

CHAPTER FIVE

A principled approach: Laws, norms and human rights

The legal and normative framework affecting international migrants should be strengthened, implemented more effectively and applied in a non-discriminatory manner, so as to protect the human rights and labour standards that should be enjoyed by all migrant women and men. Respecting the provisions of this legal and normative framework, states and other stakeholders must address migration issues in a more consistent and coherent manner.

1. International migration policies have traditionally been regarded as the preserve of states, exercising their sovereign right to regulate the entry of non-citizens into their territory. However, in exercising their sovereignty, states have long recognized the need for a broader approach – one which is based upon an agreed set of laws and norms, and which is intended to ensure that migration issues are addressed in a principled and predictable manner. More specifically, these laws and norms have three related functions: to establish the powers and obligations of states in controlling the arrival, residence and departure of migrants; to identify areas of migration policy in which states have agreed to cooperate with each other; and to specify the rights and responsibilities of migrants themselves. This penultimate chapter focuses primarily on the issue of migrant rights, while the final chapter examines the issues of interstate cooperation and the governance of international migration.

2. The legal and normative framework affecting international migrants cannot be found in a single document, but is derived from accepted customary law and a variety of binding global and regional legal instruments, non-binding agreements and policy understandings reached

by states at the global and regional level. Many elements of the framework are not migration-specific, but address broader questions of individual rights, state responsibility and interstate relations.

3. Signatories to the UN Charter, for example, agree “to employ international machinery for the promotion of the economic and social advancement of all peoples, to achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.” While they may be of a general nature, such principles have an evident relevance to the way that states address the issue of international migration.

4. While the legal and normative framework has a long history, recent years have witnessed a new degree of interest in its development. This interest has been generated by a number of related factors: the growing interdependence of states, the increased scale and complexity of human mobility, and the advocacy efforts of the human rights community.

5. The Global Commission on International Migration welcomes this new focus on the protection of human rights of migrants. If the international community is to formulate a coherent response to the issue of international migration, then it must derive from laws, norms and policy understandings that have the full support of states and other stakeholders. And those laws and norms must be respected. The main obstacle to the protection of migrant rights is not the absence of law, but the failure of states to respect those conventions, agreements and declarations that they have freely accepted.

The human rights framework

States must protect the rights of migrants by strengthening the normative human rights framework affecting international migrants and by ensuring that its provisions are applied in a non-discriminatory manner.

6. In the current international context, there is a particular need to ensure that people who are moving from one country to another are able to exercise the rights to which they are entitled under international law. Many migrant workers are at risk of exploitation and abuse because they have little power to negotiate their conditions of service and because too many employers and governments fail to respect internationally-agreed labour standards. In addition, the legitimate concern of states to combat international terrorism and to protect their citizens has meant that migrants have come under a new degree of surveillance, a situation that has some important human rights implications.

Components of the framework

7. As indicated earlier, the human rights framework has a variety of sources. In addition to the UN Charter, important provisions relating to migrant rights can be found in the Universal Declaration of Human Rights, in a number of UN human rights treaties and ILO labour conventions, as well the 1951 UN Refugee Convention and its 1967 Protocol, the 1963 Vienna Convention on Consular Relations and the two protocols on human trafficking and migrant smuggling of the UN Convention against Transnational Organized Crime, that came into force in 2003 and 2004 respectively.

8. Likewise, several regional human rights conventions, implemented by courts and commissions that can consider and determine both individual and interstate cases, have come into existence in recent years. Important efforts are also being made to develop global understandings on the issue of migration, both between states and amongst civil society and the private sector. These initiatives are examined in more detail in the following chapter.

Treaties and treaty bodies

9. The UN has established seven human rights instruments that are defined by the Office of the UN High Commissioner for Human Rights (OHCHR) as ‘core human rights treaties’. These include two general covenants to protect civil, political, economic, social and cultural rights, and five conventions that provide more specific protection against racial discrimination and torture and which safeguard the rights of children, women and migrant workers. Implementation is overseen by committees of independent experts, collectively known as treaty bodies. Six of these treaties have been ratified by between 135 and 192 states, while the 1990 Migrant Workers

Convention has as yet only 30 parties. All states, therefore, are bound, through ratification, by at least one of the seven core human rights treaties. Further details of these ratifications can be found in Annex III.

Human rights treaties

The most important basis for the legal and normative framework affecting migrants is to be found in the Universal Declaration of Human Rights and seven UN human rights treaties which give legal effect to the rights in the Declaration: the 1965 International Convention on the Elimination of All Forms of Racial Discrimination; the 1966 International Covenant on Civil and Political Rights; the 1966 International Covenant on Economic, Social and Cultural Rights; the 1979 Convention on the Elimination of All Forms of Discrimination against Women; the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the 1989 Convention on the Rights of the Child, and the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

10. These human rights instruments are universal in their application and apply generally to migrants as well as to citizens. The Commission underlines the importance of this international treaty framework as the fundamental basis of migrant rights. It urges states to strengthen this framework and to ensure that its provisions are applied in a non-discriminatory manner. The Commission has collected considerable evidence that states which have ratified international and regional human rights treaties do not always respect them in practice and do not apply them in an equitable manner to international migrants. For example, and as explained later in this chapter, migrant women engaged as domestic workers are not always adequately protected against abuse and sexual exploitation, and may

be obliged to give their passport to their employer, making it impossible for them to leave the country where they are working.

11. The Commission endorses the principle that entering a country in violation of its immigration laws does not deprive migrants of the fundamental human rights provided by the human rights instruments cited above, nor does it affect the obligation of states to protect migrants in an irregular situation. According to existing treaty and customary law, states have a minimum obligation to uphold the fundamental rights of all human beings, including the right to life and equality before the law, as well as protection against human rights violations such as slavery, prolonged arbitrary detention, racial discrimination and torture, as well as cruel, inhuman or degrading treatment. As a general rule, the provisions apply equally to citizens and non-nationals and to regular and other migrants, and therefore form an important component of the normative framework.

Articulating the legal and normative framework

12. As outlined earlier, the legal and normative framework affecting international migrants is dispersed across a number of treaties, customary law provisions, non-binding agreements and policy understandings. As a result, the provisions relevant to the protection of migrants' rights are not articulated in a clear and accessible manner; this has added to the difficulties of consistent implementation of the provisions and thus respect for migrants' rights. The Commission sees the value of articulating the legal and normative framework in a single compilation of all treaty provisions and other norms that are relevant to international migration and the human rights of migrants. The International Organization for Migration (IOM), which has initiated a

project to review the current state of international migration law, is well placed, in cooperation with other relevant bodies, to contribute to such a process.

13. This articulation exercise may contribute to more systematic government training in international law, and may become an integral element of capacity-building activities, thereby strengthening the respect for the human rights of migrants. It will also help to identify gaps in the legal and normative framework. An initial analysis undertaken by the Commission indicates that the framework is relatively well developed in relation to the issues of refugee protection and the suppression of human trafficking and migrant smuggling. International law is also robust in placing an obligation on states to permit the departure of their nationals and to readmit them when they seek or are obliged to return to their country of citizenship.

14. In other areas, however, the framework is less developed and has lagged behind the changing migration realities that are to be found on the ground. Three examples are the movement of people for the purpose of family unity, the issue of dual nationality and the regulation of private agencies that are involved in the recruitment and placement of migrant workers. The Commission recommends that states, regional bodies and relevant international organizations examine the potential for the development of common understandings or agreements on issues that are not well covered by the current legal and normative framework.

The 1990 Convention

15. The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families sets out in a single instrument the rights to which migrants are

entitled; most of these rights have already been accepted by states through their ratification of the six other core human rights treaties and ILO labour standards. The 1990 Convention, which came into force in 2003 and is at present ratified by 30 states, also includes important provisions relating to the prevention of irregular migration, the obligations of migrants and the role of inter-state cooperation in regulating the movement of people in a sound and equitable manner.

16. Although the Convention distinguishes between migrant workers with regular and irregular status, it protects the fundamental rights of all migrant workers. Most of the rights accorded to all migrant workers, including those without legal status, are fundamental civil and political rights, including freedom from torture and forced labour, the rights to life, due process, and security of the person, and freedom of opinion and religion. The Convention's provisions here mirror the language in the 1966 International Covenant on Civil and Political Rights.

17. Some economic, social and cultural rights are also afforded to all migrant workers, including emergency medical care, and access to education for children of migrant workers. But certain rights – such as family reunion – are given only to regular migrants, and the scope of trade union rights is made dependant on the legal status of the migrant worker. In a few instances, the Convention extends existing rights contained in other 'core' treaties; for example it grants migrant workers rights directly against their employers as well as against the state, and makes the unauthorized confiscation of passports and identity documents a criminal offence.

18. The Convention requires states to cooperate in measures for the orderly return of migrants with irregular status and other migrants, and in detecting, preventing and eradicating irregular

migration and the employment of migrants with irregular status. It states clearly that the Convention gives no right for workers with irregular status to regularize their status.

19. The UN Secretary-General has called on states to ratify the 1990 Convention. However, as indicated earlier, only 30 states – all of which are primarily countries of origin or transit – have at present ratified the treaty, ten of them after initial signing. Fifteen other states have signed, but as yet have not ratified the treaty. A number of reasons have been given for the decision by many states not to ratify, including the breadth and complexity of the 1990 Convention, the technical and financial obligations that it places on states that have ratified, as well as the view of certain states that it contradicts or adds no value to their own national migration legislation.

20. In addition, a number of countries have stated that they are unwilling to ratify the 1990 Convention because it provides migrants (especially those who have moved in an irregular manner) with rights that are not to be found in other human rights treaties, and because it generally disallows differentiation between migrants who have moved in a regular or irregular manner. Some states have also suggested that the non-discrimination provisions of the 1990 Convention would make it more difficult for them to introduce temporary migration programmes, in which participants are not granted the same rights as other workers.

21. States and civil society groups that support ratification claim that the arguments against ratification are based on a misunderstanding of the Convention. They argue that the Convention essentially brings together into a single text those rights which are contained in other core treaties, and which have already been ratified by a majority of states. They see the value of the

1990 Convention as deriving from its synthesis of existing rights, and its potential to give protection to a group of people who often find themselves in vulnerable situations, as well as from the role that it can play in strengthening the development of a rights-based approach to migration. While recognizing that the ratification process has been somewhat slow, proponents of this position also point out that few resources have been devoted to the promotion of the 1990 Convention and that the International Covenant on Civil and Political Rights, which is now widely ratified, took 10 years to enter into force. They further argue that the 1990 Convention may yet attract broader support in the years to come.

Complementary approaches

22. Given the decision of many states not to ratify the 1990 Convention, the Commission considers that there is a particular need for complementary approaches to the issue of migrant rights. First, and as recommended in the previous section, states must fully implement all provisions of the human rights instruments that they have already ratified, ensuring that those rights are accorded without discrimination to both citizens and migrants. They must also ensure that they fulfil their reporting obligations to the treaty bodies associated with these legal instruments.

23. Second, states should implement the trafficking and smuggling protocols of the UN Convention Against Transnational Organized Crime, which came into force in 2003 and 2004 respectively and which protect the rights of trafficked and smuggled migrants. States may be more willing to recognize and respect the rights to which migrants are entitled if they feel that they are able to control the arrival of non-citizens into their territory.

24. Third, there is an urgent need to fill the gap that currently exists between the principles found in the legal and normative framework affecting international migrants and the way in which legislation, policies and practices are interpreted and implemented at the national level. That task is examined in the following section.

State sovereignty and responsibility

All states must ensure that the principle of state responsibility to protect those on their territory is put into practice, so as to reduce the pressures that induce people to migrate, protect migrants who are in transit and safeguard the human rights of those in destination countries.

25. While the legal and normative framework of international migration may have evolved in recent years, many problems persist in the implementation of the principles to which states have formally agreed. To address this situation, the Commission calls upon states to heed the findings of the High-level Panel on Threats, Challenges and Change, which stated in its 2004 report to UN Secretary-General Kofi Annan that “in signing the Charter of the United Nations, States not only benefit from the privileges of sovereignty but also accept its responsibilities.” The Commission draws attention to some specific aspects of international migration in which states must make renewed efforts to discharge their responsibilities, and in which those states must be supported by means of capacity-building initiatives.

Countries of origin

26. First, as stated in Chapter One, states must strive to ensure that their citizens migrate out of choice, and not because they are unable to ben-

efit from safety, security or sustainable livelihoods in their own country. In too many parts of the world, migration has become a survival strategy, employed by people who are seeking a way to escape armed conflict, human rights violations, authoritarian and corrupt governments, as well as unemployment and poverty. Disadvantaged groups in society, such as women, ethnic minorities, indigenous and stateless people, are often the most desperate to leave and are at most risk of finding themselves in the hands of traffickers and smugglers.

27. The Commission considers it essential for such abuses to be eradicated, and consequently calls upon states to respect human rights and the principles of good governance, to establish democratic processes and promote the empowerment of women. The Commission also urges states to uphold those provisions of the trafficking and smuggling protocols that emphasize the need to combat the root causes of these phenomena by alleviating poverty, underdevelopment and a lack of equal opportunities, and by paying special attention to economically and socially depressed areas.

28. The Commission urges countries of origin to take active responsibility for citizens who intend to migrate or who are already living abroad, including those who have migrated in an irregular manner. This objective can be assumed in a variety of different ways. Governments can provide prospective migrants, especially temporary contract workers, with orientation and training courses before their departure, so that they have a better understanding of their rights and obligations and are better equipped to cope with the experience of working in a foreign country.

29. Countries of origin should also license, regulate and, when necessary, prosecute unscrupulous recruitment agencies, so as to ensure that

migrants are not given misleading information or exposed to exploitation. They can also enter into bilateral agreements in order to establish clear understandings with destination countries on the working and living conditions granted to their own citizens.

30. The Commission commends those countries which have appointed consular staff and labour attachés to monitor the welfare of citizens working abroad, to ensure that they have access to legal representation and, when necessary, to intercede on their behalf with the authorities and employers. The Commission recommends that ILO assumes responsibility for preparing and disseminating a compilation of effective practices in this area, thereby encouraging their replication by other countries.

Border control and international protection

31. Second, while fully recognizing the right of states to control their borders and to protect the security of their citizens, the Commission calls upon governments to ensure that their efforts to attain these objectives are aligned with their responsibility to uphold the human rights of people who are moving across international borders. As stated in Chapter Three, there is a particular need to ensure that victims of persecution have access to the territory of other states and are able to enjoy international protection in those states.

32. In accordance with the binding principle of *non-refoulement* (which prevents states from returning people to countries where their life and liberty would be at risk) it is also essential to ensure that such individuals are not returned to countries where their life or liberty would be put at risk. In this respect, the Commission calls upon states to implement UNHCR's 'Agenda for Protection', especially the provisions of the

chapter entitled 'Protecting refugees within broader migration movements'.

Transit countries

33. Third, the Commission observes that relatively little attention has been given to the responsibility of states to safeguard the rights of people who are moving across their territory, on their way to another country or continent. In view of the increasingly long and complex routes taken by international migrants, as well as their increased reliance on smugglers and traffickers, there is a need to focus additional attention on this issue.

34. As a general principle, the Commission affirms that the obligation of a state towards the migrants (with both regular and irregular status) on its territory is in no way diminished by the fact that those migrants plan to move on to another country. In such cases, states have a duty to protect the fundamental rights of all transit migrants, including the principle of *non-refoulement*.

35. Protecting migrants in transit countries generates two specific problems. On one hand, such countries often have an interest in the departure of those migrants who are crossing their territory, and they may consequently have little interest in providing transit migrants with any facilities or services that would provide them with an incentive to stay. On the other hand, many of the world's most important transit countries are relatively poor and lack both the experience and capacity to deal with this form of migration.

36. Protecting transit migrants must be recognized as an international responsibility, and resources need to be mobilized on a multilateral basis in order to support capacity-building efforts in the countries concerned. Such efforts

should be directed towards improvements in border controls, combating smuggling and trafficking and, in appropriate cases, facilitating safe and dignified return to countries of origin.

37. At the same time, individual states must protect the rights and welfare of transit migrants. States should, for example, provide assistance to migrants who are stranded in a country of transit, ensure that migrants who intend to claim refugee status have access to effective asylum procedures, and find interim solutions for transit migrants who do not qualify for refugee status, but who nevertheless cannot be returned to their country of origin.

Destination countries

38. Fourth, the Commission urges all states, including both developed and developing countries, to discharge their responsibility to protect migrant rights by means of national legislation, policies and practices, and by ensuring that those laws and policies are consistent with the international treaties they have ratified.

39. It would be highly misleading to give the impression that international migrants are invariably or inevitably mistreated once they arrive in their country of destination. The Commission has encountered numerous examples of good practice in this area, and urges states and international organizations to ensure that such examples are documented, disseminated and replicated in other countries.

40. Even so, the Commission has been concerned to hear of the extent to which migrants are at risk of discrimination and exploitation by: border guards, police officers, local authorities, landlords, recruitment agents, employers, members of the host society and more powerful individuals within their own community, as well as

smugglers and traffickers. Migrants who are unskilled, who are illiterate and who have moved in an irregular manner are especially vulnerable to human rights violations, partly because they are less likely to be aware of their rights and partly because they are unable or unwilling to bring abuses to the attention of the authorities.

41. As suggested in Chapter Four, when migrants arrive in a country, they should be provided with a comprehensive and written statement of their rights and obligations, so that they are fully informed of their entitlements. While some destination countries may wish to develop such a statement on a national basis, the Commission considers that the principal international organizations dealing with migrant rights could cooperate in the formulation of a standard text for the use of states that lack the capacity to develop such a document.

42. To prevent human rights violations from occurring, the Commission considers it essential for states to ensure that national labour laws and standards apply to migrants as well as citizens. Regrettably, this is not currently the case in many countries. The Commission also urges states to pass and implement legislation that specifically protects migrants from discriminatory behaviour and which gives them access to effective remedies when violations take place.

43. Relevant government officials should be provided with cultural, anti-racist and gender-sensitive training on migrant rights, while employers should be held to account for the conditions they offer to migrant workers and other employees by means of effective labour inspection systems and judicial processes. Appropriate legislation is also required to remove the incentive for employers to engage migrants with irregular status and for such migrants to accept unauthorized work. International organizations

and bilateral donors have an important role to play in building the capacity required for these objectives to be achieved.

44. The Commission commends those destination countries that provide migrants with confidential channels (such as telephone hotlines) to submit complaints about their employers, offer shelter and social services to migrants who have been abused and give assistance to migrants wishing to return home because their rights have been violated. All states should consider the introduction of such measures.

45. The Commission considers it essential to ensure that migration issues are addressed by a wide range of governmental and non-governmental stakeholders. There is a particular need to ensure that labour, social welfare and justice ministries, as well as national human rights bodies, are fully engaged in monitoring and promoting the human rights of migrants.

Human trafficking

46. Finally, and as explained in greater detail in Chapter Three, the Commission is especially concerned by the plight of people who are trafficked within and across international borders and underlines the need for this crime to be eradicated. Given the frequently transnational nature of the phenomenon, there is a particular need for cooperation between countries of origin, transit and destination, in order to prosecute the perpetrators, protect their victims and eliminate the demand for their services.

The rights and labour standards of migrant workers

Governments and employers must ensure that all migrants are able to benefit from decent work as defined by the ILO and are protected from exploitation and abuse. Special efforts must be made to safeguard the situation of migrant women domestic workers and migrant children.

47. As explained in Chapter One, recent years have witnessed a number of significant changes in the global economy: increased competition between different countries and enterprises; the deregulation of labour markets and the introduction of more flexible working practices, as well as the growth of sub-contracting and the expansion of the informal sector. These developments have important implications for the growing number of migrants looking for work outside their own country.

48. While states continue to play an important role in the establishment of labour migration programmes, migrant workers are increasingly engaged by private recruitment agents, brokers and gangmasters. While some agents maintain high professional standards and are closely regulated by the countries in which they operate, that is by no means always the case.

49. Once migrant workers arrive in their country of destination, many, especially those who have moved in an irregular manner, find themselves working in insecure and low-status jobs that nationals refuse to do for the wages on offer. In some situations, migrants may have to contend with an employer who exploits them and a state that is unable or unwilling to protect them. This is particularly likely to be the case in developing countries where large numbers of nationals are unable to find dignified and adequately paid work and where child labour is common.

50. In such situations, migrant children who are obliged to enter the labour market are likely to find themselves working in particularly difficult and dangerous conditions and for very low wages. The Commission urges states, almost all of which have ratified the Convention on the Rights of the Child, to eradicate such practices.

51. Another group of migrants requiring special attention are female domestic workers. Many of these women migrate alone and leave their children behind in their country of origin, which can be a traumatic experience for both the women and their families. According to the UN Special Rapporteur on Violence Against Women, once they have reached the home of their new employer, such migrant women are often engaged “in poorly remunerated labour that isolates them and places them in a subordinate position in a private realm, exposing them to the expropriation of their economic gain.”

52. According to evidence collected by the Commission, migrant women who are employed as domestic workers are sometimes hired without written contracts or with contracts in languages they cannot understand. Their passports may be retained by their employer or recruitment agent. In some situations they are denied any free time and are forbidden from leaving their place of work without the permission of the household that employs them. They may also be subjected to physical, psychological and sexual abuse.

53. The Commission urges governments to ensure that employers provide migrant workers with contracts that conform to international labour and human rights standards and which are written in their own language. Employers who fail to issue such contracts or who violate their provisions must be held to account for their actions.

54. Migrant associations, trade unions, other civil society institutions as well as local and international human rights organizations all have an important role to play in identifying situations involving the abuse of migrant workers, and bringing those situations to the attention of national authorities and the international community. Such organizations also have an important role to play in the empowerment of migrant women, by means of information, education and literacy programmes, as well as the establishment of migrant women’s associations.

Decent work

55. Significantly, most of the countries where migrant rights are frequently violated are member states of the ILO and are bound by that organization’s 1998 Declaration on Fundamental Principles and Rights at Work, an important but somewhat neglected component of the normative framework.

56. The Commission fully endorses the 1998 Declaration and underlines the need for the international community to ensure that all employees, migrants and non-migrants alike, are able to enjoy what the ILO describes as ‘decent work’, which takes place “under conditions of freedom, equity, security and dignity, in which rights are protected and adequate remuneration and social coverage are provided.”

57. To ensure that this objective can be attained, the Commission calls upon all governments, employers and trade unions to support the implementation of the ILO’s 2004 Plan of Action for Migrant Workers, including the formulation of a “non-binding multilateral framework for a rights-based approach to labour migration, taking account of national labour market needs.”

The role of the United Nations

The human rights component of the UN system should be used more effectively as a means of strengthening the legal and normative framework of international migration and ensuring the protection of migrant rights.

58. Responsibility for the legal, normative and human rights dimensions of international migration is rather diffused within the UN system. The ILO focuses exclusively on the situation of migrant workers, and does not have the operational capacity to monitor the conditions of migrants at a local level. UNHCR's involvement in this area is largely confined to the protection of refugees and asylum seekers, while the Office of the UN High Commissioner for Human Rights supports the treaty bodies and the work of the UN Special Rapporteur on the Human Rights of Migrants, including the protection of smuggled and trafficked migrants, and promotes ratification of the 1990 Convention. UNESCO, UNFPA and the UN Office on Drugs and Crime also have specific interests and activities in the domain of international migration. The International Organization for Migration (IOM) is not a UN body, and while one of its aims is to ensure the pursuit of 'humane and orderly' migration policies, it does not have a formal protection mandate.

The human rights component of the UN system

59. The Commission recommends that a number of steps be taken to strengthen the capacity of the UN and its member states in relation to the protection of migrant rights. First, the Commission welcomes the Secretary-General's proposals, in his report 'In Larger Freedom', to reform the Commission on Human

Rights and human rights treaty monitoring procedures, and to coordinate the reports of the different treaty monitoring bodies. It would be useful for the treaty monitoring bodies to have greater expertise in the area of international migration and to more consistently share the information they collect on the human rights of migrants. Also, the treaty monitoring bodies have themselves been chronically under-funded, and the Commission urges states to provide the resources needed for them to function effectively.

60. Second, the Commission calls upon states and other stakeholders to offer strong support to the work of the UN Special Rapporteur on the Human Rights of Migrants, a position created in 1999. The Commission commends the Special Rapporteur for paying attention to the rights of the most vulnerable migrants: women, children, and the victims of smuggling and trafficking, as well as for communicating and intervening with states with respect to the rights of migrant workers. The Commission encourages other UN Special Rapporteurs with relevant mandates to incorporate a focus on migrant rights in their work, thereby complementing and strengthening the activities of the Special Rapporteur on the Human Rights of Migrants.

61. Third, the Commission believes that the time has come to review the way in which states report on the implementation of the human rights instruments they have ratified. While the treaty bodies and the Special Rapporteur currently provide a service of this type, a more robust mechanism is required, not only requiring states to report on their performance, but also enabling them to request assistance from the UN and its operational agencies for capacity-building initiatives.

Capacity-building in UN Member States

62. It has become clear to the Commission that in some situations, states wilfully violate the rights of international migrants, in flagrant breach of the undertakings they have freely assumed. As stated earlier, in many other situations migrant rights can be undermined because the legal and normative framework affecting international migrants is not well articulated, because representatives of the state are unfamiliar with the framework, do not understand its implications and do not know how to put it into practice or monitor its implementation. In this context, states that have ratified the 1990 Convention may also find that this treaty is a useful instrument to foster awareness of migrants' rights and to build national capacity for the formulation and implementation of migration policy.

63. A coordinated and integrated approach to capacity-building in UN Member States is now required, in order to ensure that those countries can fully implement the provisions of the legal and normative framework affecting international migrants. This approach must combine the legal, operational and protection expertise of UN bodies and other agencies, including IOM, and should be supported by regional bodies and regional consultative migration processes. The following chapter, which focuses on the governance of international migration, makes some specific proposals with respect to the issue of coordination.