of States or other national and international actors. However, there are many opportunities for governments and other partners to **manage and facilitate that process in order to allow migrants and societies to better plan for return and its**

¹ Article 1(1)(e).

² Workshop presentations, statements and background documentation are available on the IOM website (www.iom.int/idm). Additional information on these workshops can be found in the Discussion Note for the IDM Informal Consultations held on 23 October 2008 (IC/2008/6).

³ For details of the IDM sessions, panels and presentations at the 96th Council, please refer to the Draft Report of the 96th Council (Document MC/2266, forthcoming) and the IOM website (<http://www.iom.int/jahia/Jahia/policy-research/cache/offonce/pid/2034;jsessionid=4FCF7C54A0903BF16886B1A3C1F9FE0D.worker02>)

- impact.** To do so, migration management can factor in the possibility of return at all stages of the migration process.
- (c) **Including return migration in an overall comprehensive policy approach to migration** is crucial for both countries of origin and destination. Return needs to be balanced against other components of migration policy, including for example the availability of legal channels for labour migration to meet labour market demands. An effective, fair and transparent return policy also ensures the integrity of national immigration and asylum systems.
 - (d) **Human rights of migrants are an essential component to be safeguarded in the design and implementation of return migration programmes and policies.** While each State has the sovereign prerogative to regulate the entry, stay and exit of non-nationals, this prerogative must be exercised consistent with human rights standards. Effective respect and protection of human rights also involves taking into account the needs, vulnerabilities and gender-specific and family-related concerns of returnees. A return migration policy that is transparent, fair and predictable also needs to make migrants aware of their rights and responsibilities and ensure access to relevant recourse mechanisms.
 - (e) **Voluntary return is preferable over forced return** as it provides the greatest convergence of interests between the stakeholders involved. Successful assisted voluntary return and reintegration policies take into account the migrant's decision, can help avoid the legal and social stigma associated with forced return, consider the home country's reintegration capacity, help get migrants off to a good start back home and encourage returnees to make effective contributions in their country of origin.
 - (f) **Assisted Voluntary Return and Reintegration (AVRR) has proven an effective strategy to organize return** by supporting migrants from their departure from the country of destination through to their reintegration in the country of origin, whereby individuals receive counselling on their rights, responsibilities and options to enable them to make an informed decision and benefit from financial and/or logistical support from a State or other national or international actor. AVRR can be useful in cases where migrants may wish to return, even if not obliged to, but do not have the resources to do so. When stay is not or is no longer authorized, the access of migrants to AVRR can represent a more humane alternative to forced return.
 - (g) **Policy coherence between different spheres of policy-making is an important consideration.** Return migration is multifaceted, touching on areas such as international relations (e.g. through the formal and informal links that are established between countries through return flows and related bilateral agreements), economic and social development (e.g. through investments or start-ups and transfer of acquired resources), and culture (e.g. via a migrant's sense of belonging to the country of origin). Return migration's inextricable links with various policy areas imply the need for coherence between the different ministries of a government whose work may impact or be impacted by return migration.
 - (h) **Similarly, policy coherence is also relevant at various levels of policy making (local, national, regional and international).** For example, national policies and regional

mechanisms relating to migration and return need to be made compatible. National and regional policies also need to be consistent with international human rights standards. Furthermore, return policies in both countries of destination and origin would benefit from a complementary and mutually supportive approach.

- (i) One aspect of return migration is its potential to enhance home country development. **This necessitates creating a conducive environment for return and reintegration and opportunities for returnees to contribute to development.** The transfer of skills, know-how and technology, investment and entrepreneurship, and social, professional and scientific networks and joint human resource development are some of the ways in which returning migrants have furthered the development of their country of origin. It is important to note that while returnees can make valuable non-financial and financial contributions to development, these cannot and should not be considered as a substitute for development policies or foreign aid and the private nature of any returnee's assets should be respected at all times. Furthermore, whether the migrant has returned following a personal decision or was required to return is an important factor in the impact of return on development. As there is often a discrepancy between migrants' socio-economic profiles and the conditions they return to in the home countries, return and reintegration policies are most effective when they allow for nuanced responses to specific circumstances.
- (j) **Capacity is a prerequisite to developing and implementing effective and humane return policies, to maximizing its positive potential, including its development potential, and to minimizing its potentially negative impact.** Countries of origin, transit or destination may lack the financial, institutional or operational capacities as well as the human resources to deal with the multifold aspects of return migration. Furthermore, as accurate and comparable data supports effective policy making, States' capacities to collect, analyze and apply data may need to be built. Capacity and planning is particularly important to offset the strain that return, especially when taking place on a large scale, can place on a country's ability to reintegrate returnees economically and socially. Capacity building can be realized through active partnerships involving and drawing on the experiences and resources of all actors, States as well as international organizations, the private sector and NGOs.
- (k) **Equal partnership between countries of origin and countries of destination is the fundamental principle underlying effective, fair and transparent return migration policy.** Engaging in bilateral, regional and international dialogue can help countries of origin, destination and transit to build partnerships and cooperatively design and implement effective and coherent return migration policies. Countries can further benefit from multi-stakeholder partnerships that could also include migrants, international and civil society organizations, and the private sector.

IDM 2009: Human Rights and Migration: Working Together for Safe, Dignified and Secure Migration

4. Through the process of informal consultations and a follow-up survey, the membership has selected the overarching theme of “**Human Rights and Migration: Working Together for Safe, Dignified and Secure Migration**” to guide the IDM in 2009. Under this theme, the IDM will explore the “human dimension” of migration and ways to incorporate considerations of human rights, well-being, safety, dignity and security of individuals and communities into migration policies, legislation and programming. The discussions will draw on IOM’s research and programmes, of which human rights dimensions are an integral part, and will further pursue some of the issues that were raised during the IDM 2008. It will also build on IOM’s partnerships with other agencies active in this area, as well as on the discussions and outcomes of the 2008 Manila Global Forum on Migration and Development (GFMD), the theme of which was “Protecting and Empowering Migrants for Development”.

5. Also through the process of informal consultations and a follow-up survey, two intersessional workshops have been selected by the Membership and are planned for 2009, subject to available funding.

First Workshop: Effective Respect for the Human Rights of Migrants: A Shared Responsibility (25-26 March, 2009)

6. It is no longer disputed that migrants are entitled to human rights, regardless of their status. Nevertheless, the precise applicability and implementation of human rights in the context of migration merits discussion, as questions relate, inter alia, to the principle of non-discrimination in the context of migration and the need to reconcile the exercise of the sovereign prerogatives of States – including the right to regulate entry, exit and residence – with effective respect for the human rights of migrants. For this reason, this workshop will open with a brief overview of the principal global and regional human rights instruments relevant to migrants and consider the integration of human rights standards into national legislative frameworks, policy and programming on migration.

7. The workshop will then turn to the topic of the rights and responsibilities of migrants and societies. The relationship between migrants and States tends to be the focus of attention when discussing human rights, but interactions between migrants and their families, neighbourhoods, employers and wider communities in countries of origin, transit and destination are equally significant. Each of these relationships implies rights and responsibilities on the part of all those involved. The workplace, for example, is a major locus of a migrant’s engagement with society, with rights and obligations for States, employers and employees. Other arenas of interaction include access to health services, education for migrants and their families and matters of civic and political participation which may, for example, call for cooperation between countries of origin and destination or between national and local levels of government.

8. The workshop will examine the relationships between migrants and society in terms of the interplay of rights and responsibilities of all stakeholders, including migrants themselves, to ensure the protection of the human rights of migrants as well as the more general welfare of migrants and communities of origin, transit and destination. Some of these dimensions are directly underpinned by human rights provisions, while others require a range of legal, policy

and programmatic responses. Thus, while providing an overview of the relevant legal framework, the principal focus of the workshop will be on practical ways to give expression to the shared responsibility for protecting the human rights of migrants through multi-stakeholder partnerships.

Second Workshop: Trafficking and Exploitation of Migrants: Ensuring Protection of Human Rights (9-10 July, 2009)

9. Exploitation and abuse of migrants, and the particular case of trafficking in human beings, constitute gross violations of human rights. While important legal instruments already exist to address such violations, in particular with regard to trafficking, States and other relevant actors need to be alert to potential gaps in protection. Shortcomings may arise, for example, in the situation and protection of migrants to whom existing instruments do not apply, but who nevertheless find themselves in conditions of forced labour or other forms of exploitation and suffer human rights violations.

10. With regard to trafficking in human beings, the complex ramifications of the phenomenon and the legal, social and economic precariousness of the situation in which trafficked persons find themselves make the effective protection of human rights compelling, if also more challenging. While trafficking is often viewed in relation to organized crime and the challenge it poses to the State's regulation of its borders, it is important to bear in mind the centrality of human rights in addressing this issue. Moreover, there are considerable challenges with respect to the practical implications of anti-trafficking frameworks, relating in particular to the identification of trafficked persons. While the trafficking of women and girls for sexual exploitation has received much attention, identified cases of trafficking for other forms of exploitation such as forced labour as well as the trafficking of men and boys are significantly increasing. Without diminishing the gravity of trafficking for sexual exploitation and the importance and integrity of existing anti-trafficking frameworks, a comprehensive human rights approach would require legislative and policy responses that are nuanced and responsive to the humanitarian and protection needs of vulnerable migrants as a whole, rather than filtering people into administrative categories.

11. This workshop will consider the practical value of human rights in ensuring the safety, health and dignity of migrants who, through trafficking or otherwise, have become subject to danger, exploitation and abuse. While covering the basics of the current anti-trafficking framework and its operational challenges, the workshop will also take a fresh approach by situating trafficking within the wider context of irregular migration and forms of exploitation that do not necessarily meet the strict definition of trafficking. In searching for concrete ways to address the protection challenges relating to vulnerability, exploitation and abuse of migrants, the workshop will recognize the need for a multifaceted yet coherent approach in terms of legislation, policy and programming, involving a wide range of actors.

Funding approach

12. The Administration seeks funding on a yearly basis for the entire IDM workshop programme in order to use its human resources more rationally and cost-effectively and reduce operational costs. However, the Administration wishes to remain flexible in its fund-raising approach to take into consideration particular interests and priorities donors may have. For this reason, while the Administration encourages donors to support the IDM annual

programme as a whole, it also understands that some donors may wish to earmark their contribution to a specific workshop. A project document and two separate budgets have been developed and will be made available to the Membership at the informal consultations. The majority of the funding supports the participation of developing country officials from capitals that are their government's expert in the relevant subject matter, to permit them the opportunity to share their experiences with the full membership and benefit from the views and experiences of their counterparts in other governments as well as those of non-governmental partners.