



MIGRATION MANAGEMENT AND HUMAN RIGHTS

Kristina Galstyan



IOM International Organization for Migration
OIM Organisation internationale pour les migrations
OIM Organización Internacional para las Migraciones

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This Study consists of two main parts, both of which include inserts with additional information.

Part One explores the interrelationships among migration, development and human rights in general and notes the instruments available for protecting international migrant rights.

Part Two describes the current state of migrants' rights in Armenia and examines how well migrants' rights are reflected in Armenia's migration policy.

Since it is not possible to address all the issues in detail, footnotes contain substantial references to relevant literature and internet sources. The main text is also accompanied by boxes with important information on separate sub-topics related to issues of migrant's rights and migration management.

Foreword

The publication you hold in your hands is the first attempt to assess the state of the arts of migration management in Armenia through the prism of migrants' human rights.

It is IOM's approach that orderly and humane management of migration is recognized today as a prerequisite for migration to be beneficial to both societies and migrants. In pursuing this objective, States have the responsibility to protect the rights of migrants and nationals, and to take into consideration the interests of both, within the parameters set by international principles, standards and norms. The study was prepared on the eve of development of the first comprehensive Strategy for State Regulation of Migration in Armenia and it is natural that many of the recommendations of the study have already been reflected in the "Concept for the Policy of State Regulation of Migration in the Republic of Armenia" adopted on December 30, 2010. The study is instrumental in the process of drafting the national plan of action of migration management in Armenia and will thus contribute to the development of a migration policies, which will safeguard respect for the rights of the individual, while also upholding the State's interests, and at the same time harness the development potential of the migration process and build mechanisms guaranteeing that both the State's economy and the migrants themselves benefit from the migration process.

An abridged version of the booklet became Chapter 3 ("Chapter on Migration Management and Human Rights") to the 2009 Armenia National Human Development Report entitled "Migration and Human Development: Opportunities and Challenges."

By representing the various aspects of international migration law and migrants' rights that should be taken into consideration by the State and the society to manage migration, the study plays an important role in drawing the attention of the Government and the public to the gaps in migration management to be addressed in Armenia and the need to view the migrants as a separate group in terms of protection of their rights.

The main findings of the study include recommendations to accede to the main migrant's rights conventions; to properly address the migrant's human rights and apply a migrant's-rights-centered approach in the migration policy; to increase the Government's role and administrative capacity in managing migration and protecting the rights of migrants in Armenia and the rights of Armenian emigrants abroad (through bilateral and multilateral agreements on facilitated labour migration schemes, institution of labour attaches; by involving the Diaspora); to start collecting and analyzing data on cases and types of violations of migrants' rights and base the country's migration policy on migration statistics; to increase the knowledge and information among the government officials, the migrants and the public at large.

We would like to welcome the thorough research and sound recommendations made by the author and hope that thanks to the study migration policy development in Armenia will be comprehensive and migrants-rights centered.



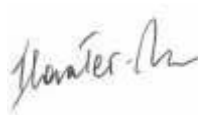
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Part One. Migration Management and Human Rights

1.1. The Migration Management System: its Goal, Objectives and General Structure

According to UN data, the number of international **migrants** in the world has now reached almost 191 million¹ – a figure that constitutes three percent of the world's population. Never in the history of mankind, it seems, have people been so mobile. Indeed, international migration flows are presently growing at an annual rate of 2.9 per cent.² Due to these contemporary trends in international migration,³ the phenomenon is not only having a significant impact on the economic and social life of states but is also now a subject at the top of the agenda of many leading international bodies. Today, various issues related to people's mobility and international migration are regularly discussed by governments, inter-governmental and non-governmental organizations within the framework of the International Dialogue on Migration initiated by the International Organization for Migration (IOM).

Since **migration** is a complex and interdisciplinary phenomenon with many facets – economic, social, demographic, political,

¹ UN DESA Population Division, *International Migration Report 2006: A Global Assessment*, available at: http://www.un.org/esa/population/publications/2006_MigrationRep/report.htm.

² See the website of the International Organization for Migration: <http://www.iom.int/jahia/Jahia/about-migration/lang/en>.

³ “**Migration** is a process of moving, either across an international border, or within a State. It is a population movement, encompassing any kind of movement of people, whatever its length, composition and causes; it includes migration of refugees, displaced persons, uprooted people and economic migrants.” IOM, *International Migration law. Glossary on Migration* (2004).

security-related – it requires comprehensive regulation and management. Moreover, the international nature of migration raises the need for a global approach to migration management. Today, almost every state is, in one way or another, involved in the migration process, whether that is as a source, transit or destination country. The trans-border movement of people also greatly influences development patterns in the modern world. Presently, sixty per cent of all migrants⁴ live in the world's more developed countries, mainly in member states of the European Union (EU) and in the United States of America (USA).

Recent studies address the complex inter-relationship of migration, development and human rights.⁵ There is already broad recognition that migration has had a positive impact on development; indeed, there is a growing conviction that migration, if properly managed, can substantially contribute to the development of both source and destination countries. International migration can contribute to sustainable development by stimulating investments and remittances, transferring

⁴ UN DESA Population Division, *International Migration Report 2006: A Global Assessment*, available at: http://www.un.org/esa/population/publications/2006_MigrationRep/report.htm.

⁵ Ruhs, Martin, "Migrant Rights, Immigration Policy and Human Development." In *Human Development Research paper 2009/23* (2009); Global Migration Group, *International Migration and Human Rights. Challenges and opportunities on the Threshold of the 60th Anniversary of the Universal Declaration of Human Rights* (2008); Grant, Stefanie, *International migration and human rights. A paper prepared for the Policy Analysis and Research Programme of the Global Commission on International Migration* (2005); Bauböck, Rainer (Ed.), *Migration and Citizenship: Legal Status, Rights and Political Participation*, Amsterdam University Press (2007); Cholewinski, Ryszard, Richard Perruchoud, and Euan Macdonald (eds.), *International Migration Law: Developing Paradigms and Key Challenges*, International Organization for Migration / T.M.C Asser Press (2007); Piper, Nicola, "The "Migration-Development Nexus" Revisited from a Rights Perspective". In *Journal of Human Rights, 1475-4843, Volume 7, Issue 3*, Routledge, Taylor and Francis Group, (2008), Pages 282 – 298; Martin, Susan F. and Rola Abimourchad, *Promoting the Rights of Migrants. Working paper prepared for the Civil Society Days of the Global Forum on Migration and Development*, Manila (2008).

knowledge and experience and building diaspora networks.⁶ Various studies⁷ have also confirmed the positive impact of migration on the Millennium Development Goals (poverty eradication, empowerment of women, health improvement, environmental sustainability and development of global partnership). The favourable impact of migration on development, however, depends on the degree to which migrants are protected in source and destination countries. According to the United Nations Human Development Concept, people are the real wealth of nations and their human development is what will determine a country's economic development and other aspects of national life.⁸ In acknowledging people's well-being as the goal of development, human development is intrinsically linked with human rights and freedoms. Freedom is vital if rights are to be exercised, potential is to be realized, and choices and decisions are to be made; "human development and human rights are mutually reinforcing, helping to secure the well-being and dignity of all people, building self-respect and the respect of others."⁹ This complex interplay between **development, migration and human rights** implies the need for the active engagement and overall responsibility of the state, through transparent legislation, policies and procedures, as well as through inter-state collaboration, in order to safeguard migrants' rights (including political, civil, economic, social, cultural and labour rights) in all stages of migration movement, including the pre-migration stage, actual

⁶ International Organization for Migration, the Berne Initiative, *International Agenda for Migration Management. Common Understandings and effective practices for a planned, balanced, and comprehensive approach to the Management of Migration* (2005).

⁷ Usher, Erika for the International Organization for Migration, *IOM Migration Research Series No. 20. The Millennium Development Goals and Migration* (2005); Global Migration Group, *International Migration and Human Rights: Challenges and opportunities on the Threshold of the 60th Anniversary of the Universal Declaration of Human Rights* (2008); United Nations Population Fund, *International Migration and the Millennium Development Goals* (2005).

⁸ *The United Nations Human Development Concept*; see <http://hdr.undp.org/en/humandev>.

⁹ Ibid.

migration, departure abroad, employment, return and reintegration.^{10, 11}

Box 1. The International Organization for Migration

The International Organization for Migration (IOM) is an inter-governmental organization with 132 Member States and 17 Observer States (as of 2010). Established in 1951, IOM has become the principal intergovernmental organization in the field of migration. After half a century of worldwide operational experience, the Organization has assisted over thirteen million migrants.

IOM's structure is highly decentralized and service-oriented. Headquartered in Geneva, Switzerland, IOM currently operates in over 400 offices worldwide, managing more than 2,800 projects. IOM has 7,000 operational staff and an annual programme budget of over one billion US dollars.

IOM is committed to the principle that human and orderly migration benefits migrants and society. IOM works closely with governmental, intergovernmental and non-governmental partners, as well as the research community and the private sector, to help ensure the orderly

¹⁰ International Organization for Migration for the Global Forum on Migration and Development, *Protecting the Rights of Migrants – A Shared Responsibility*. A paper prepared for the Roundtable 1: Migration, Development and Human Rights (2008).

¹¹ It is worth mentioning that taking into consideration the link between human rights and development, the UN has developed a document entitled *The Human Rights Based Approach to Development Cooperation Towards a Common Understanding Among UN Agencies* in order to ensure that the programmes implemented by the UN Agencies advocate promotion of the human rights stipulated by international human rights treaties and that cooperation on development is guided by human rights standards and principles (i.e. the universality and inalienability of those rights, indivisibility, inter-dependence and inter-relatedness, non-discrimination and equality, participation and inclusion, accountability and the rule of law). *The Human Rights Based Approach to Development Cooperation Towards a Common Understanding Among UN Agencies* was adopted by the UN Development Group in 2003. This approach places human rights at the core of development cooperation and promotes the protection of human rights.

and humane management of migration, to promote international cooperation on migration issues, to assist in the search for practical solutions to migration problems and to provide humanitarian assistance to migrants in need, be they refugees, displaced persons or other uprooted people.

While not part of the United Nations system, IOM has Observer status at the United Nations and maintains close working relations with UN bodies and operational agencies.

IOM helps governments and civil society through:

- ☐ Rapid humanitarian responses to sudden migration flows
- ☐ Post-emergency return and reintegration programmes
- ☐ Assistance to migrants on their way to new homes and lives
- ☐ Facilitation of labour migration¹²
- ☐ Assisted voluntary return for irregular migrants¹³
- ☐ Training and capacity-building of officials
- ☐ Measures to counter trafficking in persons

IOM's activities also cover a wide range of areas:

- ☐ Migration and Development (Migration and Economic/Community Development; Capacity Building Through Qualified Human Resources and Experts)
- ☐ Migration Health (Migration Health Assessment; Migration Health Assistance and Advice; Post-Emergency Migration Health Assistance)
- ☐ Facilitating Migration (Labour Migration; Migrant Processing and Assistance; Migrant Integration)

¹² **Labour migration** is defined as the movement of persons from their home state to another state or within their own country of residence for the purpose of employment. Definition taken from: IOM, *World Migration 2008. Managing Labour Mobility in the Evolving Global Economy* (2008).

¹³ **Irregular migrant** is a person who, owing to unauthorized entry, breach of a condition of entry, or the expiry of his or her visa, lacks legal status in a transit or host country. The definition covers inter alia those persons who have entered a transit or host country lawfully but have stayed for a longer period than authorized or subsequently taken up unauthorized employment. IOM, *World Migration 2008. Managing Labour Mobility in the Evolving Global Economy* (2008).

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- ❑ Movement, Emergency and Post-Conflict Migration Management (Resettlement Assistance; Repatriation Assistance; Emergency and Post-emergency Operations Assistance)
- ❑ Regulating Migration (Return Assistance to Migrants and Governments; Counter-trafficking; Technical Cooperation on Migration Management and Capacity Building)
- ❑ Claims Programmes (German Forced Labour Compensation Programme; Holocaust Victim Assets Programme; Iraqi Property Claims Programme; Humanitarian and Social Programmes)
- ❑ General Programmes (Migration Policy and Research; Stranded Migrant Facility; International Migration Law)

IOM activities that cut across these areas include the promotion of international migration law, policy debate and guidance, protection of migrants' rights, migration health and dealing with the gender dimension of migration.

Promoting respect for human rights through IOM activities is a component of IOM's overall Strategy. In order to streamline the organization's work in the promotion and implementation of international migration law, IOM has established a Department of International Migration Law and Legal Affairs (IML). It seeks to promote awareness and understanding of international migration law, works with governments in developing migration legislation in accordance with international migration law and seeks to promote respect for human rights of all migrants through its capacity building activities. The regular tasks of IML include: advice on matters of international migration law and input into the development of national migration legislation; an annual advanced training course on International Migration Law for government officials, lawyers, graduates and representatives of non-governmental organizations; training and capacity building for governments, civil society and IOM staff; various research activities and the compilation of migration law at the international, regional and national level for inclusion in the Migration Law Database.

Box 2. The World Migration Report (2008)

In order to promote better understanding of migration issues, the International Organization for Migration (IOM) conducts research on various aspects of migration. IOM's worldwide research activities encompass several migration management topics, including migration trends and data, international migration law, migration and development, health and migration, counter-trafficking, labour migration, trade, remittances, irregular migration, integration and return migration. A major publication on migration trends and data, the biennial World Migration Report, provides an overview of major migration trends and policy issues around the globe and features the latest trends in international migration, as well as regional insights into developments in Africa, the Americas, Asia and Europe. The 2008 edition of the World Migration Report¹⁴ focuses on the mobility of people in today's evolving global economy. It reveals policy findings and suggests practical steps towards making labour migration more effective and equitable and maximizing the benefits of labour migration for all stakeholders concerned. The report also analyses migration flows, stocks¹⁵ and trends, and surveys current migration developments in the major regions of the world.

According to the Report, people are becoming increasingly mobile within and across borders as they attempt to meet the social and economic challenges of globalisation by seeking employment – it is this process that is at the heart of most movement in the twenty-first century. The Report argues that demands for increased efficiency in production in response to fierce global competition has meant that workers, regardless of their geographical location, are increasingly living in an inter-connected world of work, which results in greater

¹⁴ “World Migration 2008. *Managing Labour Mobility in the Evolving Global Economy*” (2008).

¹⁵ **Migrant stock** is the number of migrants residing in a country at a particular point in time. IOM, “*International Migration law. Glossary on Migration*” (2004). International migrant stock is the number of people born in a country other than that in which they live, including refugees. United Nations Population Division, “*Trends in Total Migrant Stock: 2008 Revision.*”

labour mobility. Thus, the formulation of workable approaches to the management of international migration is one of the greatest challenges for the international community. The key choices it has made in order to facilitate the development of the global economy – i.e. allowing free movement of capital, goods and services – have led to an unprecedented level of human mobility on a global scale.

The report predicts that the pressures connected with labour mobility are set to increase in a world where industrialized countries, already competing for highly skilled migrants, are also in short supply of much needed, though often less accepted, low and semi-skilled workers. This has been largely due to an increasing scarcity of local workers available or willing to engage in low or semi-skilled employment such as agriculture, construction, hospitality or domestic care.

It further predicts that within the next 50 years these countries will experience even greater shortages as birth rates fall, leaving twice as many people over 60 years of age than children. Also, the current imbalance in the global labour force supply is expected to worsen, according to the report. Demographic trends show that without immigration, the working age population in developed countries is expected to have declined by 23 per cent by 2050. During this time, the working age population for Africa alone is expected to triple, from 408 million in 2005 to 1.12 billion, while another study claims that China and India are likely to account for forty per cent of the global workforce by 2030.

Although job creation at home remains a priority, the IOM report stated that an increasing number of governments are contemplating the strategy of seeking opportunities for their workers on the international labour market in order to help develop their countries.

Countries should have planned and predictable ways of matching labour demand with supply in safe, legal and humane ways to ensure the fundamental human security of migrants through better economic and social protection in work and in life and to reduce irregular migration flows.

Meanwhile, the challenge for developed countries will be to adopt planned yet flexible “front-door” labour migration policies that meet their own individual labour and skills needs.

The main findings of the Report are as follows:

1. In its many and varied forms, human mobility within and across borders is one of the characteristic and perhaps even defining features of our contemporary world. To a large extent, it is both part and consequence of the complex and interacting social and economic processes involved in the phenomenon of globalization.
2. People seek to move for a variety of personal, family, social, business or work-related reasons, often in various combinations, but the opportunities to move are frequently limited, particularly for low and semi-skilled workers.
3. In view of the choices made by the international community to facilitate the movement of capital, goods and services, human mobility or, more specifically, the movement of human resources, at all skill levels, is now being increasingly factored into the equations intended to yield new economic gains. In other words, labour market dynamics are increasingly operating across international borders.
4. The policy implications of this gradually evolving situation are yet to be fully understood, but it is already apparent that avoiding the issue, ignoring this trend or a passive laissez-faire approach are unlikely to lead to the policy stances needed to realize the social and economic potential of mobility.
5. What is required, therefore, are planned and predictable ways of matching demand with supply in a safe, legal, humane and orderly manner. Given the diversity of labour market needs and of available skills, policies and procedures will have to display commensurate flexibility and adaptability to enable modes of labour mobility that may be short-term, circular, long-term or permanent.
6. Countries of origin and destination are increasingly engaged in the formulation of policies to meet their particular labour mobility objectives, namely, to train and prepare migrant workers for employment abroad on the one hand, and to identify labour market needs and seek recruitment of appropriate personnel on the other. Optimal outcomes will be achieved when the two sets of policies are complementary and mutually supportive elements of a coherent whole, directed towards the achievement of mutual development

goals. To be successful, more cooperative approaches to human resource development are needed in order to meet national, regional and global objectives. Policies and appropriate means are also needed in order to secure the participation of non-state stakeholders in this shared endeavour, including employers, recruitment agencies, trade unions, migrant and Diaspora associations, and relevant inter-governmental organizations.

7. This calls for the identification and development of clear linkages between the domains of migration proper and those of development, employment and trade within the broader framework of established global economic interests.
8. To reach that objective, the international community must come to a common and accurate understanding of the many important issues at stake, including economic growth, managing social change while maintaining cohesion, upholding social justice and protecting the human rights of the workers concerned. This, in turn, will amply justify the maintenance and further development of consultations and cooperation at regional and global levels.
9. A closely related need is the enhancement of global, regional and national knowledge of labour market trends, labour force profiles and labour migration trends through the establishment of appropriate databases and analytical work.
10. Of relevance to all of the above is to identify the capacity-building needs of all governments, particularly those of developing countries, in terms of assessing levels of need, formulating policy and legislation, improving labour migration and related human resource development programmes through experimentation and innovation as well as monitoring and evaluating outcomes.

A new spirit of partnership in outlook and action is both possible and essential to realizing beneficial outcomes for the international community as a whole, including countries of origin, countries of destination and migrants and their families.

As different elements are present at various stages of the migration process, migration management needs to take into account those various elements and factors. The migration process begins with the impetus for migration (including root causes – the so-called ‘push and pull’ factors or whether it was forced or voluntary), and then moves through various stages of travel and entry (by regular or irregular means, facilitated or spontaneous), settlement and/or return, integration and/or reintegration and ultimately, in some cases, the acquisition of citizenship. Within this process there are a number of derivative relationships, including the potential contribution that Diaspora can make to the economic development of their countries of origin as well as a number of cross-cutting themes such as the protection and health of migrants.¹⁶

Migration management, as a component of public administration, should also be anchored in the principle of respect for human rights.

Migration management¹⁷ cuts across many spheres with linkages among policies that relate to the economy, social welfare, trade, labour, health and security. In addition, it must incorporate the rights and obligations of migrants and states at the national and international levels. This complex set of relationships highlights the need for a global understanding and approach to migration management that will take into account the relationship between migration and other contemporary issues of a social, economic and political nature like, for example, labour market developments,

¹⁶ Usher, Erica (Chief Ed.) for International Organization for Migration, *Essentials of Migration Management. A Guide for Policy Makers and Practitioners*. International Organization for Migration (2004).

¹⁷ “**Migration management**” is a term used to encompass numerous governmental functions within a national system for the orderly and humane management of cross-border migration, particularly managing the entry and presence of foreigners within the borders of the state and the protection of refugees and others in need of protection. It refers to a planned approach to the development of policy, legislative and administrative responses to key migration issues. See IOM, *World Migration 2008. Managing Labour Mobility in the Evolving Global Economy* (2008).

security concerns and evolving national identities. To this end, the IOM has proposed a **comprehensive conceptual model for migration management** (hereafter “the Model”). The Model consists of a carefully structured set of distinct but interdependent areas and components.¹⁸ According to the Model, migration is relevant to a wide range of state interests, objectives, policies and procedures. The interrelationships between various areas and components help to identify the role and contributions of ministries and agencies responsible for implementing the measures that make up a functioning migration management system. The Model represents a migration management system and provides the framework for the foundations, policies and operation activities of migration management. If the Model is put into a diagram form (see Diagram 1), the top level comprises policy, legislation, and administrative organization, which make migration management possible at the Government level. Those components of the Model cover the fundamental principles, directions and obligations of the four main areas of migration management. In turn, those four main areas have interconnections with numerous cross-cutting issues and activities that relate to one or more areas of migration management.

Policies ensure the State approach at the top level. Migration policies reflect national issues and, as a rule, derive from other elements of public policy and are interrelated with them (for example, labour market policies, foreign policy and demographic policies).

Legislation, an integral part of the migration management system, gives concrete expression to migration policy and provides authority for the measures required to manage migration, including recruitment and selection, authorization of entry, granting of residency, border inspections, responses to illegal entry and stay, as well as the removal of persons from state territory. Normative legal acts and procedural norms regulate the performance of the state officials in their duties. Through administrative organization, another element of the migration management system, various

¹⁸ Usher, Erica (Chief Ed.) for International Organization for Migration, *Essentials of Migration Management. A Guide for Policy Makers and Practitioners*. International Organization for Migration (2004).

functions involved in managing migration are assigned and coordinated within a coherent framework of operational responsibility and accountability.

The main goal of *migration and development* is to help harness the development potential of migration for individual migrants and societies.

The goal of *facilitating migration* is to safeguard and improve the ability of workers, professionals, students, trainees, families, tourists and others to move safely and efficiently between countries with minimal delay and proper authorization.

Under the Model, the goal of *regulating migration* is to help governments and societies know who is seeking access to their territories and to take measures that prevent access by those who are not authorized to enter. Replacing irregular flows with orderly and regular migration serves the interests of all governments.

The goal of *managing forced migration* is to help people escape danger during emergencies and to return afterwards. From that perspective, refugees and internally displaced persons constitute a special group and require special attention. Management of forced migration entails finding solutions for internally displaced persons, refugees, former combatants, victims of ethnic cleansing and people in transition or those recovering from damaged economies or environments.

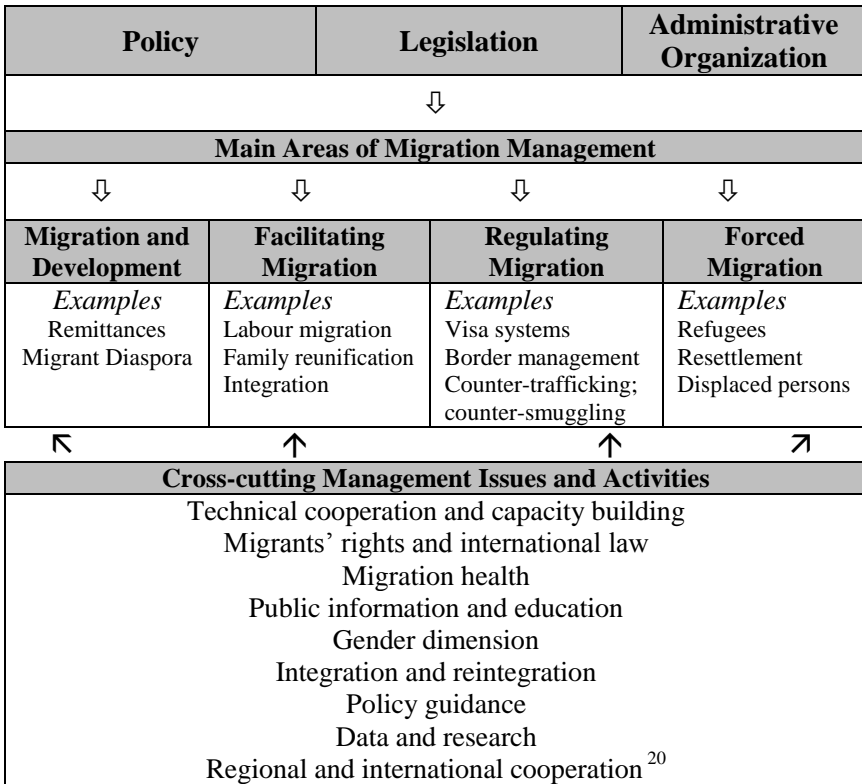
Given the complexities and varied linkages between sectors, many migration issues and management activities overlap and intersect, as can be seen from the illustration of the migration management framework in **Diagram 1** below.

The cross-cutting functions related to the four main areas outlined above are:

- Providing technical expertise and building staff capacity
- Promoting international migration law
- Protecting refugees' rights
- Providing migration policy recommendations and facilitating policy debate on migration,

- Cooperating at regional and international levels
- Collecting data and conducting research
- Conducting public awareness (information and education) campaigns
- Providing health services for migrants
- Responding to the gender aspects of migration
- Facilitating integration and re-integration¹⁹

Diagram 1. Managing Migration: a Conceptual Framework



¹⁹ Ibid.

Modern migration management aims at facilitation as well as control; states must have responsibilities as well as authority in migration matters. The relatively modest limits that regulate the exercise of state authority on migration are primarily a result of international conventions agreed to by a state, and the principles of customary international law. States, as a matter of policy rather than legal obligation, may, and usually do, choose to go much further than the minimum ‘obligations and standards’ required by international law.

A fundamental premise of national sovereignty is that a state has the power to determine which non-nationals it admits to its territory, remove non-nationals in certain circumstances, control its borders and take necessary steps to protect its security. **However, this power to manage migration has to be exercised with full respect for the fundamental human rights and freedoms of migrants that are granted under a wide range of international human rights instruments and customary international law.**²¹

International law now requires that states guarantee a range of civil and political rights, as well as basic economic, social and cultural rights, not only in regard to its nationals but for all persons within the jurisdiction of the state, including aliens and stateless persons.²²

It is worth noting at this point that the issue of **citizenship** is itself quite complex – today’s ‘global society’ has led to academic discussion and debate over terms and concepts such as “transnational citizenship,” “global citizenship,” “post-national citizenship” and “cosmopolitan citizenship” and thus whether

²⁰ Ibid.

²¹ Ibid.

²² According to the 1930 Hague Convention, “It is for each State to determine under its own law who are its nationals. This law shall be recognised by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognised with regard to nationality.” *The Hague Convention of April 12, 1930 concerning Certain Questions relating to the Conflict of Nationality Laws*.

human rights can be construed of as ‘universal citizenship’.²³ In many countries, migrants who lack citizen status account for a significant and growing part of these countries’ populations. However, as “semi-citizens,” “quasi-citizens” or “denizens,” they do not enjoy all the rights that the country’s citizens do. Moreover, states grant different rights to migrants with different statuses. Thus, migrants with residence status are granted all the rights enjoyed by the nationals of the given State bar the right to vote. The economic and social rights of temporary migrants are often limited, while irregular migrants in most countries have only a limited number of rights. Often the extent to which migrants’ rights are limited depends on migrants’ citizenship (for example, the European Union grants more rights to citizens of the EU member States than to citizens of non-member States) and on the purpose of residency (for example, employment, study, family reunification, asylum).

²³ Bosniac, Linda S., “Universal Citizenship and the Problem of Alienage” in *Northwestern Law Review*, Vol. 94 (2000), p. 963; Bosniac, Linda S., “Citizenship Denationalized” in *Indiana Journal of Global Law Studies*, Vol. 7 (2000), p. 447; Rubinstein, Kim, “Globalisation and Citizenship and Nationality” in Catherine Dauvergne, (ed.), *Jurisprudence For An Interconnected Globe*, Ashgate (2003); Bosniac, Linda, *The Citizen and the Alien*, Princeton and Oxford: Princeton University Press (2006); Bauböck, Rainer, *Transnational Citizenship. Membership and Rights in International Migration*, Edward Elgar Publishing, Aldershot (1994); Bauböck, Rainer, (ed.), *Migration and citizenship: Legal Status, rights and political participation* (2006); Falk, Richard, “The Making of Global Citizenship” in van Steenbergen, Bart (ed.), *The Condition of Citizenship*, London: Sage Publications (1994); Lagos, Taso G., *Global Citizenship – Towards a Definition* (2002); Sassen, Saskia, “Towards Post-National and Denationalized Citizenship” in Isin, Engin F. and Bryan S. Turner (eds.), *Handbook of Citizenship Studies*, New York: Sage (2003); Sassen, Saskia, “The Repositioning of Citizenship and Alienage: Emergent Subjects and Spaces for Politics” in *Globalization*, vol. 2(1): 79-94 (2005); Wind, Marlene, “Post-National Citizenship In Europe: The EU As a “Welfare Rights Generator?” in *The Columbia Journal of European Law*, Volume 15 (2009); Castles, Stephen and Alastair Davidson, *Citizenship and Migration. Globalisation and the Politics of Belonging*, New York: Routledge (2000); Hutchings, Kimberly and Roland Dannreuther (eds.), *Cosmopolitan Citizenship*, Palgrave Macmillan (1998); Hammar, Thomas, *Democracy and the Nation State. Aliens, Denizens and Citizens in a World of International Migration (Research in Ethnic Relations Series)*, Ashgate, Aldershot: Gower (1990).

For a long time, the main priority of state migration policy was to protect the interests of a state's nationals, which in many cases led to the negligence of migrants' rights. In recent years, however, there has been growing international recognition of the migration and human rights nexus through, *inter alia*, the adoption of a number of international treaties on migration matters and the creation of a **Special UN Rapporteur on the Human Rights of Migrants**.²⁴

²⁴ The mandate of the UN Special Rapporteur on the Human Rights of Migrants was created in 1999 by the Commission on Human Rights, pursuant to resolution 1999/44. The mandate of the Special Rapporteur covers all countries, irrespective of whether a State has ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 18 December 1990. The Commission requested the Special Rapporteur to examine ways and means to overcome the obstacles existing to the full and effective protection of the human rights of migrants. The main functions of the Special Rapporteur are: (a) To request and receive information from all relevant sources, including migrants themselves, on violations of the human rights of migrants and their families; (b) To formulate appropriate recommendations to prevent and remedy violations of the human rights of migrants, wherever they may occur; (c) To promote the effective application of relevant international norms and standards on the issue; (d) To recommend actions and measures applicable at the national, regional and international levels to eliminate violations of the human rights of migrants; (e) To take into account a gender perspective when requesting and analysing information, and to give special attention to the occurrence of multiple discrimination and violence against migrant women. While performing the above-mentioned functions, the Special Rapporteur on the Human Rights of Migrants: (a) sends, in response to complaints submitted or information provided to him / her about violations of migrants' rights, urgent complaints or communications to the States involved in the rights violations so as to draw their attention to the incidents and to demand an explanation; (b) visits, at the invitation of their Governments, various countries (on fact-finding missions) to study the situation with the Government's protection of human rights of migrants in a country in question. The Special Rapporteur submits his / her conclusions and recommendations as a Report to the Human Rights Council; (c) takes parts in conferences, seminars and other events on migrants' rights. The Special Rapporteur presents an annual report to the Human Rights Council about the global state of protection of migrants' human rights, his / her main concerns and the good practices he / she has observed. The Report contains information about communications sent by the Special Rapporteur to the Governments and about their responses. It also contains special recommendations that aim to improve protection of human rights of migrants. Upon the Council's request, the Special

The rights and obligations of migrants are one of the fundamental elements of migration management. Therefore, to ensure the maximum protection of migrants' rights within the framework of migration policy, it is necessary to have a clear idea of the nature and origin of the rights and obligations of migrants. To this end, it is important to find the balance between a framework of control and an approach to migration management in which human rights are a fundamental component. Balanced policy development will be guided by the principles of state authority, state responsibility and universal human rights.²⁵

Protection of migrants' rights is directly related to migration management and thus the latter should not be viewed outside that context; migration management must occur in the context of the fundamental dignity of a migrant – as reflected in state obligations in the field of human rights.²⁶

The basic rights, freedoms and obligations of a person form the basis of that person's legal status – they are the bare minimum of relations without which that person cannot act as a fully-fledged member of society. All migrants are human beings who possess fundamental and inalienable human rights and freedoms that are universally acknowledged in international instruments such as the Universal Declaration of Human Rights adopted by the United Nations General Assembly in 1948. Human rights must be guaranteed to all persons present in a state, including migrants. In addition, there are certain mobility-related rights that are particularly relevant in the migration context – for example, the

Rapporteur can submit reports to the UN General Assembly. Source: <http://www2.ohchr.org/English/issues/migration/rapporteur/>.

²⁵ Usher, Erica (Chief Ed.) for International Organization for Migration, *Essentials of Migration Management. A Guide for Policy Makers and Practitioners*. International Organization for Migration (2004). *Volume I*.

²⁶ "Statement by the United Nations Special Rapporteur on the Human Rights of Migrants Mrs. Gabriela Rodrigues Pizarro" in *International Dialogue on Migration. Fiftieth Anniversary of the International Organization for Migration. Eighty-Second Session of the Council 27-29 November 2001*, International Organization for Migration (2002).

right to freedom of movement, the right to seek asylum, the right to nationality and the right to family unity.

Human rights are to be applied without discrimination. While some human rights and freedoms are not absolute and can, in certain limited circumstances defined by law, be sidelined for reasons of state security, public order, public health or morals or the protection of the rights and freedoms of others,²⁷ fundamental human rights and freedoms such as the right to life and freedom from torture must never be suspended.²⁸

There is no single distinct category of “migration rights” within the larger body of rights that has been developed by the international community; rights that are relevant to migrants are drawn from human rights law, migrant workers law, refugee law and humanitarian law.

It is widely accepted that customary international law provides for **fundamental human rights** that are recognized by all states and binding upon them – regardless of whether or not such rights are prescribed in a written legal document. Such rights include the right to life, the prohibition of genocide, slavery/slave trade, torture or other cruel, inhuman or degrading treatment, prolonged arbitrary detention, systematic racial discrimination, the right to self-determination, the right to humane treatment as a detainee, the prohibition of retroactive penal measures, the right to equality before the law, the right to non-discrimination, the right to leave any country and to return to one’s own country and the principle of

²⁷ International Covenant on Civil and Political Rights, Article 12(3), 1966.

²⁸ According to the International Covenant on Civil and Political Rights the following non-derogable rights are considered absolute: freedom from torture and other cruel, inhuman or degrading treatment or punishment; Freedom from slavery and servitude; freedom from imprisonment for inability to fulfil a contractual obligation; Prohibition against the retrospective operation of criminal laws; right to recognition before the law. There are also non-derogable but not absolute rights (e.g. the right to life; the freedom of thought, conscience and religion), which may be subject to limitations. UN Human Rights Committee, “*General Comment No. 29: States of Emergency (article 4)*.” CCPR/C/21/Rev.1/Add.11, 31 August 2001.

non-refoulement.²⁹ Such rights apply to all people and thus no less so to all those involved in the migration process.

In emergencies, states can partially restrict certain rights and may treat nationals and non-nationals differently. Moreover, various international human rights instruments draw a clear-cut distinction between the rights of documented and undocumented migrants. Thus, a “hierarchy” of beneficiaries is established: nationals enjoy the full spectrum of rights; they are followed by aliens who are lawfully on state territory; and, finally, there are migrants in irregular situations. This is why irregular migrants are most in need of international protection.

There is no body of international law or customary law that governs the **obligations of migrants**. However, according to international law, migrants are required to comply with the national legislation of the host country. Policy makers need to recognize that longstanding and legitimate assumptions that migrants should integrate, learn the language and respect the culture of the host country are not legal obligations established by international law. While such expectations may be expressed in the context of a state’s requirements for entry or citizenship, there are no international instruments that translate these expectations into legal obligations. Of course, a state may create its own legislation to establish such obligations for migrants in its territory.³⁰ And to this end, migration policy should include a comprehensive program on the integration of migrants into state territory and secure appropriate funding for this.

²⁹ Perruchoud, Richard, and Shyla Vohra for the International Organization for Migration, *Identifying Core Rights of Concern to Migrants. Background paper for the Regional Consultation Group on Migration’s Seminar on Human Rights and Migrants*, International Organization for Migration (1998), p. 8.

³⁰ Usher, Erica (Chief Ed.) for International Organization for Migration, *Essentials of Migration Management. A Guide for Policy Makers and Practitioners*, International Organization for Migration (2004). *Volume I*.

1.2. Legislation on the Human Rights of Migrants

The protection of the rights of migrants, including irregular migrants, is based on international human rights treaties, especially a number of fundamental international and regional instruments on human rights, international treaties on the rights of refugees and stateless persons and international labour law and criminal law instruments. Thus, international treaties are the primary source of migrants' rights.

A particular right is often secured by international treaties depending on the category of migrants or the type of migration. Thus, the international treaties on the status of refugees define the rights of refugees. In their turn, the international treaties on migrant workers establish the rights of individuals working abroad, while international humanitarian law guarantees the rights of the civil population during an armed conflict.

The most important international human rights instruments from which **migrants' rights** are derived are listed below.

1. **The International Bill of Human Rights** is the cornerstone of laws on human rights.

1.1. The Universal Declaration of Human Rights³¹ was adopted and proclaimed by the UN General Assembly on 10 December 1948 by adopting Resolution 217 A (III). The Declaration is intended to be “a common standard of achievement for all peoples and all nations.” Its thirty Articles encompass a broad realm of human rights, including the right to life, liberty and security of person (Article 3), prohibition of slavery and the slave trade (Article 4), prohibition of torture or cruel, inhuman or degrading treatment or punishment (Article 5), provision that no one shall be held guilty of any penal offence on

³¹ Universal Declaration of Human Rights.

<http://www.ohchr.org/en/udhr/pages/introduction.aspx>;

<http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/043/88/IMG/NR004388.pdf?OpenElement>.

account of any act which did not constitute a penal offence at the time when it was committed (Article 11), protection against being subjected to arbitrary interference in regard to privacy, family, home or correspondence or to attacks upon a person's honour and reputation (Article 12), the right to freedom of movement and residence within the borders of each state and the right to leave any country, including one's own, and to return to that country (Article 13), the right to freedom of thought, conscience and religion (Article 18), and the right to freedom of opinion and expression (Article 19). Article 2 establishes the crucial principle of non-discrimination by stating that everyone "is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." It goes on to say that "no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs." This principle acquires great significance within the context of migration.

1.2. The International Covenant on Civil and Political Rights³² was adopted by UN General Assembly Resolution 2200A (XXI) of 16 December 1966 and entered into force on 23 March 1976. As of 2010, it has 167 State Parties. The Republic of Armenia acceded to the Covenant on 23 June 1993.

1.2.1. The First Optional Protocol to the International Covenant on Civil and Political Rights³³ was adopted by UN General Assembly Resolution 2200A (XXI) of 16 December 1966 and entered into force on 23 March 1976. As of 2010, it has 113 State Parties. The Republic of Armenia acceded to the First Optional Protocol on 23 June 1993.

³² United Nations, *Treaty Series*, volume 999, p. 171 and vol. 1057, p. 407.

³³ United Nations, *Treaty Series*, volume 999, p. 171.

1.2.2. The **Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty**,³⁴ was adopted by General Assembly Resolution 44/128 of 15 December 1989³⁵ and entered into force on 11 July 1991. As of 2010, the protocol has 73 State Parties. The Republic of Armenia has not yet acceded to this Protocol.

1.3. The International Covenant on Economic, Social and Cultural Rights³⁶ was adopted by UN General Assembly Resolution 2200A (XXI) of 16 December 1966 and entered into force on 3 January 1976. As of 2010, it has 160 State Parties. The Republic of Armenia acceded to the Covenant on 13 September 1993.

The goal of the two abovementioned Covenants is to make the rights proclaimed in the Universal Declaration of Human Rights legally binding. The covenants encompass a broad spectrum of rights and freedoms, which are guaranteed to all people, including migrants. Thus, important rights for migrants, such as the right to leave a country or enter their own country,³⁷ are secured. The Covenants are also important since the violation of the basic rights of a person or discrimination against a person often constitute one reason why that person leaves his or her native country; and, therefore, it is important to protect human rights and freedoms in the country of origin. No less important, of course, is the protection of human rights in transit and destination countries.

³⁴ United Nations, *Treaty Series*, volume 1642, p. 414.

³⁵ *Official Records of the General Assembly, Forty-fourth Session, Supplement No. 49 (A/44/49)*, p. 206.

³⁶ United Nations, *Treaty Series*, volume 993, p. 3.

³⁷ International Covenant on Civil and Political Rights, Article 12.

2. Other international human rights treaties include:

2.1. The International Convention on the Elimination of All Forms of Racial Discrimination³⁸ condemns “racial discrimination” as “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 an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life” (Article 1(1)). Article 5 of the Convention serves as an important guarantee for migrants. Even though Article 1(2) indicates that the Convention does not apply to distinctions or preferences made between citizens and non-citizens by a State Party to the Convention, Article 5 nevertheless states that State Parties undertake to guarantee everyone a number of important rights (i.e. the right to equal treatment before tribunals, the right to security of person, the right to participate in elections-to vote and to stand for election, the right to freedom of movement and residence within the borders of the State, the right to leave any country, including one's own, and to return to one's country, the right to nationality, the right to marriage and choice of spouse, the right to own property, the right to inherit, the right to freedom of thought, conscience and religion, the right to freedom of expression, the right to freedom of association, the right to work, to free choice of employment, to just and favourable conditions of work, to protection against

³⁸ United Nations, *Treaty Series*, volume 660, p. 195. The ICERD was adopted on 7 March 1966 by UN General Assembly Resolution 2106 (XX) of 21 December 1965 (see *Official Records of the General Assembly, Twentieth Session, Supplement No. 14 (A/6014)*, p. 47). The ICERD entered into force on 4 January 1969. As of 2010, ICERD has 174 state parties. The Republic of Armenia acceded to the Convention on 23 June 1993.

unemployment, to equal pay for equal work, to just and favourable remuneration, the right to form and join trade unions, the right to housing, the right to public health, medical care, social security and social services, the right to education, the right to equal participation in cultural activities and the right of access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafes, theatres and parks).

2.2. The Convention on the Elimination of All Forms of Discrimination against Women³⁹ was adopted by UN General Assembly Resolution 34/180⁴⁰ of 18 December 1979. It entered into force on 3 September 1981, and as of 2010 has 186 State Parties. The Republic of Armenia acceded to the Convention on 13 September 1993.

The Convention requires that States Parties take all appropriate measures, including legislation, to suppress all forms of traffic in women.⁴¹ Given the feminization of international migration, this Convention is vitally important in terms of protecting women from trafficking and protecting them, and female migrants in general, from discrimination.

2.3. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁴² was adopted by UN General Assembly Resolution 39/46⁴³ of 10 December 1984 and entered into force on 26 June 1987. As of 2010, it has 147 State Parties; the Republic of Armenia acceded to the Convention on 13

³⁹ United Nations, *Treaty Series*, volume 1249, p. 13.

⁴⁰ Resolution 34/180, *Official Records of the General Assembly of the United Nations, Thirty-fourth Session, Supplement No. 46 (A/34/46)*, p. 193.

⁴¹ Article 6.

⁴² United Nations, *Treaty Series*, volume 1465, p. 85.

⁴³ *Official Records of the General Assembly of the United Nations, Thirty-ninth session, Supplement No. 51 (A/39/51)*, p. 197.

September 1993. The Convention urges that torture and other forms of degrading treatment be eliminated at the global level and that the non-refoulement principle be applied when there are substantial grounds for believing that a person would be in danger of being subjected to torture in his or her country of origin.⁴⁴

2.4. The Convention on the Rights of the Child⁴⁵ was adopted by UN General Assembly Resolution 44/25⁴⁶ of 20 November 1989 and entered into force on 2 September 1990. As of 2010, it has 193 State Parties.⁴⁷ The Republic of Armenia acceded to the Convention on 23 June 1993. The Convention sets out criteria for the treatment of children under 18. Article 2 prohibits any discrimination: State Parties must respect and ensure the rights set forth in the Convention to each child within their jurisdiction, including to children of refugees and other migrants.

2.5. The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families⁴⁸ was adopted by UN General Assembly Resolution 45/158⁴⁹ of 18 December 1990 and entered into force on 1 July 2003. As of 2010, the Convention has 44 Parties. The Republic of Armenia has not yet acceded to the Convention. Information about this Convention can be found in **Box 3**.

⁴⁴ Article 3.

⁴⁵ United Nations, *Treaty Series*, volume 1577, p. 3.

⁴⁶ *Official Records of the General Assembly, Forty-fourth Session, Supplement No. 49 (A/44/49)*, p. 166.

⁴⁷ CRC was ratified by all UN member states except for Somalia and USA, as well by non-UN member states Cook Islands, Niue and the Holy See.

⁴⁸ United Nations, *Treaty Series*, volume 2220, p. 3; Doc. A/RES/45/158.

⁴⁹ *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 49 (A/45/49)*, p. 261.

Box 3. Human Rights of Migrant Workers: The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) is one of the main international legal instruments for protecting migrant's rights. Indeed, among all the relevant treaties, it offers the most comprehensive protection to migrants.

The treaty was developed based on current legally binding agreements, studies on human rights by the United Nations, the conclusions and recommendations of expert committees, and debates and resolutions within UN bodies about the migrant worker issue. The goal was to hammer out an instrument that would guarantee appropriate international protection of the rights of migrant workers and their family members.

The ICRMW emphasizes the link between human rights and migration and sets minimum standards for individual states' legislative, judicial and administrative procedures. The Governments of the State Parties undertake to apply the Convention's provisions by adopting the measures needed to ensure that migrant workers are able to seek legal remedy if their rights are violated. The minimum standards set by the ICRMW should apply to all migrant workers and members of their families irrespective of their sex, race, colour, language, religion or religious convictions, political or other opinion, national, ethnic or social origin, age, economic position, marital status, birth or other status, including their migratory status. The Convention seeks to prevent and eliminate the exploitation of migrant workers throughout the entire migration process (preparation for migration, departure, transit, the entire period of stay and remunerated activity in the State of employment as well as the return to the State of origin or the State of habitual residence) by providing a set of binding international standards to address the treatment, welfare and human rights of both documented and undocumented migrants,⁵⁰ as well as the obligations

⁵⁰ A documented migrant is a migrant who entered a country legally and remains in the country in accordance with his/her admission criteria. Undocumented migrant workers are migrant workers or members of their families, who are not authorized

and responsibilities of the sending and receiving States. In particular, it seeks to put an end to the illegal or clandestine recruitment and trafficking of migrant workers and discourage the employment of migrant workers in an irregular or undocumented situation.⁵¹

It is important to stress that the Convention recognizes the rights of irregular or undocumented migrants. It notes that cases of irregular migration present more serious problems and, therefore, the Convention encourages actions that will both prevent and eliminate the clandestine movement and trafficking of migrant workers and ensure the protection of their fundamental human rights.

The ICRMW, consisting of nine parts and ninety-three articles, provides a clear definition of who constitutes a migrant worker. According to the Convention, “the term ‘migrant worker’ refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.”⁵²

This general definition does *not* include **(a)** the employees of international organizations or agencies, **(b)** Government officials or persons sent or employed by a State or on its behalf outside its territory who participate in development programmes and other co-operation programmes, **(c)** investors, **(d)** students and trainees, **(e)** non-national, non-resident Seafarers and workers on offshore installations, **(f)** refugees and stateless persons.⁵³

The Convention further elaborates on the definition by providing categories of migrant workers: **(a)** “frontier workers”, who reside in a neighbouring State to which they return daily or at least once a week; **(b)** seasonal workers; **(c)** seafarers employed on vessels registered in a State other than their own; **(d)** workers on offshore installations which are under the jurisdiction of a State other than their own; **(e)** itinerant workers; **(f)** migrants employed for a specific project; and **(g)** self-employed workers.

to enter, to stay or to engage in employment in a State. IOM, *International Migration law. Glossary on Migration* (2004).

⁵¹ <http://www.unhchr.ch/html/menu2/6/cmw/>.

⁵² The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 2.

⁵³ Ibid, Article 3.

According to the Convention, “the term ‘members of the family’ refers to persons married to migrant workers or having a relationship with them that according to relevant legislation bestows on them a status equivalent to marriage as well as their dependent children and other dependent persons who are recognized as members of the family by applicable legislation or bilateral or multilateral agreements in force between the States concerned.”⁵⁴ Those migrant workers and members of their families who, pursuant to the law of that State and international agreements to which that State is a party, are not authorized to enter, stay or engage in remunerated activity in the State of employment are considered to be undocumented or in an irregular situation.

The Convention grants a wide range of rights to migrant workers and members of their families. Some of these rights are also provided for by other important UN Human Rights Treaties such as the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and other core human rights treaties, to which the Convention makes reference in its Preamble (i.e. the rights to life, to liberty and security of person, freedom of opinion, expression, thought, conscience and religion, the prohibition of torture, of slavery and forced labour, the prohibition of arbitrary interference with privacy, home, correspondence and other communications, the prohibition of the arbitrary deprivation of property, rights to just and favourable conditions of work and to rest and leisure, the rights to education and social security). In the Convention, enumeration of rights starts with the freedom to leave any State, including the State of one’s origin – subject only to restrictions that are aimed at protecting national security, public order, public health/morals or the rights and freedoms of others – and the right to enter and remain in one’s State of origin.

In addition to the universal human rights mentioned above, the Convention includes a number of rights that address specific protection needs and provide additional guarantees in the light of the particular vulnerability of migrant workers and their family members. For instance, migrant workers and their family members have the right

⁵⁴ Ibid, Article 4.

to join trade unions and seek their assistance;⁵⁵ they are protected from the arbitrary deprivation of property;⁵⁶ while, Article 21 of the Convention contains safeguards against the confiscation and destruction of (or attempts to destroy) identity documents, documents authorizing entry, stay, residence or establishment in the national territory or work permits; it also prohibits the destruction of the passport (or equivalent document) of a migrant worker or a member of his or her family.⁵⁷

The Convention stipulates that migrant workers and their family members shall not be subject to measures of collective expulsion and that they may only be expelled from the territory of a State party in order to comply with the decision of a competent authority, in accordance with the law. Furthermore, no migrant worker or member of his or her family shall be deprived of residency status or a work permit, or expelled from the country, merely because they fail to fulfil an obligation arising out of a work contract, unless the fulfilment of that obligation constitutes a condition upon which such a status or permit was to be granted.

The Convention also provides for the right of migrant workers to have recourse to the protection and assistance of the consular or diplomatic authorities of their respective State of origin, or of a State representing the interests of that State, whenever the rights recognized in the Convention are infringed. In cases of arrest or detention, a migrant worker or a member of his or her family has the right to inform the consular or diplomatic authorities of his or her arrest or detention, explain the reasons for it and communicate with them.⁵⁸

One of the vital rights that the Convention stipulates is that in respect to remuneration migrants should be treated no less favourably than nationals of the State of employment; this also applies to other work conditions (overtime, hours of work, weekly rest, paid holiday, health

⁵⁵ Ibid, Article 26.

⁵⁶ Ibid, Article 15.

⁵⁷ Office of the United Nations High Commissioner for Human Rights, *The International Convention on Migrant Workers and Its Committee. Fact Sheet No. 24 (rev. 1)*, United Nations, New York and Geneva (2005).

⁵⁸ The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 23 and Article 16, clause 7.

and safety, termination of employment relations, etc.) and other terms of employment (minimum age of employment, restriction on work, etc.). Derogation from the principle of equal treatment in private contracts of employment is deemed unlawful.⁵⁹

The Convention provides for the social rights of migrant workers and their family members in terms of its requirement that migrants and their families be treated on the same basis as nationals of the relevant State. This includes the right to receive any medical care that is urgently required for the preservation of life or the avoidance of irreparable harm to health (and, moreover, such emergency medical care shall not be withheld due to any irregularities in regard to their stay or employment).⁶⁰ It also includes the fundamental right to have access to education and as well as the right to a name, register a birth and record the nationality of a migrant's child.⁶¹ With respect to social security, migrant workers and their family members shall be entitled to the same treatment as that granted to nationals, as long as they fulfil the requirements provided for by the relevant legislation of the State and applicable bilateral and multilateral treaties.⁶² The cultural identity of migrant workers and their family members is also protected in the Convention.⁶³

The right to transfer earnings and savings and personal effects and belongings upon the termination of stay in the State of employment is provided for in Article 32 of the ICRMW.

Those migrant workers and their family members that are documented or in a regular situation are also granted the following additional rights: **(a)** the right to be fully informed by their States of origin and employment about the conditions that apply to admission, stay and the kinds of remunerated activities in which they may engage;⁶⁴ **(b)** the right to freely move in the territory of the State of employment and freely choose their residence there;⁶⁵ **(c)** the right to form associations

⁵⁹ Ibid, Article 25.

⁶⁰ Ibid, Article 28.

⁶¹ Ibid, Article 30 and Article 29.

⁶² Ibid, Article 27.

⁶³ Ibid, Article 31.

⁶⁴ Ibid, Article 37.

⁶⁵ Ibid, Article 39.

and trade unions;⁶⁶ and participate in the public affairs of their State of origin, including voting and elections.⁶⁷ Furthermore, documented migrant workers and members of their families are entitled to the same opportunities and treatment as nationals in relation to various economic and social services;⁶⁸ in the exercise of their remunerated activity,⁶⁹ in the choice of their remunerated activity (subject to some restrictions and conditions)⁷⁰ and with regard to protection against (unfair) dismissal and entitlement to unemployment benefits.⁷¹ Migrant workers and members of their families in a regular status are also entitled to be exempt from import and export taxes on their household and personal effects⁷² and shall not be liable to more onerous taxation than nationals in similar circumstances.⁷³ In addition, migrant workers shall have the right to transfer their earnings and savings, particularly funds needed for the support of their families, from the State of employment to their State of origin or any other State.⁷⁴ Protection of the unity of the families of migrant workers shall be ensured by States, and State Parties are encouraged to facilitate family reunification.⁷⁵

In the interests of promoting “sound, equitable, humane and lawful conditions” for the international migration of workers and members of their families, the Convention imposes a series of obligations on State Parties. These requirements include: the establishment of policies on migration; the exchange of information with other State Parties; the provision of information to employers, workers and their organizations on policies, laws and regulations; and assistance to migrant workers and their families. The Convention contains clauses aimed at preventing and eliminating trafficking in persons and the

⁶⁶ Ibid, Article 40.

⁶⁷ Ibid, Article 41.

⁶⁸ Ibid, Articles 43 and 45.

⁶⁹ Ibid, Article 55.

⁷⁰ Ibid, Article 52.

⁷¹ Ibid, Article 54.

⁷² Ibid, Article 46.

⁷³ Ibid, Article 48.

⁷⁴ Ibid, Article 47.

⁷⁵ Ibid, Article 44.

smuggling of migrants. To this end, State Parties to the Convention should take measures to: (a) deal with the dissemination of misleading information about emigration and immigration; (b) detect and eradicate illegal or clandestine movements of migrant workers and members of their families and impose effective sanctions on persons, groups or entities that organize, operate and assist in organizing or operating such movements; (c) impose effective sanctions on persons, groups or entities that use violence, threats or intimidation against undocumented migrant workers or members of their families. The States of employment shall take all adequate measures to eliminate the employment of undocumented migrant workers, including, where appropriate, penalties for the employers of such workers. Furthermore, when State Parties identify cases of undocumented migrant workers and members of their families on their territory, the States must take appropriate measures to ensure that such situations do not persist.⁷⁶

Overall, the Convention seeks to play a role in preventing and eliminating the exploitation of all migrant workers and members of their families throughout the entire migration process. In particular, the Convention seeks to discourage the employment of migrant workers in an irregular or undocumented situation and to put an end to the illegal or clandestine recruitment and trafficking of migrant workers.

The ICRMW was adopted by General Assembly Resolution 45/158 on 18 December 1990, a day proclaimed by General Assembly Resolution 55/93 as International Migrants Day⁷⁷ in recognition of the efforts, contributions and rights of migrants worldwide. The Convention entered into force on 1 July 2003.

The treaty has forty-four parties. The following countries have ratified the Treaty as of 2010: Albania, Algeria, Argentina, Azerbaijan, Belize, Bolivia, Bosnia and Herzegovina, Burkina Faso, Cape Verde, Chile, Columbia, Ecuador, Egypt, El Salvador, Ghana, Guatemala,

⁷⁶ Ibid, Articles 68 and 69.

⁷⁷ UN Member States, intergovernmental and non-governmental organizations observe International Migrants' Day by disseminating information on the human rights and fundamental freedoms of migrants and through sharing about experiences and actions aimed at their protection.

Guinea, Guyana, Honduras, Jamaica, Kyrgyzstan, Lesotho, Libyan Arab Jamahiriya, Mali, Mauritania, Mexico, Morocco, Nicaragua, Niger, Nigeria, Paraguay, Peru, Philippines, Rwanda, Senegal, Seychelles, Sri Lanka, St. Vincent and the Grenadines, Syrian Arab Republic, Tajikistan, Timor-Leste, Turkey, Uganda, Uruguay. Another fifteen states – Bangladesh, Benin, Cambodia, Cameroon, Comoros, Congo, Gabon, Guinea-Bissau, Indonesia, Liberia, Montenegro, Sao Tome and Principe, Serbia, Sierra Leone and Togo – have signed but not yet ratified the Treaty.^{78, 79} The Republic of Armenia has not yet signed the Treaty even though the ICRMW is one of the most important international legal instruments in the field of migration.

While responsibility for implementing the Convention rests with State Parties, the Convention is monitored by the **Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families**, which now consists of fourteen experts of high moral standing and acknowledged impartiality, serving in their personal capacity and elected by the State Parties in accordance with the procedure set forth in the Convention. A year after the Convention has entered into force in a particular State, the State must report on steps that have been taken towards the Convention's implementation;

⁷⁸ Source: United Nations, *Treaty Collection*, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&lang=en.

⁷⁹ Signature constitutes a preliminary and general endorsement of the convention by the given State. It is an indication of the State's intention to undertake a careful examination of the Treaty. Signing is not legally binding; it is only by accession or ratification that a State becomes a Party to the Convention. By acceding or ratifying the Convention, a state agrees to be legally bound by the terms of the convention. In the cases of ratification, States first sign and then ratify the treaty, while the procedure for accession has only one step – it is not preceded by an act of signature. Ratification and accession include the process of adopting the international treaty by the relevant national body, usually the legislature. The institution of ratification grants states the necessary timeframe to seek the required approval for the treaty at the domestic level and to enact the necessary legislation that will give domestic effect to the treaty. Sources: *The Vienna Convention on the Law of Treaties* (1969); United Nations, *The United Nations Treaty Reference Guide* (1999); De Feyter, Myriam, and Rene Plantevoet, *A Guide for Non-Governmental Organisations on the Implementation of the UN Migrant Workers' Convention*, International NGO Platform on the Migrant Workers' Convention (2005).

and, thereafter, it must do this every five years. The reports also are expected to indicate any problems that have been encountered during the implementation of the Convention and provide information on migration flows. After examining the reports, the Committee communicates any relevant comments to the State Party concerned.

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Office of the United Nations High Commissioner for Human Rights, *The International Convention on Migrant Workers and Its Committee. Fact Sheet No. 24 (rev. 1)*, United Nations, New York and Geneva (2005).

De Feyter, Myriam, and Rene Plaetevoet, *A Guide for Non-Governmental Organisations on the Implementation of the UN Migrant Workers' Convention*, International NGO Platform on the Migrant Workers' Convention (August 2005).

2.6 The Convention on the Rights of Persons with Disabilities⁸⁰ was adopted on 13 December 2006 by General Assembly Resolution A/RES/61/106 and entered into force on 3 May 2008. As of 2010, the Convention had 97 parties. Armenia ratified the Convention on 22 September 2010.

2.7 The International Convention for the Protection of All Persons from Enforced Disappearance⁸¹ was adopted by UN General Assembly A/RES/61/177 on 20 December 2006 and entered into force on 23 December 2010. As of 2010, it had 21 parties. The Republic of Armenia signed the convention on 10 April 2007 and is soon expected to ratify it.

3. Regional human rights instruments⁸²:

3.1. Documents of the Council of Europe:

3.1.1. The Convention for the Protection of Human Rights and Fundamental Freedoms⁸³ was adopted on 4 November 1950 and entered into force on 3 September 1953. As of 2010, it had 47 Parties (all CoE member states). The Republic of Armenia ratified the Convention on 26 April 2002. The Convention defends a number of very important human rights and freedoms (right to life, right to liberty and security, right to a fair trial, no punishment without law, right to respect for private and family life, freedom of thought, conscience and religion, freedom of expression, freedom of assembly and association, right to marry, right to effective legal remedies as well as the prohibition of torture, slavery, forced labour and discrimination). A number of **Protocols** to the

⁸⁰ Doc.A/61/611.

⁸¹ Doc.A/61/488.

⁸² Only the treaties and documents of the relevant region are addressed here; it does not consider American and African regional legal instruments.

⁸³ Council of Europe, *European Treaty Series*, ETS / CETS No. 005.

Convention establish additional rights; these are **No.1**⁸⁴ (protection of property and right to education), **No.4**, **No.7**⁸⁵ (Procedural safeguards relating to expulsion of aliens, right not to be tried or face double jeopardy), **No.12**⁸⁶ (prohibition of discrimination), **No.6**⁸⁷ and **No.13**⁸⁸ (abolition of the death penalty).

3.1.1.1. Protocol No.4 to the Convention for the Protection of Human Rights and Fundamental Freedoms securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto⁸⁹ was adopted on 16 September 1963. It entered into force on 2 May 1968 and as of 2010 had 43 State Parties. The Republic of Armenia ratified the Protocol on 26 April 2002. The protocol establishes important rights from the perspective of migration, such as the freedom of

⁸⁴ The Protocol was adopted on 20 March 1952 and entered into force on 18 May 1954. As of 2010, there were 45 parties to the protocol. The Republic of Armenia ratified the protocol on 26 April 2002.

⁸⁵ Protocol No.7 was adopted on 22 November 1984 and entered into force on 1 November 1988. As of 2010, it had 42 parties. The Republic of Armenia ratified the protocol on 26 April 2002.

⁸⁶ The Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms was adopted on 4 November 2000 and entered into force on 1 April 2005. As of 2010, the protocol had 18 parties. The Republic of Armenia ratified the protocol on 17 December 2004.

⁸⁷ The Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty was adopted on 28 April 1983 and entered into force on 1 March 1985. As of 2010, the protocol had 46 parties to it. From among the CoE Member States, only the Russian Federation has not acceded to this Protocol; the Republic of Armenia ratified the Protocol on 29 September 2003.

⁸⁸ The Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances was adopted on 3 May 2002 and entered into force on 1 July 2003. As of 2010, the protocol had 42 parties. The Republic of Armenia signed the Protocol on 19 May 2006 but has not yet ratified it.

⁸⁹ Council of Europe, *European Treaty Series*, ETS / CETS No. 036.

movement⁹⁰, the right to enter the territory of the State of which one is a national and prohibition of collective expulsion of aliens.

3.1.2. The **European Social Charter**⁹¹ and the **European Social Charter (revised)**⁹². The former document was adopted on 18 October 1961 and entered into force on 26 February 1965. As of 2010, the European Social Charter had 27 Parties to it.

The European Social Charter (revised) was adopted on 3 May 1996 and entered into force on 1 July 1999. As of 2010, the Revised European Social Charter had 30 parties to it. The Republic of Armenia did not sign the “European Social Charter” of 1961 but instead ratified the “Revised European Social Charter” on 21 January 2004. The European Social Charter (revised) embodies all the rights guaranteed by the Charter of 1961 and adds a number of new rights, including key employment rights. Thus, under Article 19, migrant workers and their families, who are nationals of a State Party to the Charter, are entitled to protection and assistance in the territory of any other Party. The Article details the necessary provisions for that assistance: free services to assist migrant workers, measures to facilitate the journey of such workers, including appropriate services for health, medical attention and good hygienic conditions during the journey; for such workers lawfully within their territories, treatment not less favourable than that of their own nationals in respect to remuneration, recruitment, membership of trade unions, accommodation, as well as in regard to employment taxes,

⁹⁰ See Article 2 of the Protocol. According to this Article, restrictions may be imposed on freedom of movement in accordance with law, in cases deemed necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

⁹¹ Council of Europe, *European Treaty Series*, ETS / CETS No. 048.

⁹² Council of Europe, *European Treaty Series*, ETS / CETS No. 163.

facilitation of the reunion of the family of a migrant worker and permission to transfer parts of the earnings and savings of such workers; ensuring that migrant workers are not expelled unless they endanger national security or act against public interests or morality; facilitation of the teaching of the national language of the receiving State while at the same time facilitating, as far as practicable, the teaching of the migrant worker's mother tongue to the children of the migrant worker.

3.1.3. The European Convention on the Legal Status of Migrant Workers⁹³ was adopted on 24 November 1977 and entered into force on 1 May 1983. As of 2010, this Convention had eleven parties, namely Albania, France, Italy, Moldova, the Netherlands, Norway, Portugal, Spain, Sweden, Turkey and Ukraine. The Republic of Armenia has not yet signed the Convention.

The Convention defines “migrant worker” as a national of a Contracting Party who has been authorized by another Contracting Party to reside in its territory in order to take up paid employment. The Convention does not apply to frontier workers, artists and sportsmen engaged for a short period and members of a liberal profession, seamen, persons undergoing training, seasonal workers and workers who are nationals of a Contracting Party that are carrying out specific work in the territory of another Contracting Party on behalf of an undertaking that has its registered office outside the territory of the Contracting Party. The Convention addresses the issues of migrant workers' legal status, particularly with regard to recruitment, medical examination and vocational test, travel, residence permits, work permits, family reunion, conditions of work, transfer of savings and social security, social and medical assistance, expiry of contract and discharge and re-employment. A Consultative Committee was set up to

⁹³ Council of Europe, *European Treaty Series*, ETS / CETS No. 093.

examine the proposals submitted by the Contracting Parties with a view to improving the application of the Convention. On the basis of the reports, a report containing information regarding the application of the Convention in the territory of the Contracting Parties will be drawn up for the attention of the Committee of Ministers.

- 3.1.4. **The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment**⁹⁴ was adopted on 26 November 1987 and entered into force on 1 February 1989. As of 2010, the Convention had 47 Parties. The Republic of Armenia ratified the Convention on 18 June 2002.

The Convention establishes a European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment, which is authorized to visit any place where persons are deprived of their liberty by a public authority. The Committee publishes a report on the facts found during the visit and offers observations and recommendations with a view to improving the protection of persons deprived of their liberty.

- 3.1.5. **The Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data** was adopted on 28 January 1981 and entered into force on 1 October 1985. As of 2010, the Convention had 43 parties. The Armenian Government is currently considering signing this Convention.

Though not a human rights treaty, the Convention is significant for migration law as the first binding international instrument to protect the individual against abuse that may accompany the collection and processing of personal data; it also seeks to regulate the trans-border flow of personal data. The Convention enshrines the

⁹⁴ Council of Europe, *European Treaty Series*, ETS / CETS No. 126.

individual's right to know that information is stored about him or her and, if necessary, to have it corrected. The Convention outlaws the processing of 'sensitive' data on a person's race, politics, health, religion, sexual life, criminal record, etc., in the absence of proper legal safeguards. Restriction on the rights laid down in the Convention are only possible when overriding interests (such as protecting State security, public safety, the monetary interests of the State or the suppression of criminal offences) are at stake.

3.2. Human rights treaties of the Commonwealth of Independent States:

- 3.2.1. **The Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms**⁹⁵ also encompasses the Decision made by the Commonwealth of Independent States on the Human Rights Commission. The Decision was made on 24 September 1993 and the Convention was adopted on 26 May 1995, entering into force on 11 August 1998. As of 2010, four countries were State Parties to it. The Republic of Armenia signed the Convention but has not yet ratified it.

The Convention provides for the following main rights and freedoms: the right to life (death penalty may not be imposed on women and minors); prohibition of torture or cruel, inhuman or degrading treatment or punishment, slavery, forced or compulsory labour; right to liberty and security of person; equality before court and law; entitlement to restore violated rights; prohibition of double jeopardy; right to protection from retroactive

⁹⁵ Конвенция Содружества Независимых Государств о правах и основных свободах человека включая Положение о Комиссии по правам человека Содружества Независимых Государств.

criminal law; right to respect for one's private and family life, one's home and one's correspondence; right to freedom of thought, conscience and faith; right to marriage and family; right to health; right to special protection for minors; right to recognition of one's legal capacity; right to property; freedom to peacefully assemble and associate with others (including the right to form and to join trade unions).

It also provides certain rights which are important in terms of migration: the freedom of movement and freedom to choose one's residence within the territory of any Contracting Party; the freedom to leave any (including one's own) country (these two provisions can be restricted only in the interests of national security or public safety, public order, public health or morals or for the protection of the rights and freedoms of others); as well as the right to work, protection from unemployment, right to equal remuneration for equal work, including work-related benefits (special attention is paid to work conditions for women), right to citizenship and the right to change it, prohibition to be expelled from the country of one's citizenship, the right to enter one's country of citizenship, the prohibition of collective expulsion of aliens and the right to social protection.

- 3.2.2. **The Agreement on Cooperation in the Sphere of Labour Migration and Social Protection of Migrant Workers**⁹⁶ was concluded on 15 April 1994 and entered into force on 11 August 1998. As of 2010, this Agreement had ten Parties. The Republic of Armenia ratified it on 9 December 1995 (and it entered into force in the country on 26 February 1996).

⁹⁶ Соглашение о сотрудничестве в области трудовой миграции и социальной защиты трудящихся-мигрантов.

The Agreement regulates (in conformity with the recruitment legislation of the relevant Party) the main directions of cooperation between the Contracting Parties in the area of employment and social protection of those persons and their family members who reside permanently in the territory of a Contracting Party but work in enterprises, institutions or organizations of any ownership form in the territory of another Contracting Party. The Agreement does not apply to refugees and internally displaced persons, artists and members of liberal professions engaged in short-term work or individuals who arrive for study purposes.⁹⁷ The Agreement addresses the issues of the workers' recruitment procedure, placement, workers' entry into the Party's territory, residence and departure, labour contracts, taxation of earned incomes and provision of pension. The Agreement outlines a number of rights for workers and their family members such as the right to import and export personal effects, have recourse to social insurance, social security (with the exception of pensions) and medical services on a par with the country's nationals at the expense of the lessor or employer and the right to transfer savings.

3.2.2.1. The Protocol on Changes and Amendments to the Agreement on Cooperation in the Sphere of Labour Migration and Social Protection of Migrant Workers of 15 April 1994⁹⁸ was concluded on 25 November 2005 and entered into force on 15 December 2006. As of 2010, the Protocol had eight parties. The Republic of Armenia signed the Protocol but has not yet ratified it.

⁹⁷ Article 1.

⁹⁸ Протокол о внесении изменений и дополнений в Соглашение о сотрудничестве в области трудовой миграции и социальной защиты трудящихся-мигрантов от 15 апреля 1994 года.

The protocol defines ‘frontier worker’ (someone who retains his or her place of residence and returns home at least once a week). The Parties also undertake to define, through bilateral and multilateral agreements, a simplified procedure for the frontier workers’ activities.

3.2.3. The **Convention on the Legal Status of Migrant Workers and Members of their Families of the CIS Member States**⁹⁹ regulates relations related to the whole migration cycle of migrant workers and members of their families. The Convention was signed on 14 November 2008 and entered into force on 21 February 2010. Armenia ratified the Convention on 15 July 2010. As of 2010, the Convention had five parties.

The Convention defines **migrant worker** as a citizen of a State Party or a stateless person who permanently resides on the territory of one of the parties but lawfully stays and engages in remunerated work on the territory of another State Party (i.e. he or she is not a citizen of that state or does not permanently reside in that state). The Convention provides several other important definitions: a **seasonal worker** is a migrant worker whose work, by its character, is dependent on seasonal conditions and is performed only during part of the year; **members of a migrant’s family** are a migrant workers’ spouse or dependent children as well as any other dependent persons who are recognized as members of the family by the legislation of the destination State; the **migration cycle** is the period encompassing departure from the State Party of residence, transit, entry into, residence and involvement in a remunerated work activity in the destination State Party, as well as return to the State Party of permanent residence; **frontier worker**, etc.

⁹⁹ Конвенция о правовом статусе трудящихся-мигрантов и членов их семей государств – участников Содружества Независимых Государств.

According to the Convention, migrant workers and members of their families shall be entitled to the following rights: right to life, to liberty and security of person, to marriage, to equality before law and court as granted to the Party's own nationals; right to protection from interference with one's personal or family life; right to privacy of home, correspondence and other communication; right to protection of one's dignity and business reputation; right to protection of legally-owned private property; right to education, cultural life; social security (except for pensions); right to receive emergency medical care for free and access other health care on a paid basis; right to register a child's birth on the territory of the host state party; right to enter, stay, move in the territory of the host state party and leave it (in accordance with the given state's national legislation and international treaties); right to legal personality; right to transfer (in host state party's currency or foreign currency) or take back to their own country monetary assets earned in the country of employment; right to receive information free of charge from competent bodies of the Parties (including transit countries) regarding the procedure for realizing their own rights and freedoms and relevant conditions of work and residence. The members of a migrant's family (excluding those of frontier and seasonal workers) who are living on the territory of the Host State Party are entitled to the same rights as nationals in terms of general education and supplementary vocational training. Migrant workers are entitled to the same rights as the host party's nationals in terms of: safe working conditions; equal compensation for equivalent work, including receipt of additional payments and allowances for eligible persons; social welfare and insurance other than pension payments; mandatory social insurance against accidents at work and occupational illnesses; reimbursement for losses incurred as a result of production fatalities or impaired health; access to other paid employment activity in the

event that employment is lost due to circumstances beyond the control of the migrant worker. The rights of migrant workers pertinent to their employment activity in the Host State Party are regulated by that state's legislation and the international treaties it has signed.

The Parties guarantee the realization of the rights of migrant workers and members of their families to freedom of speech, religion and expression as well as the freedom to form associations, non-governmental organizations and join trade unions. The Parties also prohibit cases of slavery, any other forms of restriction of freedom, forced labour, torture or the cruel, humiliating or degrading attitude towards or punishment of migrant workers and members of their families. The Parties guarantee that IDs and documents entitling migrant workers and members of their families to enter, stay and engage in activities of paid employment cannot be confiscated except in cases prescribed by the Host Party's legislation and where confiscation is undertaken by the competent authority. The Parties support the organization of language courses in the employment country's language for members of the migrant workers' families and do not hinder them from studying their native language. Migrant workers and members of their families may not be subject to deportation, extradition or readmission by the Host Party on grounds other than the ones stipulated under international treaties and the applicable legislation of such a Party.

The Parties collaborate with each other on matters pertaining to: return of migrant workers; issuance of documents containing biographic data for migrant workers and members of their families; creation of a database on migrant workers and sharing of that information; health insurance of migrants and vocational training needs of migrants (according to existing demands in skills and occupations in the Host Party's labour

market); sharing of information about legislation on labour, occupation and employment, labour migration, rules for entry, stay, movement and exit, living conditions and procedures for engaging in paid employment activities by migrant workers and about changes in the states of national labour markets; pursuant to international treaties, exclusion of double taxation on the income and property of migrant workers. Issues relating to pensions are regulated by the legislation of the Party of permanent residence and international treaties signed by the Parties.

3.2.4. The Agreement on Visa-free movement of CIS Citizens on the territory of CIS member states¹⁰⁰ was signed and came into force on 9 October 1992. Armenia, along with nine other CIS member states, ratified the Agreement on that date (later on, however, four States withdraw their membership and thus as of 2010 the Agreement had 6 State Parties to it).

The Agreement establishes the right of documented nationals of CIS member states to visa-free movement throughout territories of the CIS. Issues pertaining to entry to a CIS country of stateless persons permanently residing in the territory of CIS member states are regulated by the legislation of the relevant Party.

4. International labour law also addresses the rights of migrants:

4.1. The main international legal instruments of International Labour Organization¹⁰¹ are:

4.1.1. The Migration for Employment Convention (Revised)¹⁰² was adopted on 1 July 1949 and entered into force on 22 January 1952. As of 2010, it had 49

¹⁰⁰ Соглашение о безвизовом передвижении граждан государств СНГ по территории его участников.

¹⁰¹ The Republic of Armenia has acceded to numerous other ILO Conventions not mentioned here; this publication addresses only the most important ones in terms of migrants' human rights.

¹⁰² C97 Migration for Employment Convention (Revised 1949).

Parties. The Republic of Armenia ratified the Convention on 3 October 2005 and it entered into force in Armenia on 27 January 2007.

The Convention covers the entire process of labour migration from entry to return. It attaches significance to free services that assist migrants with their employment, particularly in terms of providing accurate information. The Convention also stipulates that each State Party should undertake to treat immigrants who are lawfully on its territory in a no less favourable way than it does its own nationals – without discrimination in regard to nationality, race, religion or sex – in terms of: remuneration, hours of work, holidays with pay, minimum age for employment, apprenticeship and training, women's work and the work of young persons, membership of trade unions, accommodation, social security and employment taxes, dues or contributions.¹⁰³ The Annexes to the Convention address a number of issues, including: recruitment and placing of migrants recruited under government-sponsored arrangements;¹⁰⁴ recruitment not related to government-sponsored arrangements for group transfer;¹⁰⁵ the importation of the personal effects, tools and equipment of migrants for employment.¹⁰⁶ The Convention stipulates that services rendered in connection with the recruitment, introduction or placing of migrants for employment will be free of

¹⁰³ Article 6.

¹⁰⁴ Annex 2 (Recruitment, Placing and Conditions of Labour of Migrants for Employment Recruited under Government-Sponsored Arrangements for Group Transfer).

¹⁰⁵ Annex 1 (Recruitment, Placing and Conditions of Labour of Migrants for Employment Recruited Otherwise than under Government-Sponsored Arrangements for Group Transfer).

¹⁰⁶ Annex 3 (Importation of the Personal Effects, Tools and Equipment of Migrants for Employment).

charge within the borders of State Parties.¹⁰⁷ The promotion of clandestine or irregular immigration is subject to appropriate penalties.¹⁰⁸

4.1.2. The **Migrant Workers (Supplementary Provisions) Convention**¹⁰⁹ was adopted on 24 June 1975 and entered into force on 9 December 1978. As of 2010, the Convention had 23 Parties. Armenia ratified the Convention on 3 October 2005 and it entered into force within the country on 27 January 2007.

The Convention mostly deals with issues of irregular migration and how international collaboration can prevent it. The Convention requires that State Parties undertake to respect the basic human rights of all migrant workers. The Convention also urges its Member States to prosecute trafficking crimes.

5. The legal instruments that constitute part of **international criminal law** are also important for the protection of migrants' rights. Important **regional treaties aimed at combating human trafficking** are also listed below.

5.1. The **Convention against Transnational Organized Crime**¹¹⁰ was adopted by UN General Assembly Resolution A/RES/55/25 on 15 November 2000 and entered into force on 29 September 2003. As of 2010, it had 158 Parties. Armenia acceded to the Convention on 1 July 2003.

5.1.1. The **Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime**¹¹¹ was adopted by UN General Assembly

¹⁰⁷ Annex 2, Article 4.

¹⁰⁸ Annex 2, Article 13.

¹⁰⁹ C143 Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers

¹¹⁰ Doc. A/55/383.

¹¹¹ Doc. A/55/383, United Nations, *Treaty Series*, volume 2237, p. 319.

Resolution A/RES/55/383 on 15 November 2000 and entered into force on 25 December 2003. As of 2010, 142 countries are Parties to it. Armenia acceded to the Protocol on 1 July 2003.

5.1.2. **The Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime**¹¹² was adopted by UN General Assembly Resolution A/55/383 on 15 November 2000 and entered into force on 28 January 2004. As of 2010, the Protocol had 126 Parties. Armenia acceded to the Protocol on 1 July 2003.

5.2. **The Council of Europe Convention on Action against Trafficking in Human Beings**¹¹³ was adopted on 16 May 2005 and entered into force on 1 February 2008. As of 2010, it had 33 countries as State Parties. Armenia acceded to the Convention on 14 April 2008.

Its focus is mainly on the protection of victims of trafficking and the protection of their rights. The Convention applies to all forms of trafficking regardless of whether it is transnational or national or unrelated to organized crime. The Convention provides for the setting up of a special monitoring mechanism that guarantees the parties' compliance with its provisions.

5.3. **The Agreement among the Governments of the Black Sea Economic Cooperation Participating States on Cooperation in Combating Crime, in Particular in its Organized Forms**¹¹⁴ was signed on 2 October 1998 and

¹¹² United Nations, *Treaty Series*, volume 2241, p. 507; Doc. A/55/383.

¹¹³ Council of Europe, *Council of Europe Treaty Series*, CETS No. 197.

¹¹⁴ Agreement among the Governments of the Black Sea Economic Cooperation Participating States on Cooperation in Combating Crime, in Particular in its Organized Forms. <http://www.bsec-organization.org/documents/Legal>

entered into force on 4 October 1999. As of 2010, the Agreement had 12 Parties. Armenia ratified the Agreement on 2 November 2000. The Agreement condemns various forms of organized crime, including trafficking in human beings.

- 5.4. The **Agreement on the Cooperation of the CIS Member States in Combating Trafficking in Persons, Human Organs and Tissues**¹¹⁵ was concluded on 25 November 2005 and entered into force on 4 September 2006. As of 2010, the Agreement had five Parties. Armenia adopted the Agreement on 25 November 2006.

The purposes of the Agreement include: to develop an agreed strategy and adopt a collective and comprehensive legal, social and economic information base, along with other measures, that will help to combat human trafficking, eliminate the causes and conditions that are conducive to it as well as protect and rehabilitate its victims; to consolidate the efforts of all government bodies, NGOs, other organizations and citizens in order to maximize the effective countering of trafficking in humans, particularly in women and children. The Agreement defines the concept of ‘human trafficking’ as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threats or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation. Exploitation includes, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to

Documents/agreementmous/agree/Downloads/CombatingCrimeAGREEMENT%20071120.pdf.

¹¹⁵ Соглашение о сотрудничестве государств - участников СНГ в борьбе с торговлей людьми, органами и тканями человека.

slavery, servitude or the removal of organs for the purpose of selling them.

6. The following principal **international and regional** legal instruments regulate the rights of **refugees and stateless persons**:

- 6.1. The **Convention relating to the Status of Refugees**¹¹⁶ was adopted on 28 July 1951 and entered into force on 22 April 1954. As of 2010, the Convention had 144 Parties. Armenia acceded to the Convention on 6 July 1993.
- 6.2. The **Convention relating to the Status of Stateless Persons**¹¹⁷ was adopted on 28 September 1954 and entered into force on 6 June 1960. As of 2010, it had 65 Parties. Armenia acceded to the Convention on 18 May 1994.
- 6.3. The **Protocol relating to the Status of Refugees**¹¹⁸ was adopted on 31 January 1967 and entered into force on 4 October 1967. As of 2010, the Protocol had 145 Parties. Armenia acceded to the Protocol on 6 July 1993.
- 6.4. The **Convention on the Reduction of Statelessness**¹¹⁹ was adopted on 30 August 1961 and entered into force on 13 December 1975. As of 2010, the Convention had 37 parties. Armenia acceded to the Convention on 18 May 1994.
- 6.5. The Council of Europe **European Agreement on the Abolition of Visas for Refugees** was adopted on 4 April 1959. As of 2010, the Agreement had 23 parties. Armenia signed it on 11 May 2001 but is yet to ratify it.
- 6.6. The Council of Europe **Protocol to the European Convention on Consular Functions concerning the Protection of Refugees** was adopted on 11 December 1967 together with the European Convention on Consular

¹¹⁶ United Nations, *Treaty Series*, volume 189, p. 137.

¹¹⁷ United Nations, *Treaty Series*, volume 360, p.117.

¹¹⁸ United Nations, *Treaty Series*, volume 606, p. 267.

¹¹⁹ United Nations, *Treaty Series*, volume 989, p. 175.

Functions. As of 2010, the Convention had 5 parties and the protocol had 2 parties (Norway and Portugal). Armenia has not signed this Agreement.

- 6.7. The Council of Europe **European Agreement on Transfer of Responsibility for Refugees** was adopted on 16 October 1980. As of 2010, the Agreement had 13 parties. Armenia has not signed this Agreement.
- 6.8. The **CIS Agreement on Support to Refugees and Forced Migrants**¹²⁰ was signed on 24 September 1993 and entered into force on 21 November 1994. As of 2010, the Agreement had six states parties. Armenia ratified the Agreement on 21 November 1994.

The Agreement defines what constitutes a refugee and a forced migrant. A refugee is an individual who is not a national of the Party granting asylum and was forced to abandon his or her place of permanent residence on the territory of another Party due to violence or persecution in various forms against himself or members of his family, or because of a real threat of persecution due to his or her racial or national origin, religious faith, language, political convictions, or affiliation with a certain social group in connection with armed and international conflicts. An individual who has committed an offence against peace or humanity or some other premeditated criminal act cannot be recognized as a refugee. A forced migrant is an individual who is a national of the Party granting asylum and was forced to abandon the place of his permanent residence on the territory of another Party as a result of violence or persecution in various forms against himself or members of his / her family, or because of a real threat of persecution on the basis of racial or national origin, religious faith, language, political convictions, as well as affiliation with a certain social group in connection with armed and international conflicts.

¹²⁰ Соглашение СНГ о помощи беженцам и вынужденным переселенцам.

These international treaties are the main sources of migrant's rights. Non-discrimination is a core principle of the protection of the rights of migrants, including irregular or so-called 'undocumented' migrants. When developing migration policies, states should firmly consider the protection of migrant rights; they must weigh them against considerations of security and find the right balance between controlling and managing migration processes while at the same time protecting human rights. Indeed, balanced policy development can only issue from a clear perception of migrants' rights. Thus, it is vital that violations of migrants' rights are understood and identified, and this requires that migrants should be viewed as a separate vulnerable social group. To this end, public awareness and the training of government officials is key.

It follows that a state's legislation should incorporate the key international standards if it is to facilitate the formation of effective migration policies and migration management. Any limitations on migrants' rights should be lawful and comply with state legislation, which in turn should comply with international standards. Legal instruments alone are insufficient to manage migration and protect migrants; an independent body is required to oversee that there is compliance with law. Any actions that result in the restriction of human rights should be regularly reviewed by independent bodies, and, importantly, any necessary security measures should be applied to individual migrants rather than to all migrants in general. The protection of migrants' rights requires that migration management is based on a holistic approach that embraces the principles of lawfulness, proportionality, awareness and transparency.

Part Two. Rights of Migrants in the Republic of Armenia

The second part of this booklet explores how well migration management in the Republic of Armenia (RA) guarantees the rights of migrants. With this purpose in mind, Armenia's migration policy, migration related legislation and judicial practice (or absence of) are considered.

2.1. Migration Policy of the Republic of Armenia

The current Concept Paper on the State Regulation of Population Migration in the Republic of Armenia¹²¹ and the RA Government's Programme for 2008-2012¹²² both highlight the importance of protecting the rights of migrants. Under the Government Programme, the Government will, among other things, pay close attention to the "legislative regulation of labour emigration as well as issues pertaining to the state's protection of the rights and legitimate interests of labour emigrants. The level of State protection provided to foreign citizens and persons without citizenship due to humanitarian considerations will be improved, bringing it into line with international standards."¹²³ Among the priorities for the state's regulation of the migration process, the concept paper notes "the state protection of the rights and lawful interests of labour emigrants by means of concluding bilateral interstate treaties."¹²⁴

The Paper supports:

¹²¹ The Concept Paper on State Regulation of Population Migration in the Republic of Armenia was adopted as an Appendix to the RA Government Session Record Decision # 24 dated 25 June 2004.

¹²² The Republic of Armenia's Government Programme for 2008-2012 was adopted by Government Decision # 380-A of 28 April 2008 and approved by RA National Assembly Decision # N-074-4 of 30 April 2008 ('On Approving the Programme of the Government of the Republic of Armenia').

¹²³ Republic of Armenia Government Programme, Section 4.4.8. Migration.

¹²⁴ Section 3(2).

- the creation of legislation to regulate the labour emigration of Armenian nationals (development of domestic legislation and accession to pertinent international conventions);
- the conclusion of interstate treaties relating to the job placement of Armenian nationals in foreign states on a contractual basis and the legal and social protection of labour migrants;
- the regulation of the employment conditions of foreign nationals and stateless persons who work on the territory of the Republic of Armenia;
- the safeguarding of Armenian nationals taking precedence in the filling of job vacancies;
- means to facilitate the return of Armenian nationals who are labour migrants abroad, including primarily highly-qualified specialists and activists in culture, science, arts and sports.

The State Migration Service (formerly the Migration Agency) under the Ministry of Territorial Administration is presently devising the Strategy for the State Regulation of Migration and Implementation Action Plan for the coming years. It has adopted the principles of non-discrimination, the equality of all migrants before the law, the right to free movement for those legally present in the territory of the Republic of Armenia and the protection of Armenian nationals outside of Armenia as the core principles of its migration regulation policy. According to the Strategy, the Government will implement effective and coordinated migration policies that not only pursue the objectives of national security, sustainable human development and the demographic policies of Armenia but also comply with international standards for the protection of the rights and interests of persons involved in the migration process. By elaborating on the priorities identified in the current Concept Paper on the State Regulation of Population Migration in the Republic of Armenia, the Strategy and Action Plan will endeavour to detail a concrete system of emigration and immigration management for the population. To this end, it is essential that every aspect of the migration policy to be adopted within the Strategy take into account migrants' rights, be anchored

in Armenia's international commitments and comply with international standards on migrants' rights.

The draft "Concept for the Policy of State Regulation of Migration in the Republic of Armenia" notes that a priority issue in terms of state regulation of migration is the protection of the rights and interests of Armenian nationals leaving to work abroad. It states that the issue may be addressed according to certain key directions, namely:

- (i) regulate by law the legal relations involved in the process of nationals leaving to work abroad, especially in terms of protecting RA nationals' rights and interests;
- (ii) introduce a system of state control over the activities of private organizations that are acting as recruitment agents and establish partnerships between such organizations and state bodies;
- (iii) study the labour market of foreign countries, involving RA diplomatic representatives and consular institutions in host countries as well as other competent bodies in the area;
- (iv) discuss possibilities for concluding relevant bilateral interstate agreements and acceding to existing international treaties related to the interests of labour migrants in order to increase opportunities for migrants to leave for work abroad on a treaty basis as well as to protect the rights and interests of those labour migrants who are RA nationals;
- (v) devise and implement initiatives that aim to increase the potentially positive impact such work abroad could have on the human development of the RA population;
- (vi) raise public awareness about the procedure and terms of employment in foreign countries through means such as hot-line consultation services, publication of leaflets, contacts with mass media and the deepening of cooperation with NGOs.

In developing the state's migration policy, it will be important to pay due attention to the protection of migrants' rights regardless of the type of migration (irregular migrants, labour migrants, refugees, asylum seekers, victims of trafficking and smuggled migrants). This includes special attention being paid to the

realization of the right to development, especially given the special needs of female and child migrants and migrants held in special shelters as well as the interrelationship between migration and development. The migration policy should also acknowledge migrants' rights by developing a system of migration information management.

The Strategy should also address the main gaps in Armenia's migration management and legislation by proposing legislative reforms and recommending the ratification of key international treaties on the protection of migrants' rights. Since the Republic of Armenia is primarily a source country, its migration policy will need to harness the potential for development that comes from migration – both for individual migrants and for the state as a whole. Indeed, at present, the Republic of Armenia is failing to exploit the human development opportunities provided by migration. This is a key issue since the migration-development nexus is closely related to human rights; these rights, including the right to development, cannot be exercised and well-being cannot be attained without fundamental freedoms being secured. Thus, the state should play an active role in promoting the human development of migrants by safeguarding their rights, thereby contributing to the development of the country as a whole.

2.2. Administrative Organization of the Migration Management System

The Assessment of Migration Management, carried out in the Republic of Armenia during 2007-2008¹²⁵ at the request of the Government, identified that the absence of a single state body to coordinate migration management in the country was a substantial weakness in this sphere. The Report recommended that such a body be designated and authorized to develop migration policy. It

¹²⁵ Rossi-Longhi, Pier, Therése Lindström and Kristina Galstyan for the International Organization for Migration, *Review of Migration Management in the Republic of Armenia: Assessment Mission Report*, International Organization for Migration, 2008.

would be tasked with coordinating the sector with the broader context of migration in mind; it would review and ensure consistency among the functions performed by various state bodies presently dealing with different issues of migration (i.e. the ministries of labour and social affairs, economy, health care, education, etc.) as well as examine sector-specific policies and strategies, with a view to bringing conceptual issues related to migration policy into mainstream policy-making.

Armenia is currently implementing migration management reforms. The goal is to create a body with migration functions that will deal with foreigners' entry and granting of residency, granting of asylum to foreigners, granting of citizenship and personal identification documents, granting of work permits to foreigners in the territory of Armenia and the protection of the rights and interests of labour migrants leaving Armenia.¹²⁶ This body will develop and implement Armenia's migration policy and its associated programmes, as well as compile migration statistics. The most serious gap in migration management in Armenia today, however, is still the absence of a separate central body that is authorized to develop migration policy. Designating a migration policy-making body and empowering it with the necessary status and competencies will have a positive influence on migration management and the protection of migrants' rights in the country.

It is worth mentioning that an interagency working group was established in Spring 2009 by the Prime Minister's Decision¹²⁷ to discuss the comments and suggestions made in the 'Review of Migration Management in Armenia – Assessment Mission Report' (prepared within the framework of the IOM 'Capacity Building in Migration Management Programme Armenia Assessment' Project) as well as comments and suggestions made by international

¹²⁶ Order # NK-53-A of the President of the Republic of Armenia dated 15 March 2008, 'On the Conception for Migration System of the Republic of Armenia and for Introduction of the System of Electronic Passports and Identification Cards with Biometric Parameters in the Republic of Armenia'.

¹²⁷ Decision # 304-A of the Prime Minister of Armenia of 16 April 2009, 'On Establishing an Interagency working group'.

organizations and experts; the interagency working group was also responsible for developing new suggestions on reforms in migration management. Consequently, the group recommended that the status of the Migration Agency be elevated to a State Migration Service (SMS), again under the RA Ministry of Territorial Administration. The SMS was then established by the Decree¹²⁸ of the President of Armenia and by the Decision¹²⁹ of the RA Government. According to its charter, the SMS has a new function of “coordinating bodies involved in migration activities, developing migration policies and legal acts and securing the implementation of these policies.”

2.3. National Legislation on Migration

As already mentioned in Part One, the Republic of Armenia has ratified the majority of the aforementioned **international treaties** prescribing migrants’ rights. Armenia is a member of the IOM,¹³⁰ the ILO, the UN,¹³¹ the Council of Europe¹³² and other intergovernmental organizations. It has concluded various international treaties on migration with these bodies, many of which are referred to above.

Furthermore, Armenia has acceded to 29 **ILO conventions**,¹³³ including the most important ILO Conventions on migrant workers referred to in Part One.

¹²⁸ Decree # NH-286-N of the President of the Republic of Armenia of 18 November 2009, ‘On the establishment of the State Migration Service within the administrative sector of Ministry of Territorial Administration of RA.’

¹²⁹ Decision # 1515-N of the RA Government of 17 December 2009, ‘On Establishing State Migration Service under the RA Ministry of Territorial Administration State Administrative Body, Approving the Charter and Structure of the Staff of the State Migration Service’.

¹³⁰ The Republic of Armenia joined the IOM by Government Decision # 601 dated 30 November 1993, ‘On the Accession of the Republic of Armenia to the International Organization for Migration.’

¹³¹ Armenia became a member of the UN on 2 March 1992.

¹³² Armenia acceded to the Council of Europe on 25 January 2001.

¹³³ The ILO Conventions ratified by Armenia are listed in the Appendix to this publication.

As part of the CIS, the Republic of Armenia has also ratified the **“Agreement between the CIS Member States on Cooperation in Combating Illegal Migration,”** signed in Moscow on 6 March 1998,¹³⁴ and the **“Agreement on the Formation of the Council of Heads of Migration Bodies of CIS Member States”**¹³⁵ which was signed on 5 October 2007.

It should be noted that international treaties ratified by the Republic of Armenia become part of the country’s domestic legislation and shall prevail if the latter conflicts with the former.

If these international treaties are properly implemented, then the main rights and freedoms of migrants will be secured. To ensure that migrants’ rights in the Republic of Armenia are protected, it is vital that there is consistency both among action plans, concept papers and national legislation on migration and international standards and treaties. A serious weakness in this respect is that Armenia has not yet signed the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and the 1977 European Convention on the Legal Status of Migrant

¹³⁴ “Соглашение о сотрудничестве государств – участников Содружества Независимых Государств в борьбе с незаконной миграцией.” The Agreement entered into force on 14 June 1999. As of 2010, it had nine parties. Armenia ratified it on 26 June 1999 and it entered into force for Armenia on 13 August 1999. The Agreement defines “illegal migrant” as third country nationals and stateless persons who have violated the rules of entry into, transit by or exit from the Parties’ territories as well as nationals of the Parties who have violated the rules of residence on the territory of each of the Parties as defined by their national legislation.

¹³⁵ Соглашение об образовании Совета руководителей миграционных органов государств-участников СНГ. The Agreement entered into force on 5 October 2007. As of 2010, it had five parties. Armenia ratified the Agreement on 15 June 2010. The Council is a body for sectoral cooperation and coordination in the field of migration policy. The main directions of the Council’s activities include: identification of priority areas for cooperation; adoption of uniform approaches aimed at harmonization of national legislations; coordination of mutual cooperation in main directions of migration policy; assistance to the protection of the rights and legitimate interests of migrants who are nationals or stateless persons permanently residing on the territory of CIS member states; support to integration of databases registering data on aliens and stateless persons; support to the implementation of inter-state or inter-governmental documents on migration.

Workers. Indeed, in the most recent **Universal Periodic Review of the United Nations Human Rights Council**¹³⁶ it was recommended that the Armenian Government take adequate measures to better protect the fundamental rights of migrant workers and refugees living in Armenia and consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.¹³⁷

The **domestic legislation of the Republic of Armenia regarding migrants' rights and migration** consists of a number of laws and sub-legislative acts. These are discussed below in terms of specific migration-related areas.

(a) Human Rights

Through provisions on fundamental human and civil rights and freedoms, the **Constitution** of the Republic of Armenia prohibits any form of discrimination based on any grounds, such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or other personal or social circumstances.

By enshrining human dignity as the cornerstone of human rights and freedoms, the Constitution safeguards the following main

¹³⁶ The Human Rights Council is the main inter-governmental body within the United Nations system; it comprises 47 States (each elected by the General Assembly for a three-year term) and is responsible for strengthening the promotion and protection of human rights around the globe. The Council was created by the UN General Assembly on 15 March 2006 by adopting resolution A/RES/60/251; its main purpose is to address situations of human rights violations by submitting relevant recommendations. Among the tools it employs is the new Universal Periodic Review (UPR) mechanism which will assess the human rights situations in each of the 192 UN Member States, once every four years. The UPR provides the opportunity for each State to declare what actions they have taken to improve the human rights situations in their countries and to fulfil their human rights obligations. The result of each review is reflected in an 'outcome report' which lists recommendations made to the State under review.

¹³⁷ A/HRC/15/9, *Report of the Working Group on the Universal Periodic Review: Armenia*, 6 July 2010.

rights for every person: equality before the law; the right to life; the right to personal liberty and security; the right to the protection of rights and to effective legal remedy for violated rights; the right of access to justice and to receive legal assistance (provided at the expense of the state for cases prescribed by law); the right to the presumption of innocence; the right to respect for one's privacy and family life (including the right to secrecy of correspondence, telephone conversations, mail, telegraph and other communication); the right to the inviolability of residence; the right to the freedom of thought, conscience, religion, opinion, expression; the right to form or join associations and trade unions; the right to hold peaceful assemblies; the right to property (except the right to own land, which is reserved for citizens of Armenia alone); the freedom to choose an occupation; the right to rest, an adequate standard of living for oneself and one's family, social security, medical aid and services; the right to education; the right to freedom of literary, aesthetic, scientific and technical creation; and the right to preserve one's national and ethnic identity.

The Constitution of Armenia prohibits torture or other inhuman or degrading treatment or punishment, forced labour and the retroactive application of criminal law. The right to freedom of movement and choice of residence in the territory of Armenia is reserved for anyone who is legally residing in the Republic of Armenia (Article 25). Everyone has the right to leave the Republic of Armenia, and every Armenian citizen and everyone legally residing in Armenia has the right to return to Armenia.

The rights and freedoms stipulated by the Constitution do not exclude other rights and freedoms prescribed by laws and international treaties.

(b) Citizenship

The amended Constitution, adopted in 2005,¹³⁸ defers the regulation of citizenship matters to the legislature, thereby

¹³⁸ Constitution, Article 30.1.

permitting dual citizenship. Procedures for acquiring, awarding, restoring and terminating Armenian citizenship are regulated by the Law on Citizenship of the Republic of Armenia (16 November 1995).

(c) Immigration, Residency and Status of Foreigners

The legislation of Armenia regulates the stay of migrants in Armenia as well as foreigners' entry into and exit from Armenia. An essential legislative act regulating immigration is the **RA Law on Foreigners** signed on 16 January 2007. It addresses foreigners' entry into, stay and residency in, transit through, and exit from the Republic of Armenia as well as matters pertaining to the labour activities of foreigners in Armenia. The Law on Foreigners also regulates the registration of foreign citizens and their labour migration to Armenia; it contains provisions on visa types, procedures for granting, refusing, validating, and extending entry visas, prohibiting entry, granting or denying residency status, appealing decisions, terminating residency status, voluntary departure and deportation from Armenia, extradition, the arrest and detention of foreigners and the protection of the privacy of foreigners' data. Several regulations were also adopted to ensure the enforcement of the Law. However, a number of issues and legislative gaps related to foreigners' stay in Armenia remain.¹³⁹

(d) Irregular Migration

Although the Armenian Government adopted decisions¹⁴⁰ that approved a procedure for the operation of *Special Accommodation*

¹³⁹ For detailed gaps analysis of Armenian legislation related to migration please see: Rossi-Longhi, Pier, Thérèse Lindström and Kristina Galstyan for the International Organization for Migration, *Review of Migration Management in the Republic of Armenia: Assessment Mission Report*, International Organization for Migration, 2008.

¹⁴⁰ RA Government Decision # 127-N of 7 February 2008, "On Approving Procedures for the Functioning of Special Accommodation Centres on RA Border Crossing

Centres (SACs) and the holding of foreigners in these Centres, such centres still do not exist at the majority of the country's border-crossing points (only two have been established). There is no central special migrant accommodation centre either. According to law, if it is not possible to send adult aliens without passports or holding invalid passports, who have been denied a visa at a border crossing checkpoint or have been denied entry by the authority in charge of the border control, back to the country of origin or the country they arrived from, then they must be held in SACs at border crossing checkpoints (in transit zones) until their circumstances have been ascertained, their identity established or a decision made about them. Permission to hold such an alien in a SAC for up to 90 days must be given by court; a relevant request must be submitted by the authorized body in charge of the border control within 24 hours of the alien being placed in the SAC.¹⁴¹ If it is not possible to send the alien back to the country of origin within 90 days, the alien is issued a temporary residence permit by an authorized body of State administration (via the RA police). The permit is valid until the alien's departure from the Republic of Armenia but may not be granted for more than one year.

When there are sufficient grounds for believing that an alien may go into hiding before a court hears an extradition case or before a court ruling on deportation takes legal effect, a detained alien must be held in a central SAC until the relevant court ruling is issued or takes legal effect (this is limited to 90 days, however).¹⁴²

Under the RA Law on Foreigners, any foreigner held in a SAC is entitled to the services of a translator, access to court and judicial

Points and Transit Zones and for Accommodating Foreigners in these Centres" and RA Government Decision # 827-N of 10 July 2008, "On Approving the Procedure of the Operation of a Special Accommodation Centre in the Territory of the Republic of Armenia and the Procedure of Holding Arrested Foreigners in this Centre."

¹⁴¹ See "The Law on Foreigners," Article 37.

¹⁴² Within 24 hours of detention, a diplomatic mission or consular office of the detained alien's country of origin or a diplomatic mission of another country that represents interests of the said country and/or the alien's close relatives, who are in the Republic of Armenia, shall be informed about the detention.

appeal, the services of a lawyer or other legal representative (including NGOs), a meeting with a diplomatic or consular official of his country of origin and any necessary health care.

The legislation on SACs needs to be improved. A more detailed procedure for how the SACs are operated needs to be devised and more specific requirements for conditions and timelines for holding foreigners in the SACs must be set. In addition, the rights of migrants held in the SACs need to be protected by certain safeguards and the SACs should be brought into line with the humanitarian standards set forth by international organizations and the EU *acquis* on migration and asylum,¹⁴³ the Council of Europe, European Court of Human Rights and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.¹⁴⁴

At present, SACs only exist at Zvartnots International Airport (Yerevan) and the Bagratashen border-crossing checkpoint. Both of these need to be improved and aligned with international standards. Theoretically, persons that illegally cross the border can be detained; however, in the absence of a central SAC, irregular migrants in Armenia are currently held in the Vardashen Penitentiary Institution. After their detention or arrest, they are granted some of the rights enjoyed by Armenian citizens, including the right to legal, social, psychological and medical counselling, as well as short and lengthy visitations (organized by embassies). Foreign citizens charged with crimes are extradited on the basis of international treaties; citizens of the Russian Federation are extradited through the RA Procuracy General and citizens of the

¹⁴³ That is legally binding (or other) instruments that comprise the EU's legal framework that EU Member States apply in the area of migration and asylum. See, in particular, EC Directorate-General for Justice, Freedom and Security, *EU acquis communautaire, Title IV of the TEC (Treaty on European Community), Part II of the TEC, Title VI of the TEU (Treaty on European Union)*.

¹⁴⁴ The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment was set up by the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 1987. Armenia ratified this Convention on 18 June 2002.

majority of other countries are extradited through the RA Ministry of Justice.¹⁴⁵

The gaps that exist in the national legislation regulating the holding of irregular migrants in SACs and the operation of SACs need to be addressed. It is necessary: a) to define the maximum period for which irregular immigrants may be detained; and b) to hold irregular immigrants in a place separate from convicts serving sentences for other criminal offences. Furthermore, state budget financing is necessary in order to bring the SACs into line with international and EU standards and to provide appropriate accommodation, transport and health care services to irregular migrants.

To prevent and prosecute migration offences and crimes, Armenia refers mostly to other branches of law, such as provisions in the administrative or criminal codes. Migration-related offences committed by Armenian citizens are mostly dealt with under the following articles of the **Republic of Armenia Criminal Code** (adopted 29 April 2003): Article 329 (“Illegal State Border Crossing”), Article 178 (“Swindling”), Article 325 (“Forgery, sale or use of forged documents, stamps, seals, letter-heads, vehicle license plates”), Article 324 (“Theft of or damage to documents, stamps or seals”) and Article 326 (“Sale or purchase of official documents or state decorations”).

Violation by foreigners or stateless persons of the procedure and terms for their stay in RA instigate administrative liability (Article 201 (Violation by foreigners, inviting parties and employers of the RA Law on Foreigners) and Article 200 (Violation of the rules of entry to and residence in the border zone) of the **Republic of Armenia Administrative Violations Code**¹⁴⁶).

¹⁴⁵ Rossi-Longhi, Pier, Thérèse Lindström, and Kristina Galstyan, for the International Organization for Migration, *Review of Migration Management in the Republic of Armenia: Assessment Mission Report*, International Organization for Migration, 2008.

¹⁴⁶ The RA Administrative Violations Code was adopted on 6 December 1985. Article 201 was amended on 25 December 2006 to revise the fines for residing in

In the absence of SACs or other institutions for irregular migrants, persons illicitly crossing the border are subject to criminal (not administrative) liability and may be placed in criminal detention facilities. This issue must be urgently addressed. For, current procedure means that in contrast to offences related to other breaches of immigration procedure – such as failure to leave the country after visa expiry, for which a limited number of softer (administrative) sanctions are prescribed – illegal crossing of the border is disproportionately punished with more severe criminal penalties. Indeed, a key recommendation of the Assessment of Migration Management in Armenia¹⁴⁷ was that administrative law be applied to migration offences, including the illegal crossing of the border (when other criminal intent is absent) and breached visa terms.

(e) Work Permits

Another gap in migration management – with repercussions for human rights – is the lack of an effective system for granting work permits to foreigners in the Republic of Armenia. This means that employers have no obligations when hiring foreigners, a situation that may lead to violations of immigrants' rights and unequal treatment. To this end, it is extremely important to develop clear procedures for granting visas to those that wish to enter the country to work or start their own business and to introduce a system of individual labour permits for labour migrants. Moreover, the procedure for applying for a work permit should be accessible to potential labour migrants both inside and outside Armenia.¹⁴⁸

(f) Asylum and Refugees

Armenia without a valid visa or residency status or with invalid documents and for violating the procedures of transit through Armenia.

¹⁴⁷ Rossi-Longhi, Pier, Thérèse Lindström, and Kristina Galstyan, for the International Organization for Migration, *Review of Migration Management in the Republic of Armenia: Assessment Mission Report*, International Organization for Migration, 2008.

¹⁴⁸ Ibid.

The regulation of asylum and refugee status is a key component of legislation on migration. According to UNHCR's 2006 Global Report, Armenia's ratio of refugees was one of the highest in the world – it ranked second in terms of the number of refugees per capita with 38 refugees per 1,000 inhabitants, second only to Jordan.¹⁴⁹

Armenia's main laws on matters relating to asylum and refugee are the RA Law on Political Asylum (19 October 2001) and the RA Law on Refugees and Asylum (27 November 2008). The latter brought the Armenian asylum legislation closer to international standards. Any flaws related to refugee protection are due to policy and practice rather than legislation, which is largely due to Armenia's socio-economic situation. Outstanding issues that need to be addressed include the risk of return, the lack of a referral mechanism for asylum-seekers, and the absence of special accommodation centres.¹⁵⁰

(g) Identity Management and Data Protection

Another area closely related to migration is the **protection, collection and monitoring of data** on migrants. The RA Law on Foreigners prescribes mechanisms for the protection of such data in line with the RA Law on Personal Data (22 November 2002).

A new Law on the Protection of Personal Data has recently been drafted. It aims to regulate the handling of personal data by central and local government bodies, state or municipal institutions, natural persons and legal entities as well as ensure the protection of human and civil rights and freedoms in the processing of personal data, including the protection of the right to immunity of private and family life. The draft proposes that an inspectorate for

¹⁴⁹ *UNHCR Global Report 2006*, Part 1, UNHCR: An Overview, page 59. Available at <http://www.unhcr.org/gr06/index.html>; <http://www.unhcr.org/publ/PUBL/4666d25b0.pdf>.

¹⁵⁰ *Strengthening Capacity to Protect Refugees in Armenia, National Stakeholders Consultations: Conference Report*, UNHCR (2008).

personal data protection be created in order to monitor the lawfulness of the collection, processing and use of personal data.

The Government of Armenia has not yet signed the European Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, which has particular significance in terms of introducing biometric electronic passports and identification cards.

The introduction of **biometric personal identification and travel documents** is essential for managing emigration and outgoing flows from Armenia. Introducing biometric personal identification and travel documents in Armenia is expected to pave the way for the signing of a visa facilitation agreement with the European Union.^{151, 152}

The processing and transfer of information containing biometric characteristics can come into conflict with the right to privacy safeguarded by international treaties.¹⁵³ Such data is often used for security reasons, especially with a view to combating terrorism. Thus, a trend has emerged in some countries in which immigration policies are equated with the fight against terrorism. These two issues are, however, quite different. Moreover, it is not always the

¹⁵¹ *European Neighbourhood Policy (ENP) Action Plan for Armenia and EU Eastern Partnership.*

¹⁵² Visa facilitation agreements are designed to facilitate interaction between a signatory state and EU Member States and, as such, may be viewed as a prerequisite for the sustainable development of economic, humanitarian, cultural and scientific (and other) ties. Wherever such an agreement exists, short-term visas (including multiple entry visas) are issued via a simplified procedure on the basis of reciprocity to citizens of contracting states, especially members of official delegations, businessmen, drivers of vehicles performing international transportation of freight and passengers, journalists, students, participants of international sports tournaments and persons accompanying them, participants of cultural and scientific events and the immediate relatives of a migrant of one State Party living on the territory of another State Party; visits to military or civilian cemeteries in the territory of contracting states are also facilitated. Such agreements also regulate the procedure for granting visa fee exemptions to certain categories of applicants.

¹⁵³ See Universal Declaration of Human Rights, Article 15, and International Covenant on Civil and Political Rights, Article 17.

case that biometric documents can prevent irregular migration since irregular migrants work and reside, for the most part, clandestinely and can cross borders illegally, without any documents.

In terms of bringing the use of data containing biometric characteristics in line with human rights, it is important that the use of such data, and the consequent restrictions placed on freedom of movement, be proportional to any public risk. The collection of such information should be appropriate, relevant and for legitimate purposes.¹⁵⁴ Such issues must be taken into consideration as the Republic of Armenia works towards the introduction of documents containing biometric data.

(h) Labour Migration

The majority of Armenian laws on migration try to regulate the immigration of foreigners; domestic legislation is inadequate, however, in terms of regulating and supporting the emigration of Armenian citizens. Thus, with a view to managing labour migration flows and protecting the rights of migrants, the State Migration Service (formerly the Migration Agency) of the RA Ministry of Territorial Administration has devised a draft *Law on the Organization of Overseas Employment*. The purpose of the draft Law is to prevent citizens from being cheated in offers of labour emigration or from being smuggled to foreign states as well as to create a legal foundation that regulates labour emigration for the benefit of the labour emigrants. With a view to protecting the rights and interests of persons going abroad to work, the Draft Law stipulates that the organization of work abroad is regarded as an activity that is subject to licensing. It is then incumbent on licensed organizations to conclude contracts with citizens who wish to work abroad, stating in the contract the citizen's preferences (destination country, occupation, remuneration, timeframe, etc.); contracts must also be drawn up with the relevant employers abroad or with their authorized representatives in Armenia who work as recruitment

¹⁵⁴ Thomas, Rebekah, *Biometrics, Migrants, and Human Rights*, Global Commission on International Migration (March 2005).

agents. Indeed, the Draft Law states that a labour contract must be concluded between the employer abroad and the emigrating worker with essential terms and conditions clearly defined.

Under the Draft Law, persons wishing to leave for overseas employment must be able to obtain preliminary information regarding overseas employment and foreign employers free of charge from licensed organizations. This includes information on the general situation of the labour market in a potential destination country, the immigration regime there, the country's geographical location, political order, climate conditions, traditions, etc. (the full list of such information will be issued by the RA Government). Relevant persons should also be able to have free consultations about the extent to which the contract that has been signed, or is about to be signed, with the employer abroad complies with guarantees that protect the worker's interests and rights. The draft law is currently being reviewed by the Armenian Government.

Since the emigration of Armenian citizens for work purposes is a key component of the country's migration patterns, it is recommended that an appropriate legal framework for managing various aspects of labour emigration be created. Regulation of activities of agencies that recruit Armenian citizens for employment abroad is a priority task in this regard. Equally important is providing protection and support to Armenian citizens already working abroad, by means of concluding a bilateral agreement on labour migration¹⁵⁵ with the destination country (stipulating clear provisions about the protection of labour migrants), the designation of labour attachés in Armenian embassies abroad, cooperation with main destination countries, including the EU Member States.

¹⁵⁵ **Bilateral labour migration agreements** are formal mechanisms concluded between states, which are essentially legally binding treaty commitments concerned with inter-state cooperation on labour migration. The term is also used to describe less formal arrangements regulating the movement of workers between countries entered into by states as well as a range of other actors, including individual ministries, employer organizations, etc. IOM, *World Migration 2008. Managing Labour Mobility in the Evolving Global Economy* (2008).

Bilateral agreements with various states are a means of protecting the rights of Armenian citizens abroad.

The rights of Armenian labour migrants abroad (and other migrants) must be protected on the basis of international treaties by relevant bodies that monitor compliance with such treaties. Hence, it is important to join conventions that have a bearing on migrant workers.

Many states have **labour attachés**¹⁵⁶ in their diplomatic missions abroad. In view of the fact that Armenian citizens often emigrate for employment, it would be desirable for the Republic of Armenia to also have labour attachés who could negotiate employment quotas and protect Armenian labour migrants' rights abroad.

From the perspective of RA citizens exercising their right to freedom of movement and their right to choose employment, it is important that **employment quotas**¹⁵⁷ be obtained in countries that are struggling to meet domestic demand (due to insufficient domestic workforce) and are willing to receive workers from Armenia (on a temporary or long-term employment basis). Such arrangements for temporary circular labour migration¹⁵⁸ within the framework of bilateral agreements can secure decent working conditions for labour migrants and protect their rights. Though agreements on regulation of labour and social issues were concluded with Georgia (1993), Russia (1994), Ukraine (1995), Belarus (2000), thus far, such arrangements have not been

¹⁵⁶ Labour attachés are diplomats or staff working in their country's embassy in a foreign state. Their role is to protect, within the remit of the diplomatic mission, their fellow nationals working in the foreign state, facilitate the exchange of information on the labour market and labour opportunities, support the development of labour policies and establish good relations on labour matters between their country and the destination state.

¹⁵⁷ In the migration context, **quota** is a quantitative restriction on the number of migrants to be admitted each year. IOM, *World Migration 2008. Managing Labour Mobility in the Evolving Global Economy* (2008).

¹⁵⁸ **Circular migration** is the fluid movement of people between countries, including temporary or long-term movement which may be beneficial to all involved, if occurring voluntarily and linked to the labour needs of countries of origin and destination. Ibid.

implemented in the Republic of Armenia,¹⁵⁹ however, the RA Government has been working towards them.

Such facilitated arrangements for labour migration afford numerous opportunities for development. Unfortunately, the Republic of Armenia is yet to avail itself of these benefits in an orderly fashion; labour migration from Armenia is presently unregulated and unorganized. This leads to frequent violations of migrants' rights, inadequate payment for work, lack of decent work conditions and the failure to maximize the benefits of labour emigration. However, the human development potential of labour migration can be harnessed with the help of state measures that will obtain employment quotas abroad, organize labour emigration properly, introduce employment contracts and safeguard the rights of labour emigrants. To this end, it is essential to develop mechanisms that will stabilize and amplify the impact that Armenian labour migrants' remittances from abroad are having on development and poverty reduction.

(i) Return of Citizens and Readmission

Those migrants who are irregular on a foreign state's territory are usually subject to return to their country of origin. Issues of return and readmission of irregular migrants are regulated by **readmission agreements**.¹⁶⁰ The common practice in international

¹⁵⁹ There are a few exceptions. For example, RA citizens received the opportunity to work in Qatar thanks to negotiations conducted by the RA Government. The draft text of the "Agreement Between the Government of the State of Qatar and the RA Government Concerning the Regulation of Manpower Employment in the State of Qatar" was outlined for the first time in 2004 during the official visit of the Head of the State Migration Service (then Migration Agency) to Qatar. In 2005, the Qatari side recruited 22 medical doctors and 4 nurses who worked in Qatar for three months; some of them later extended their contracts. The negotiations to sign the bilateral labour between the Government of the State of Qatar and RA Government resumed in 2009. The agreement has a model employment contract as one of its attachments. IOM was invited by the SMS to facilitate negotiations on this bilateral agreement.

¹⁶⁰ A readmission agreement or agreement on the readmission of aliens in an irregular situation facilitates the procedures for the return of aliens in an irregular situation (i.e. persons that do not meet or no longer meet the legal requirements for entering a state

law is that such agreements should be in line with the 1951 Geneva Convention on the Status of Refugees and the 1967 Protocol relating to the Status of Refugees, as well as the key international human rights treaties. Agreements also ought to contain provisions on personal data protection. As of 2010, Armenia had signed readmission agreements with the Republic of Bulgaria, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, Latvia, Lithuania, the Kingdom of Norway, the Russian Federation, the Kingdom of Sweden, Switzerland. Draft readmission agreements with Austria, Kingdom of Belgium, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, Cyprus, Estonia, Lebanon, Moldova, Poland, Romania and Ukraine are currently being discussed.

Sustainable reintegration into the society of the returning migrants, and a clear and realistic reintegration policy viewing the returnees as a special category in need of support are essential for reducing recurrent irregular emigration.

(j) Forced Labour, Trafficking and Smuggling of Migrants

Trafficking in persons and smuggling of migrants are threats of irregular migration. To prevent and curb **trafficking in human beings**, criminal penalties for trafficking were prescribed in the Armenian Criminal Code in 2003 (Article 132). Subsequent

or being or residing on its territory) to their home country. This can include establishing such migrants' identities and facilitating their return or transit, whilst ensuring that their fundamental rights and freedoms as prescribed by international treaties and domestic laws are secured, including, but not limited to, the right to appeal to courts and other competent authorities. Cases of persons subject to return should be reviewed individually. Their nationality is confirmed *prima facie* by relying on such proofs as birth certificates, expired passports, driving licenses, military servicemen's cards, cards that establish identity of a company or copies of all the above documents as well as witnesses' testimonies, the language that the person in question speaks, or any other document that can help ascertain that person's nationality. The costs associated with readmission are usually recovered by the requesting party (the State that submits a request that the person who is in its territory without permission be admitted back or allowed transit). In order to exercise control over the implementation of agreements, the parties to the agreement usually set up a committee of experts.

amendments to the Code (made in 2006) were aimed at providing a clearer and more comprehensive definition of trafficking offences by finding a better Armenian equivalent for the term ‘trafficking’ and introducing more severe sentences for offenders. Moreover, the third anti-trafficking strategy and national action plan have been devised¹⁶¹ and the National Referral Mechanism (NRM) for victims of trafficking has been developed.

The NRM provides effective protection of the rights of trafficking victims and provides them with rehabilitation services.¹⁶² It is a system that brings together various State agencies to collaboratively protect and promote the rights of trafficking victims and engage civil society in strategic partnership in the course of their activities. An important principle is that a victim’s referral is done only with his or her consent; and keeping any personal information confidential is, of course, also imperative. The NRM, which only recently began its activities in Armenia, should become the main mechanism for protecting the rights of victims.

In addition to these developments, amendments were introduced to the RA Labour Code in order to prohibit forced labour, violence against workers and employment of children under 14 years of age as well as to add articles that ensure public oversight over employers.

A Draft Law on the Fight against Trafficking in Human Beings has been developed in order to regulate the prohibition of and fight against trafficking in human beings, the legal and organizational grounds for combating trafficking, the legal status of victims (including the principle of gender equality) and legal aspects of victim protection and assistance. Despite the fact that the Republic of Armenia has ratified international and regional anti-trafficking

¹⁶¹ Government Decision 1140-N of 3 September 2010, “On Approving the National Program and Implementation Timetable for the Fight against Trafficking in Persons during 2010-2012 in the Republic of Armenia.”

¹⁶² Such services include the provision of shelter, professional medical and psychological assistance and counselling, work permits and access to education or training.

conventions, it is advisable that discussion of the draft law be finalized and the draft adopted.

Since the Republic of Armenia is primarily a source country in terms of human trafficking, RA diplomatic and consular missions, the Armenian Apostolic Church and cultural centres as well as organizations of the Armenian Diaspora conduct activities abroad to try to identify victims of trafficking.

To prevent trafficking and migrant smuggling, it is important to fully implement the Protocol against the Smuggling of Migrants by Land, Sea and Air as well as the United Nations Convention against Transnational Organized Crime, which would include adding an article that criminalizes the smuggling of migrants to Armenia's Criminal Code.

2.4. Protection of Migrants' Rights in Armenia

When considering the protection of migrants' rights by the authorities and non-governmental organizations, it must be stated that not all migrants living in Armenia are perceived of as a vulnerable group. This does not apply to refugees; indeed, according to an IOM survey, most complaints about violations of migrants' rights in Armenia come from refugees.

The "2008 Annual Report on the Activities of the Defender of Human Rights of the Republic of Armenia and on Violations of Human Rights and Fundamental Freedoms in the Country" focuses on issues relating to the protection of refugees' rights in Armenia. The Report states that with regard to the protection of the rights of refugees in the Republic of Armenia, the State Migration Service (former Migration Agency) of the Ministry of Territorial Administration recorded twelve complaints in 2008, most of which concerned housing, living conditions and the social protection of refugees, while the staff of the Human Rights Defender (Ombudsman) counselled a significant number of applicants on refugee housing matters. The Ombudsman considered seven out of the aforementioned twelve complaints and explained to the applicants of one of the five complaints not admitted for

consideration what options were available to them for the protection of their rights. The Ombudsman's staff monitored 29 settlements with high numbers of refugees but did not register any grave violations of human rights there. However, the Report mentions that about 30 refugee families live in extremely poor conditions on the site of the correctional labour camp in Kasakh village, Kotayk region. It also mentions another example of a family living in anti-sanitary conditions in a basement without light and basic living conditions. According to the Ombudsman's report, monitoring and follow-up showed that the state bodies designated to address the problems of refugees often do not objectively present the refugees' real situation but prefer to focus on achievements that have been made in the sphere of refugee naturalization and integration. Nevertheless, even in these spheres, assessment of the situation of refugees showed that "naturalization had been achieved via bargain or blackmail – e.g. "if you take up Armenian citizenship, we will give you the legal right to win the apartment built by international donors." But after the 'transaction' is done, the future of the refugees is left to fate."¹⁶³

The report stresses that the housing problems of refugees are most pressing, especially given constant fluctuations in house prices and a new wave of refugees and asylum-seekers from Iraq, Iran, Georgia and Turkey (Kurds). The State cannot easily provide temporary housing to these groups scattered throughout Armenia and they are deprived of access to information on public services. The report also states that, owing to the monitoring, preventive activities, and expert advice given by the Staff of the Ombudsman, many refugees and NGOs dealing with problems of refugees were able to solve their problems in administrative procedures or in court during 2008 and thus the number of complaints fell considerably.¹⁶⁴

¹⁶³ See *2008 Annual Report on the Activities of the Republic of Armenia's Human Rights Defender and Violations of Human Rights and Fundamental Freedoms in the Country*, Section 4: Rights of Special and Vulnerable Groups, 4.3. Rights of Refugees, page 149 (available in Armenian only).

¹⁶⁴ *2008 Annual Report on the Activities of the RA Human Rights Defender and Violations of Human Rights and Fundamental Freedoms in the Country*.

Despite the important work being carried out by the Staff of the Ombudsman, the scope of their activities within the protection of migrants' rights should be extended to cover the protection of the rights of irregular migrants in Armenia. For, in the absence of special accommodation centres, representatives of this group may theoretically be held in the same detention institution as those charged with criminal offences. Labour migrants and other groups of migrants should also receive additional attention.

Indeed, it is regrettable that regular reports and studies on human rights in Armenia published by international organizations or foreign Governments often do not pay sufficient attention to migrants' rights, including the right to the freedom of movement. Limitations of this right are only discussed in the *Country Reports on Human Rights for 2008* published by the US Department of State Bureau of Democracy, Human Rights and Labour;¹⁶⁵ it mentions as a limitation of the right to the freedom of movement the 'exit authorization' concept in Armenia.¹⁶⁶ However, the report commends the fact that, effective from October 2008, a person is no longer required to de-register from their place of residence when emigrating from the country. It also notes that violations of the right to the freedom of movement typically occur in Armenia during election periods and that as a result of reforms in the passport system, separate documents for personal identification and for travel will now be introduced in Armenia.

Even though the human rights reports of NGOs operating in Armenia have failed to address emigrants' rights, reports of destination countries can provide an understanding of the violations of Armenian emigrants' rights in various countries. Interestingly,

¹⁶⁵ See '2008 Human Rights Report: Armenia' in US Department of State Bureau of Democracy, Human Rights, and Labour, *Country Reports on Human Rights for 2008*, 25 February 2009 (<http://www.state.gov/g/drl/rls/hrrpt/2008/index.htm>).

¹⁶⁶ According to the RA Government Decision 821 of 25 December 1998 "On Approving the RA Passport System By-Laws and the RA Citizen's Passport Description," the passport of an Armenian citizen (the primary document for identifying an Armenian citizen in foreign countries) is issued for a ten-year term and may be extended for another five years. The passport is valid in foreign states for five years. A stamp duty is collected for an 'exit permit.'

the 2009 Report of the independent human rights organization Human Rights Watch on Russia¹⁶⁷ addresses, among other issues, the abuses of Armenian immigrants' rights in the Russian Federation. The Report states that the construction sector in Russia has grown in recent years at the expense of grave and continued infringements of migrants' rights. In this sector, which employs about 40 per cent of Russia's nine million migrants, it is common for employers to refuse the signing of employment agreements and arbitrarily cut or delay wages, subject workers to extreme physical conditions and threaten violence. Employers, intermediaries or job agencies sometimes seize migrants' passports and force them to work without pay. As proof of this, the Report presents testimonies from officials of the Armenian Embassy in Moscow, as well as Armenian labour immigrants working in Russia. These state that the Armenian Embassy frequently receives complaints about the seizure of passports of immigrants from Armenia, non-payment of wages and harassment by employers or policemen. According to such statements, employers often pull another unlawful trick: they pay a migrant construction worker half of the current month's salary and defer the other half till the following month in order to keep the migrant dependent.

According to the Report, this type of exploitation is so widespread that many do not even consider changing their employment because they realise that the situation in the neighbouring construction site is no different. The Report proposes that the Russian Government take measures to punish employers who infringe migrants' rights – something that is especially important during times of international financial crisis when migrants are more vulnerable to employers' arbitrary attitudes and intensified attacks from extremist groups who see migrants as the root of their economic hardship.¹⁶⁸

¹⁶⁷ *"Are You Happy to Cheat Us? The Exploitation of Migrant Construction Workers in Russia,"* Human Rights Watch (2009).

¹⁶⁸ See <http://www.armtown.com/news/am/rfe/20090210/2009021016/> (in Armenian).

Box 4. Migration in Armenia in Figures.

Although Armenia primarily experiences migration in terms of emigration (i.e. it is predominantly a source country), it also witnesses substantial flows of immigrants. In this regard, the State needs to pay special attention to the integration of persons who have recently been granted citizenship as well as refugees and other migrants. It must formulate and implement policies that are in line with current international standards in order to guarantee the protection of rights of persons who lawfully work or study in the Republic of Armenia (RA), irregular migrants, asylum-seekers and others.

The information and data below indicate migration trends and highlight issues that need to be taken into account while formulating and implementing migration policies.

A. Migration Inflows to Armenia: Citizenship, Asylum and Study

According to data provided by the RA National Statistical Service,¹⁶⁹ 162 foreigners acquired Armenian **citizenship** in 2007 (of those, 116 were Georgian citizens, 16 were Iraqi citizens, eight were Azerbaijani citizens, while others were citizens of Lebanon, Turkmenistan, Russia, Iran and other countries). In 2008, the number grew to 962 (including 703 citizens of Georgia, 136 of Russia, 29 of Uzbekistan, 20 of Turkmenistan, 17 of Iraq, 14 of Iran, 14 of Syria, nine of the USA as well as citizens of other states).

In recent years, there have been quite a few applications **to grant asylum** in the Republic of Armenia. In 2003, the Republic of Armenia received 82 applications, the majority of which (63) were from citizens of Iraq. The country received 162 applications in 2004 (of which 143 were from Iraqis), 163 in 2005 (123 from Iraqis), 650 in 2006 (275 from Iraqis), 291 in 2007 (271 from Iraqis) and 205 in 2008

¹⁶⁹ Source: Republic of Armenia National Statistical Service July 2009 letter in response to an IOM inquiry.

(68 from Iraqis).¹⁷⁰ To date, Armenia has not received any applications to grant political asylum.

About 80,000 former **refugees** have become Armenian citizens (mainly refugees who were forced out of their homes in Azerbaijan).¹⁷¹

In 2008, there were 3,198 **foreign students** (1,480 female) in state institutions of higher education in Armenia – they were citizens of Georgia (904), Russia (852), Iran (698), India (438) and other countries, including Syria, Iraq, Kazakhstan, the USA, the Ukraine, China and Greece. During 2008, a total of 813 foreign students (428 female) attended non-state institutions of higher education in Armenia – citizens of Russia (442), Georgia (241) and other countries, including the Ukraine, Turkmenistan, Iran and Kazakhstan.¹⁷²

B. Victims Trafficked from Armenia to Other Countries

The number of identified **victims of trafficking** was: nine in 2004, fifty-three in 2005, forty-eight in 2006, thirty-six in 2007, thirty-four in 2008, and forty-four in the first six months of 2009.¹⁷³

All 36 of the trafficking victims identified in 2007 were Armenian citizens; seventeen had been exploited in the UAE and nineteen in Turkey. Of the 34 victims identified in 2008, thirteen were citizens of the Russian Federation who had been exploited in Armenia, while the remaining 21 victims were Armenian citizens – eight had been exploited in Turkey and three in Armenia (domestic trafficking). Of the 44 victims identified during the first half of 2009, eleven were Russian citizens exploited in Armenia, while the remaining 33 were

¹⁷⁰ Source: Republic of Armenia Ministry of Territorial Administration, Migration Agency, July 2009 letter in response to an IOM inquiry.

¹⁷¹ Ibid.

¹⁷² Source: Republic of Armenia National Statistical Service July 2009 letter in response to an IOM inquiry.

¹⁷³ Source: Republic of Armenia Procuracy General, July 2009 letter in response to an IOM inquiry.

Armenian citizens – seven had been exploited in Turkey, five in the UAE, seventeen in Russia and four in Armenia.¹⁷⁴

Before 2008, identified victims were women, mostly middle-aged (no minors were identified); however, male victims of labour trafficking were identified for the first time in 2008; and five of the victims identified in 2009 were minors, two of which were male. During this period, six victims of labour trafficking were identified (three women and three men).¹⁷⁵

During 2006–2009, sixteen criminal cases were charged in the Armenian courts under Article 132 of the Criminal Code (“recruitment, transportation, transfer, harbouring or receipt of persons for purposes of exploitation”), four criminal cases under Article 132.1 of the Criminal Code (“involvement of a person in prostitution or other forms of sexual exploitation, forced labour, services, placement or holding of a person in slavery or practices similar to slavery”), and seven criminal cases under Article 261 of the Criminal Code (“involvement of another person in prostitution for mercenary purposes”).¹⁷⁶

C. Irregular Migration and Prosecution of Foreigners in Armenia

During 2006–2009, Armenian courts reviewed 119 criminal cases under Article 325 of the Criminal Code (Forgery, Sale or Use of Forged Documents, Stamps, Seals, Letterhead Papers and Vehicle License Plates), 24 under Article 329 (Illegal Crossing of State Border) and 411 under Article 178 (Swindling).¹⁷⁷

In relation to crimes proscribed by Article 329 of the Criminal Code of Armenia, the Procuracy General instigated 29 criminal cases in 2004 and seven of the persons punished as a result were **foreigners**.

¹⁷⁴ Ibid.

¹⁷⁵ Source: Republic of Armenia Ministry of Territorial Administration, Migration Agency, July 2009 letter in response to an IOM inquiry.

¹⁷⁶ Source: Republic of Armenia Judicial Department, July 2009 letter in response to an IOM inquiry.

¹⁷⁷ Ibid.

In 2005, twenty-four criminal cases were instigated and seven of the persons punished as a result were foreigners. During 2006, nineteen criminal cases were instigated and two of the persons punished as a result were foreigners. In 2007, twenty-nine criminal cases were instigated and one foreigner was punished. Of all the persons punished as part of 34 criminal cases in 2008, four were foreigners. Eighteen criminal cases have been instigated during 2009.¹⁷⁸

During 2004, eighteen cases were instigated in relation to the crimes proscribed under Article 325 of the Criminal Code. The number reached 37 cases in 2005 (three of the perpetrators were foreign citizens), 56 in 2006 (eight of the perpetrators were foreign citizens), 48 in 2007 (two of the perpetrators were foreign citizens), 30 in 2008 (four of the perpetrators were foreign citizens) and ten in 2009 (only one of the perpetrators was a foreign citizen).¹⁷⁹

The following table provides information on the number of **foreigners** prosecuted under Articles 329 (Illegal Crossing of State Border) and 325 (Forgery, sale or Use of forged Documents, Stamps, Seals, Letterhead Papers and Vehicle License Plates) of the RA Criminal Code.¹⁸⁰

Year	Total number of criminal cases instigated by Procuracy General under Article 329 (with no. of foreigners prosecuted)		Total number of criminal cases instigated by Procuracy General under Article 325 (with no. of foreigners prosecuted)	
	Number of cases instigated	Number of foreigners prosecuted by these cases	Number of cases instigated	Number of foreigners prosecuted by these cases
2004	29	7	18	0
2005	24	7	37	3
2006	19	2	56	8
2007	29	1	48	2
2008	34	4	30	4
2009	18	0	10	1

¹⁷⁸ Source: Republic of Armenia Procuracy General, July 2009 letter in response to an IOM inquiry.

¹⁷⁹ Ibid.

¹⁸⁰ Ibid.

D. Cases of Violations of Migrant's Human Rights

The survey carried out by the IOM did not reveal any information or statistics about violations of human rights by state bodies during the migration process. Although this may be due to the fact that such data has not yet been compiled. It should be noted that the **European Court of Human Rights** has never received a single complaint against the Republic of Armenia on the grounds of the violation of the right to freedom of movement.¹⁸¹

E. Protection of the Rights and Interests of Armenian Citizens Abroad

The interests of Armenian citizens abroad are protected by RA consular missions, which also organize the return of Armenian citizens to Armenia. The findings of a study of the infringements of Armenian citizens' rights in various countries are presented below.

Analysis of complaints received from Armenian citizens in Ukraine, for instance, revealed that most infringements are related to violations of Ukrainian migration laws. Armenian citizens have lodged numerous complaints about unfavourable treatment by Ukrainian migration and passport control authorities. Armenian citizens have complained that they have been denied entry into the Ukraine at airports and railway stations with no explanation.

During 2004–2009, there was an increase in the number of Armenian citizens who were deported from Ukraine or voluntarily returned to Armenia due to breaches of Ukrainian migration laws. The majority were Armenian citizens deported by Ukrainian border officials (according to court orders) for illegal stay in the territory of the Ukraine. During this period, 3,696 return certificates were issued to

¹⁸¹ Source: <http://www.echr.coe.int/ECHR/EN/Header/Case-Law/Decisions+and+judgments/HUDOC+database> and http://www.echr.coe.int/NR/rdonlyres/C2E5DFA6-B53C-42D2-8512-034BD3C889B0/0/FICHEPARPAYS_ENG.pdf.

Armenian citizens in the Ukraine.¹⁸² This number of return certificates issued to Armenian citizens in the Russian Federation was even higher (according to data from the Armenian General Consulate in Saint Petersburg, 7,068 such certificates were issued in that district alone).

The table below illustrates that most Armenians returning voluntarily came from the USA, the Russian Federation and Germany, while the highest number of deportees were expelled from Poland and France. According to data provided by the Consular Department of the RA Ministry of Foreign Affairs, the majority of returnees (voluntary and deported) were adult males, though the numbers of women and children were not negligible.

Number of RA citizens who voluntarily returned to Armenia or were deported during 2004–2009, by country:¹⁸³

	The total number of RA citizens who returned voluntarily	The total number of RA citizens who were expelled
Argentina	5	-
Austria	40	
Belarus	56	25
Bulgaria	168	75
Canada		20
China	-	2
France	640	429
Georgia	-	1
Germany	1307	187
Greece	35	
Israel	8	
Italy	4	79
Netherlands	74	39
Poland		1178
Russian Federation	30497	2731
Spain		53

¹⁸² Source: Republic of Armenia Ministry of Foreign Affairs Consular Department, reference letter in response to an IOM inquiry.

¹⁸³ The table is based on data received from the Consular Department of the RA Ministry of Foreign Affairs at IOM's request.

Sweden	127	127
Switzerland	264	
Turkey	77	
Turkmenistan	98	9
United Arab Emirates	3	19
United Kingdom of Great Britain and Northern Ireland	25	76
United States of America	1961	328

It should be noted, however, that the figures are not complete since other Armenian citizens (with valid documents) voluntarily returned or were deported from these countries during the same period without the knowledge of the relevant Armenian embassies.

Assisted voluntary return of Armenian citizens organized by IOM¹⁸⁴

Assisted Voluntary Return is one of many migration management services IOM offers to migrants and governments. It aims to better enable the orderly, humane and cost-effective return and reintegration of migrants who are unable or unwilling to remain in host countries and who wish to return voluntarily to their countries of origin.

Since 2000 IOM has assisted 5,143 migrants who returned to Armenia¹⁸⁵ from mostly from European states, including about 1,800 returnees¹⁸⁶ from Belgium alone. The assistance provided to returnees varies broadly and ranges from return assistance, which includes pre-departure information and counselling and the organization of voluntary return, to schemes that include help with long-term reintegration and economic viability of the migrants once they are back in their countries of origin.

¹⁸⁴ Source: IOM.

¹⁸⁵ International Organization for Migration, “*Assisted Voluntary Return and Reintegration. Annual Report of Activities 2010.*”

¹⁸⁶ Source: <http://avrr.belgium.iom.int/en/about-reab/statistics/chart/listhtml?chart=country&doChart=Display>.

Only in 2009 IOM Armenia assisted 100 cases of voluntary return and reintegration mostly from Belgium (45 cases), Poland (14 cases), UK (8 cases); people returned also from the Netherlands, Germany, Ukraine, Ireland, Italy, Latvia, Slovakia, Switzerland. Of these reintegration cases 45 included assistance with starting up business.¹⁸⁷

¹⁸⁷ Source: IOM Armenia.

The data presented in Box 4 demonstrates that migrants from Armenia need protection abroad and underlines the importance of better protecting their rights through consular missions and diaspora-run and non-governmental organizations, signing relevant bilateral agreements with the host countries, obtaining employment quotas and retraining of the domestic workforce.

In terms of enforcing existing law, the instances when courts directly apply the RA Constitution or international treaties are certainly not numerous. Nevertheless, the Constitution is an integral part of RA legislation and the treaties are supposed to prevail over the norms of national legislation whenever there is any conflict between them. Thus, raising awareness about migrants' rights will be instrumental in encouraging migrants to start defending any violated rights and in helping the authorities and the public to perceive migrants as a vulnerable group.

The State must assume a leading role in the protection of migrants' rights. As a part of public administration, migration management should also be grounded in the principle of human rights protection. Otherwise, it will be impossible to promote sustainable development and reap the benefits of the migration-development nexus.

Conclusions and Recommendations

Since development should not be viewed in purely economic terms (it also involves human rights) and respect for human rights reinforces the relationship between development and migration, this study has highlighted how migration policy must be an integral part of a comprehensive, holistic development strategy. Only this will ensure consistent policy-making and fully exploit the interconnections between migration and development. Indeed, it must be recognized that migration can positively contribute to the realization of the right to development.

International law classifies human rights by risk groups or categories of persons in need of special human rights protection¹⁸⁸ and a number of books on human rights address the protection of the rights of vulnerable groups.¹⁸⁹ Migrants should be perceived as one of the vulnerable groups. However, in Armenia, migrants are not perceived as a separate group of people in need of special human rights protection. In contrast to women, children, persons with disabilities and ethnic minorities, all of which are seen by the State as vulnerable groups in terms of human rights protection, migrants have not yet merited the special attention they deserve as a vulnerable group in terms of human rights. Thus, it is vital that the legal thinking that migrants are a separate category in need of special human rights protection be reinforced in Armenia. To this end, it is imperative to apply the provisions of international conventions ratified by the country and comply with the relevant requirements of domestic legislation, which should be brought into line with international standards.

¹⁸⁸ Weissbrodt, David and Connie de la Vega, *“International Human Rights Law. An Introduction.”* University of Pennsylvania Press (2007).

¹⁸⁹ Smith, Rhona K. M., *“Textbook on International Human Rights”* Oxford University Press (2007); Doebller, Curtis Francis, *“International Human Rights Law: Cases and Materials”* (2004); Symonides, Janusz (ed.), *“Human Rights. Concept and Standards”* Ashgate Publishing Co. (2000); Reichert, Elisabeth, *“Understanding Human Rights. An Exercise Book”* SAGE Publications, Inc (2006); Alfredsson, Gudmundur, and Peter Macalister-Smith (Ed.-s), *“The living law of nations: essays on refugees, minorities, indigenous peoples, and the human rights of other vulnerable groups. In memory of Atle Grahl-Madsen.”* Kehl, Germany: N.P. Engel (1996).

Since Armenia is primarily a source country of migration, it should join the international treaties on the protection of the rights of migrant workers, namely the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, as well as regional conventions such as the European Convention on the Legal Status of Migrant Workers. Accession to such conventions will especially help to protect Armenian citizens abroad by means of both international treaties and non-treaty mechanisms that monitor the realization of international human rights standards and examine complaints about human rights' violations.

The absence of Special Accommodation Centres (SACs) for foreigners (suspected of unlawful entry/residence) and the fact that irregular migrants are detained in penitentiary institutions are serious issues that amount to violations of the rights of migrants in Armenia. While the Armenian Government has taken measures to address these issues, it is essential that the legislation and procedures on SACs be brought into line with international standards in order to secure respect for migrants' rights.

Given the essential role of migration policy for the protection of human rights, an imperative clearly facing Armenia is the development of a migration policy that will safeguard respect for the rights of the individual while also upholding the interests of the State. Thus, the Republic of Armenia Strategy of State Regulation of Migration and Implementation Action Plan, which is currently being devised, should include a specific section dedicated to the protection of migrants' rights. Indeed, the rights of migrants should be taken into account throughout the development process of Armenia's migration regulation policy and migration management system. The migration policy to be developed should afford the State the opportunity to harness the development potential of the migration process and establish mechanisms that guarantee benefits for both the state economy and the migrants themselves. At the heart of the migration policy should lie the goal of human development. The policy should take into account all factors that, if skilfully managed, will yield development and prosperity, including 'brain circulation' (as opposed to brain drain), access to international best practices, Armenia's emergence as a regional educational centre, remittances and the Armenian diaspora. The policy must also strike a balance between

respect for human rights in terms of both immigration and emigration. Although Armenia is primarily a source country of migration, it is already witnessing a trend of rising immigration. In order to be in a position to demand protection of the rights of Armenian migrants in other countries, Armenia should ensure that migrants' rights are respected within its own borders.

The effective coordination of the activities of administrative structures that deal with migration issues is also important. It is crucial, therefore, that a body be designated that will develop and implement migration policy, coordinate the activities of Armenian public administration bodies in the field of migration, play a lead role in the protection of migrants' rights and endeavour to regulate labour emigration.

In addition, attempts must be made to facilitate the free movement of Armenians abroad, especially in the EU, through negotiations on simplified entry procedures and future visa liberalisation. The State should play a key role in creating regular labour migration opportunities abroad for the Armenian labour force. This is particularly so in the wake of the global financial and economic crisis – jobs are being axed and incomes are falling, with vulnerable groups and residents in remote regions being affected worse, all of which increases the likelihood of job-seekers being subjected to labour abuse and becoming victims of trafficking. Even amidst the crisis, however, there is demand for a labour force abroad, which is an opportunity for Armenian labour migrants to be engaged in lawful programs of international circular labour migration in accordance with legal employment contracts that safeguard rights. To this end, the Armenian Government is currently engaged in an important effort to organize temporary circular labour migration by obtaining labour quotas for Armenian workers.

Legislation should recognize migrants as a vulnerable group, paying special attention to the protection of their rights. In particular, legal means of defending Armenian migrants' rights abroad are needed. Armenia, in contrast to many States, lacks labour attachés in its diplomatic missions (its consular bodies perform the function of labour attachés). Thus, it would be advisable for Armenia to introduce the institution of labour attachés at least in major destination countries for Armenian migrants; these officials would be responsible for protecting the rights and freedoms of Armenian emigrants. In

addition, organizations that represent the Armenian Diaspora should also be engaged in efforts to defend migrants' rights.

Given the number of Armenian migrants returning from abroad, Armenia's migration policy should clearly regulate issues related to return, including reintegration and respect for the rights of returnees.

The survey conducted in preparation for this study unfortunately showed that statistics on violations of migrants' rights are not systematically collected by any agency in Armenia. Indeed, people have a very limited awareness of their rights in the field of migration and the mechanisms available for their protection. It is possible that this issue is not sufficiently addressed at the state level either. Analysis of judicial statistics revealed no cases involving migrants and violations of the rights of labour migrants; most complaints received by the Office of the Human Rights Defender came from refugees.

As international migration grows, a subsystem for managing migration data becomes an increasingly indispensable part of modern migration management. This implies, among other things, the collection of detailed data on cases and types of violations of migrants' rights. The comprehensive collection and analysis of such statistics will help to gauge the extent to which migrants are protected in Armenia, indicate how well ratified international treaties and domestic migration laws are being applied and highlight issues in policy, legislation, administration and organization that need to be addressed. This information should be accessible to all government stakeholders to encourage a mutual sharing of information among all competent state bodies.

Other important priorities for Armenia include education on the rights of migrants, training of officials and servants as well as public awareness-raising activities.

Overall, by viewing migrants as a separate vulnerable group in terms of human rights and upholding their rights both inside and outside the country, the Republic of Armenia would be honouring its international commitments in the area of respect for human rights and would stimulate the positive impact that migration can have on the development of the country and its people.

Appendix 1. List of ILO Conventions Ratified by the Republic of Armenia

As of 2010

C14 Weekly Rest (Industry) Convention (adopted on 17 November 1921; as of 2010 has 119 member states; Armenia ratified the Convention on October 3, 2005, the convention entered into force for Armenia on January 27, 2006).

C17 Workmen's Compensation (Accidents) Convention (adopted on June 10, 1925, as of 2010 has 71 member states; Armenia ratified the Convention on October 25, 2004, the convention entered into force for Armenia on December 17, 2004).

C18 Workmen's Compensation for Occupational Diseases Convention (adopted on June 10, 1925, as of 2010 has 60 member states; Armenia ratified the Convention on February 28, 2005, the convention entered into force for Armenia on May 18, 2005).

C26 Convention concerning the Creation of Minimum Wage-Fixing Machinery (adopted on June 16, 1928, as of 2010 has 103 member states; Armenia ratified the Convention on October 3, 2005, the convention entered into force for Armenia on January 27, 2006).

C29 Convention concerning Forced or Compulsory Labour (adopted on June 28, 1930, as of 2010 has 174 member states; Armenia ratified the Convention on October 25, 2004, the convention entered into force for Armenia on December 17, 2004).

C81 Convention concerning Labour Inspection in Industry and Commerce (adopted on July 11, 1947, as of 2010 has 142 member states; Armenia ratified the Convention on October 25, 2004, the convention entered into force for Armenia on December 17, 2004).

C87 Convention concerning Freedom of Association and Protection of the Right to Organise (adopted on July 9, 1948, as of 2010 has 150 member states; Armenia ratified the Convention on March 22, 2005, the convention entered into force for Armenia on January 2, 2007).

C94 Convention concerning Labour Clauses in Public Contracts (adopted on June 29, 1949, as of 2010 has 61 member states; Armenia ratified the Convention on February 28, 2005, the convention entered into force for Armenia on May 18, 2005).

C95 Convention concerning the Protection of Wages (adopted on July 1, 1949, as of 2010 has 96 member states; Armenia ratified the Convention on October 25, 2004, the convention entered into force for Armenia on December 17, 2004).

C97 Convention concerning Migration for Employment (Revised 1949) (adopted on July 1, 1949, as of 2010 has 49 member states; Armenia ratified the Convention

on October 3, 2005, the convention entered into force for Armenia on January 27, 2006).

C98 Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (adopted on July 1, 1949, as of 2010 has 160 member states; Armenia ratified the Convention on September 24, 2003, the convention entered into force for Armenia on November 12, 2004).

C100 Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (adopted on June 29, 1951, as of 2010 has 168 member states; Armenia ratified the Convention on December 21, 1993, the convention entered into force for Armenia on July 29, 1995)

C105 Convention concerning the Abolition of Forced Labour (adopted on June 25, 1957, as of 2010 has 169 member states; Armenia ratified the Convention on October 25, 2004, the convention entered into force for Armenia on December 17, 2004)

C111 Convention concerning Discrimination in Respect of Employment and Occupation (adopted on June 25, 1958, as of 2010 has 169 member states; Armenia ratified the Convention on December 21, 1993, the convention entered into force for Armenia on July 29, 1995)

C122 Convention concerning Employment Policy (adopted on July 9, 1964, as of 2010 has 104 member states; Armenia ratified the Convention on December 21, 1993, the convention entered into force for Armenia on July 29, 1995)

C131 Convention concerning Minimum Wage Fixing, with Special Reference to Developing Countries (adopted on June 22, 1970, as of 2010 has 51 member states; Armenia ratified the Convention on December 13, 2004, the convention entered into force for Armenia on April 29, 2006)

C132 Convention concerning Annual Holidays with Pay (Revised) (adopted on June 24, 1970, as of 2010 has 36 member states; Armenia ratified the Convention on October 3, 2005, the convention entered into force for Armenia on January 27, 2006)

C135 Convention concerning Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking (adopted on June 23, 1971, as of 2010 has 84 member states; Armenia ratified the Convention on December 21, 1993, the convention entered into force for Armenia on July 29, 1995)

C138 Convention concerning Minimum Age for Admission to Employment (adopted on June 26, 1973, as of 2010 has 158 member states; Armenia ratified the Convention on October 3, 2005, the convention entered into force for Armenia on January 27, 2006)

C143 Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (adopted on June 24, 1975, as of 2010 has 23 member states; Armenia ratified the Convention on October 3, 2005, the convention entered into force for Armenia on January 27, 2006)

C144 Convention concerning Tripartite Consultations to Promote the Implementation of International Labour Standards (adopted on June 21, 1976, as of 2010 has 128 member states; Armenia ratified the Convention on December 13, 2004, the convention entered into force for Armenia on April 29, 2006)

C150 Convention concerning Labour Administration: Role, Functions and Organisation (adopted on June 26, 1978, as of 2010 has 70 member states; Armenia ratified the Convention on February 28, 2005, the convention entered into force for Armenia on May 18, 2005)

C151 Convention concerning Protection of the Right to Organise and Procedures for Determining Conditions of Employment in the Public Service (adopted on June 27, 1978, as of 2010 has 47 member states; Armenia ratified the Convention on December 21, 1993, the convention entered into force for Armenia on July 29, 1995)

C154 Convention concerning the Promotion of Collective Bargaining (adopted on June 19, 1981, as of 2010 has 41 member states; Armenia ratified the Convention on December 13, 2004, the convention entered into force for Armenia on April 29, 2006)

C160 Convention concerning Labour Statistics (adopted on June 25, 1985, as of 2010 has 48 member states; Armenia ratified the Convention on December 13, 2004, the convention entered into force for Armenia on April 29, 2006)

C173 Convention concerning the Protection of Workers' Claims in the event of the Insolvency of their Employer (adopted on June 23, 1992, as of 2010 has 19 member states; Armenia ratified the Convention on February 28, 2005, the convention entered into force for Armenia on May 18, 2005)

C174 Convention concerning the Prevention of Major Industrial Accidents (adopted on June 22, 1993, as of 2010 has 15 member states; Armenia ratified the Convention on November 6, 1995, the convention entered into force for Armenia on January 3, 1997)

C176 Convention concerning Safety and Health in Mines (adopted on June 22, 1995, as of 2010 has 24 member states; Armenia ratified the Convention on October 12, 1998, the convention entered into force for Armenia on April 27, 2000)

C182 Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (adopted on June 17, 1999, as of 2010 has 173 member states; Armenia ratified the Convention on March 22, 2005, the convention entered into force for Armenia on January 2, 2007)

C118 Convention concerning Equality of Treatment of Nationals and Non-Nationals in Social Security (adopted on June 28, 1962, as of 2010 has 37 member states; Armenia ratified the Convention on October 3, 2005, the Convention has not yet come into force for Armenia)

Appendix 2. CIS Treaties related to migration¹⁹⁰

As of 2010. The list is selective

“Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms,” adopted on 26 May 1995, in force from 11 August 1998, and “Decision of the Commonwealth of Independent States on the Human Rights Commission,” adopted on 24 September 1993, Armenia signed the Convention but has not yet ratified it

“Agreement on Cooperation in the Sphere of Labour Migration and Social Protection of Migrant Workers,” concluded on 15 April 1994, entered into force on 11 August 1998, Armenia ratified it on 9 December 1995, entered into force in Armenia on 26 February 1996

“Protocol on Changes and Amendments to the Agreement on Cooperation in the Sphere of Labour Migration and Social Protection of Migrant Workers,” concluded on 25 November 2005, entered into force on 15 December 2006, Armenia signed the Protocol but has not yet ratified it

“Convention on the Legal Status of Migrant Workers and Members of their Families of the CIS Member States,” signed on 14 November 2008, entered into force on 21 February 2010, Armenia ratified the Convention on 15 July 2010

“Agreement on Visa-free movement of CIS Citizens on the territory of CIS member states,” signed, came into force and ratified by Armenia on 9 October 1992

“Agreement on the Cooperation of the CIS Member States in Combating Trafficking in Persons, Human Organs and Tissues,” concluded on 25 November 2005, entered into force on 4 September 2006, Armenia adopted the Agreement on 25 November 2006

“CIS Agreement on Support to Refugees and Forced Migrants,” signed on 24 September 1993, entered into force and was ratified by Armenia on 21 November 1994

“Agreement between the CIS Member States on Cooperation in Combating Illegal Migration,” signed in Moscow on 6 March 1998, entered into force on 14 June 1999, Armenia ratified it on 26 June 1999 and it entered into force for Armenia on 13 August 1999

“Agreement on the creation within the CIS member States of a common system for the registration of citizens of third countries and stateless persons

¹⁹⁰ Source: <http://cis.minsk.by/reestr/ru/index.html#reestr>.

entering the territory of the CIS member States,” adopted and entered into force on 3 June 2005, Armenia has not acceded to it

“Agreement on Establishing a Council of Head of Migration Bodies of CIS Member states,” signed and entered into force on October 5, 2007, in force in Armenia since 15 June 2010

CIS Model laws related to migration¹⁹¹

As of 2010. The list is selective

“On Coordinated Principles of Regulation of Citizenship,” adopted on 29 December 1992

“On General Regulating Principles Relating to Refugee Citizens of USSR Successor States in the Territories of the Commonwealth States,” adopted on 15 June 1998

“The Labour Migration in the CIS Countries,” adopted on 13 May 1995

“On Employment of Population,” adopted on 3 April 1999

“On Combating Against Organized Crime,” adopted on 2 November 1996

“On Labour Protection,” adopted on 8 June 1997

“On Labour Protection Services,” adopted on 9 December 2000

“On Private Employment Agencies,” adopted on 28 October 2010

“On State Border,” adopted on 28 October 2010

“On Passport and visa documents and other identification documents of the new generation,” adopted on 28 October 2010

“Recommendations on harmonization of national legislations of CIS Member states on preventing irregular migration,” adopted on 3 December 2009

“Recommended glossary of migration management terms and concepts,” adopted on October 31, 2007

“On legal regulation of migration processes in the territory of the Commonwealth of Independent States,” adopted on 9 December 2000

¹⁹¹ Source: <http://www.iacis.ru/html/index-eng.php?id=54&str=list&nid=9>.

Appendix 3. United Nations Treaties¹⁹²

As of 2010

“Universal Declaration of Human Rights,” 10 December 1948

ICCPR “International Covenant on Civil and Political Rights,” adopted on 16 December 1966 and entered into force on 23 March 1976, Armenia acceded on 23 June 1993

ICCPR-OP1 “First Optional Protocol to the International Covenant on Civil and Political Rights,” adopted on 16 December 1966 and entered into force on 23 March 1976, Armenia acceded on 23 June 1993

ICCPR-OP2 “Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty,” adopted on 15 December 1989, entered into force on 11 July 1991, Armenia has not yet acceded to this Protocol

ICERD “International Convention on the Elimination of All Forms of Racial Discrimination,” adopted on 7 March 1966, entered into force on 4 January 1969, Armenia acceded to the Convention on 23 June 1993

ICESCR “International Covenant on Economic, Social and Cultural Rights,” adopted on 16 December 1966, entered into force on 3 January 1976, Armenia acceded to the Covenant on 13 September 1993

ICESCR - OP “Optional Protocol of the Covenant on Economic, Social and Cultural Rights,” adopted on 10 December 2008, not in force yet, Armenia signed on 29 September 2009, but has not ratified yet

CEDAW Convention on the Elimination of All Forms of Discrimination against Women, adopted on 18 December 1979, entered into force on 3 September 1981, Armenia acceded to the Convention on 13 September 1993

OP-CEDAW “Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women,” adopted on 6 October 1999, in force from 22 December 2000, Armenia acceded on September 14, 2006

CAT “Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,” adopted on 10 December 1984, entered into force on 26 June 1987, Armenia acceded to the Convention on 13 September 1993

¹⁹² Source: <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>.

OP-CAT “Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,” adopted on 18 December 2002, entered into force on 22 June 2006, Armenia acceded on September 14, 2006

CRC “Convention on the Rights of the Child,” adopted on 20 November 1989, entered into force on 2 September 1990, Armenia acceded on 23 June 1993

OP-CRC-AC “Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict,” adopted on 25 May 2000, in force from 12 February 2002, Armenia ratified on September 30, 2005

OP-CRC-SC “Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography,” adopted on 25 May 2000, in force from 12 February 2002, Armenia ratified on June 30, 2005

ICRMW “International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families,” adopted on 18 December 1990, entered into force on 1 July 2003, Armenia has not yet acceded to the Convention

CRPD “Convention on the Rights of Persons with Disabilities,” adopted on 13 December 2006, entered into force on 3 May 2008, Armenia ratified the Convention on 22 September 2010

OP-CRPD “Optional Protocol to the Convention on the Rights of Persons with Disabilities,” adopted on 13 December 2006, in force from 3 May 2008, Armenia signed on 30 March 2007 but has not ratified yet

CPED “International Convention for the Protection of All Persons from Enforced Disappearance,” adopted on 20 December 2006, entered into force on 23 December 2010, Armenia signed on April 10, 2007, not ratified yet

“Convention against Transnational Organized Crime,” adopted on 15 November 2000, entered into force on 29 September 2003, Armenia acceded on 1 July 2003

“Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the “United Nations Convention against Transnational Organized Crime,” adopted on 15 November 2000, entered into force on 25 December 2003, Armenia acceded to the Protocol on 1 July 2003

“Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the “United Nations Convention against Transnational Organized Crime,” adopted on 15 November 2000, entered into force on 28 January 2004, Armenia acceded to the Protocol on 1 July 2003

“Convention relating to the Status of Refugees,” adopted on 28 July 1951, entered into force on 22 April 1954, Armenia acceded on 6 July 1993

“Convention relating to the Status of Stateless Persons,” adopted on 28 September 1954, entered into force on 6 June 1960, Armenia acceded on 18 May 1994

“Protocol relating to the Status of Refugees,” adopted on 31 January 1967, entered into force on 4 October 1967, Armenia acceded to the Protocol on 6 July 1993

“Convention on the Reduction of Statelessness,” adopted on 30 August 1961, entered into force on 13 December 1975, Armenia acceded to it on 18 May 1994

“Convention on the Nationality of Married Women,” adopted on 20 February 1957, entered into force on 11 August 1958, Armenia acceded on 18 May 1994

“Vienna Convention on Consular Relations,” adopted on 24 April 1963, entered into force on 19 March 1967, Armenia acceded on 23 June 1993

“Optional Protocol to the Vienna Convention on Consular Relations concerning Acquisition of Nationality,” adopted on 24 April 1963, entered into force on 19 March 1967

“Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others,” adopted on 21 March 1950, in force from 25 July 1951

Appendix 4. Council of Europe Treaties related to migration¹⁹³

As of 2010. The list is not exhaustive

005 “Convention for the Protection of Human Rights and Fundamental Freedoms,” adopted on 4 November 1950, entered into force on 3 September 1953, Armenia ratified it on 26 April 2002

009 “Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms,” adopted on 20 March 1952, entered into force on 18 May 1954, Armenia ratified the protocol on 26 April 2002

046 “Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto,” adopted on 16 September 1963, in force from 2 May 1968, Armenia ratified it on 26 April 2002

114 “Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty,” adopted on 28 April 1983, entered into force on 1 March 1985, Armenia ratified it on 29 September 2003

117 “Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms,” adopted on 22 November 1984, entered into force on 1 November 1988, Armenia ratified it on 26 April 2002

177 “Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms,” adopted on 4 November 2000, entered into force on 1 April 2005, Armenia ratified it on 17 December 2004

187 “Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances,” adopted on 3 May 2002, entered into force on 1 July 2003, Armenia signed the Protocol on 19 May 2006 but has not yet ratified it

035 “European Social Charter,” adopted on 18 October 1961 and entered into force on 26 February 1965

163 “European Social Charter (revised),” adopted on 3 May 1996, entered into force on 1 July 1999, Armenia ratified it on 21 January 2004

093 “European Convention on the Legal Status of Migrant Workers,” adopted on 24 November 1977, entered into force on 1 March 1983, Armenia has not yet signed it

126 “European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment,” adopted on November 26, 1987, Armenia ratified it on June 18, 2002

¹⁹³ Source: <http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?PO=ARM&MA=999&SI=2&DF=&CM=3&CL=ENG>.

151 “Protocol No. 1 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment,” adopted on 4 November 1993, in force since 1 March 2002, Armenia ratified it on June 18, 2002

152 “Protocol No. 2 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment,” adopted on 4 November 1993, in force since 1 March 2002, Armenia ratified it on June 18, 2002

108 “Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data,” adopted on 28 January 1981, entered into force on 1 October 1985, signature by Armenia is expected in the near future

197 “Council of Europe Convention on Action against Trafficking in Human Beings,” adopted on 16 May 2005, entered into force on 1 February 2008, Armenia acceded to it on 14 April 2008

031 “European Agreement on the Abolition of Visas for Refugees,” adopted on 4 April 1959, entered into force on 4 September 1960, Armenia signed it on 11 May 2001 but has not ratified yet

061A “The Council of Europe Protocol to the European Convention on Consular Functions concerning the Protection of Refugees,” adopted on 11 December 1967, Armenia has not signed this Agreement

107 “Council of Europe European Agreement on Transfer of Responsibility for Refugees,” adopted on 16 October 1980, in force from 1 December 1980, Armenia has not signed this Agreement

025 “European Agreement on Regulations governing the Movement of Persons between Member States of the Council of Europe,” adopted on December 13, 1957, in force from January 1, 1958, Armenia has not yet signed it

024 “European Convention on Extradition,” adopted on December 13 1957, in force from 18 April 1980, Armenia ratified it on January 25, 2002

086 Additional Protocol to the European Convention on Extradition, adopted on October 15, 1975, in force from August 20 1979, Armenia ratified it on December 18, 2003

098 Second Additional Protocol to the European Convention on Extradition, adopted on March 17, 1978, in force from June 6, 1983, Armenia ratified it on December 18, 2003

043 Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality, adopted on 6 May 1963, in force from 28 March 1968

068 European Agreement on Au Pair Placement, adopted on 24 November 1969, in force from 30 May 1971

144 Convention on the Participation of Foreigners in Public Life at Local Level, adopted on 5 February 1992, in force from 1 May 1997

166 European Convention on Nationality, adopted on 6 November 1997, in force from 1 March 2000

200 Council of Europe Convention on the avoidance of statelessness in relation to State succession, adopted on 19 May 2006, in force from 1 May 2009

Appendix 5. Readmission Agreements Signed by the Republic of Armenia¹⁹⁴

As of 2010

1. “Agreement between the Government of the Republic of **Latvia** and the Government of the Republic of Armenia on Admission and Transfer of Persons” (signed in 2002, ratified on August 21, 2002)
2. “Agreement between the Government of the Republic of Armenia and the Government of the Kingdom of **Denmark** on the Readmission of Persons with Unauthorized Stay” (signed on April 30, 2003, ratified on August 2, 2003, entered into force on January 1, 2004)
3. “Agreement between the Government of the Republic of Armenia and the Government of the Republic of **Lithuania** on the Readmission of Persons with Unauthorised Stay” (signed on September 15, 2003, entered into force on May 22, 2004)
4. “Agreement between the Government of the Republic of Armenia and the **Swiss** Federal Council on the Readmission of Persons with Unauthorized Stay” (signed on October 30, 2003, ratified on April 27, 2004, entered into force on March 1, 2005)
5. “Agreement between the Government of the Republic of Armenia and the **German** Federal Republic on the Readmission of Persons with Unauthorized Stay” (signed on November 12, 2006, ratified on February 25, 2008, entered into force on April 20, 2008)
6. “Agreement between the Government of the Republic of Armenia and the Government of the Republic of **Bulgaria** on the Readmission of Persons with Unauthorized Stay” (signed on November 13 2007, entered into force on July 1, 2008)
7. “Agreement between the Government of the Republic of Armenia and the Government of the Kingdom of **Sweden** on the Readmission of Persons with Unauthorized Stay” (signed on November 7, 2008, entered into force on April 19, 2009)
8. “Agreement between the Government of the Republic of Armenia and the Government of the Kingdom of **Norway** on the Readmission of

¹⁹⁴ Source: Consular Directorate of the Ministry of Foreign Affairs of the Republic of Armenia.

Persons with Unauthorized Stay” (signed on January 23, 2010, entered into force on June 26, 2010)

9. “Agreement between the Government of the Republic of Armenia and the Government of the **Czech Republic** on the Readmission of Persons with Unauthorized Stay” (signed on May 17, 2010, ratification is pending)
10. “Agreement between the Government of the Republic of Armenia and the Government of the Russian Federation on the Readmission” (signed on August 20, 2010, ratification is pending)

Appendix 6. Armenian legislation related to Migration and Human Rights

As of 2010, list not exhaustive, includes also strategies and policies

“Constitution of the Republic of Armenia,” adopted by referendum on 27 November 2005

“Republic of Armenia Labour Code,” adopted on 9 November 2004, signed on 14 December 2004, in force from 21 June 2005

“Republic of Armenia Administrative Violations Code,” adopted and signed on December 6, 1985, in force from 1 June 1986

“Republic of Armenia Criminal Code,” adopted on 18 April 2003, signed on 29 April 2003, in force from 1 August 2003

“Republic of Armenia Customs Code,” adopted 6 July 2000, signed on 9 August 2000, in force from 1 January 2001

“Republic of Armenia Law on Citizenship,” adopted on 6 November 1995, signed on 16 November 1995, in force from 28 November 1995

“Republic of Armenia Law on Foreigners,” adopted on 25 December 2006, signed on 16 January 2007, in force from 3 February 2007

“Republic of Armenia Law on Employment of Population and Social Security in Case of Unemployment,” adopted on 24 October 2005, signed on 25 November 2005, in force from 1 January 2006

“Republic of Armenia Law on the State Border of the Republic of Armenia,” adopted on 20 November 2001, signed on December 17, 2001, in force from 25 December 2001

“Republic of Armenia Law on the Border Guards Troops,” adopted on 20 November 2001, signed on December 17, 2001, in force from 25 December 2001

“Republic of Armenia Law on Aviation,” adopted on 22 February 2007, signed on 15 March 2007, in force from 7 April 2007

“Republic of Armenia Law on Consular Service,” adopted on 29 May 1996, signed on 7 June 1996, in force from 15 June 1996

“Republic of Armenia Law on Political Asylum,” adopted on 26 September 2001, signed on 19 October, 2001, in force from 31 October 2001

“Republic of Armenia Law on Refugees and Asylum,” adopted on 27 November 2008, signed on 12 December 2008, in force from 24 January 2009

“Republic of Armenia Law on the legal and socio-economic guarantees for the persons who had been forcibly displaced from the Republic of Azerbaijan in 1988 to 1992 and have acquired the citizenship of the Republic of Armenia,” adopted on 6 December 2000, signed on 27 December 2000, in force from 30 December 2000

“Republic of Armenia Law on Personal Data,” adopted on 18 October 2002, signed on 7 November 2002, in force from 14 February 2003

Order No. NK-53-A of the President of the Republic of Armenia “On the Conception for Migration System of the Republic of Armenia and for Introduction of the System of Electronic Passports and Identification Cards with Biometric Parameters in the Republic of Armenia,” March 15, 2008

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Acronyms Used

ArmStat	RA National Statistics Service
BSEC	Black Sea Economic Cooperation
CoE	Council of Europe
CIS	Commonwealth of Independent States
ENP	European Neighbourhood Policy
EU	European Union
HD	Human Development
ILO	International Labour Organization
IML	International Migration Law
IOM	International Organization for Migration
MA	Migration Agency at the Republic of Armenia Ministry of Territorial Administration, as of 2010 State Migration Service at the Republic of Armenia Ministry of Territorial Administration
MoFA	Republic of Armenia Ministry of Foreign Affairs
MoTA	Republic of Armenia Ministry of Territorial Administration
NA	Republic of Armenia National Assembly
NGO	Non-governmental organization
NPA	National Plan of Action
NRM	National Referral Mechanism
PDIU	Project Development and Implementation Unit, IOM Mission in Armenia
RA	Republic of Armenia
RF	Russian Federation
SMS	State Migration Service at the Republic of Armenia Ministry of Territorial Administration
UAE	United Arab Emirates
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UPR	Universal Periodic Review
USA	United States

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