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Migrants and refugees: a continuing challenge for the Council of Europe

Report

Committee on Migration, Refugees and Population

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Summary

The challenges posed by international migration and asylum today have far-reaching consequences for all European societies and therefore merit greater attention by the 47 member states of the Council of Europe. The Organisation has particular value to add in strengthening the protection of human rights of migrants, asylum seekers, refugees and displaced persons, as well as devising migration management policies and promoting cultural diversity and integration Europe-wide. Migration and asylum is not just about processes, it is also about people and the Council of Europe through its human rights prism has a unique contribution to make.

The Assembly recommends to the Committee of Ministers to formulate a medium-term strategy on migration, asylum and displacement in Europe, which would streamline the Organisation's priorities in these fields and improve the internal cohesion and functioning and the outside communication. For this purpose, it calls for the setting up of a transversal Council of Europe project on migrants, asylum seekers and displaced persons.

The Assembly also reiterates its call for the establishment of a new inter-governmental committee with a permanent mandate to examine asylum, refugee and displacement issues to replace the Ad hoc Committee of Experts on the Legal Aspects of Territorial Asylum, Refugees and Stateless Persons (CAHAR). This Committee will need to work in close co-operation with the European Committee on Migration (CDMG) and other inter-governmental committees. Furthermore the Assembly highlights the need for the Council of Europe to enhance the impact and visibility of the work of the Council of Europe in this area, including through enhanced international co-operation with, *inter alia*, the European Union, the Office of the United Nations High Commissioner for Refugees (UNHCR), the International Organisation for Migration (IOM), the International Labour Organization (ILO), the International Committee of the Red Cross (ICRC) and national and international non-governmental organisations.



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A. Draft recommendation

1. Migration continues to shape the European economy, culture and society. Globalisation, with its growing disparities and the recent economic recession, has added new challenges that need to be tackled not only at the European Union level but also by the 47-member Council of Europe.
2. The challenges that particularly require the Council of Europe's attention range from reinforcing the rights and protection of migrants, refugees, asylum seekers and displaced persons to contributing to managing migration in a coherent and co-ordinated approach and developing greater responsiveness to new emerging trends.
3. The Parliamentary Assembly is of the opinion that dealing with these challenges should be placed much higher on the political agenda of the Council of Europe and prioritised within the Council of Europe reform process. The Council of Europe is a value-based organisation, which was created to protect the rights of all people within Europe. Migrants, refugees, asylum seekers and displaced persons are often some of the most vulnerable people in Europe. There is a need not only to strengthen their rights but also to monitor that these rights are guaranteed in practice.
4. The Council of Europe should focus on the areas where it can provide added value at pan-European level. Its major strength lies in its standards of human rights and the rule of law. It also has the advantage of combining experiences amongst its member states, which include countries of origin, transit and destination. Whereas the European Union is concentrating on migration processes, the Council of Europe should make it its explicit priority to concentrate on the people involved in this process and to examine issues of migration, asylum and displacement primarily through a human rights prism in the context of the migration process.
5. The Assembly believes that in defining further priorities and action, the Organisation should refine the priorities established at the 2005 Warsaw Summit of the Heads of State and Government of the Council of Europe and the 2008 Kyiv Conference of Ministers responsible for migration affairs. It should also take into account the recommendations of the 2005 Global Committee on International Migration (GCIM) and the provisions of the European Union's Stockholm Programme (2010-2014).
6. The Assembly deems it important that the Council of Europe formulates its own medium-term strategy on migration, asylum and displacement in Europe. It needs to bring together the bulk of work that has been carried out by the various bodies and sectors of the Organisation and streamline its priorities aiming at the creation of a Europe-wide area where migrants and people in need of protection will enjoy a treatment in line with human rights, the principle of rule of law, access to basic rights and to legal remedies. More specifically, the strategy should strengthen the protection of human rights of migrants, asylum seekers, refugees and displaced persons at all key stages of movement; promote cultural diversity and raise the standards of integration of migrants and refugees in European societies; improve policy development and implementation in member states to handle the long-term impact of migration on society; step up activities in the fields of combating xenophobia, discrimination and trafficking in human beings; and improve the Organisation's intra-institutional cohesion and collaboration in the field of migration, asylum and displacement.
7. Drawing from the wide experience across all relevant sectors of the Organisation, the Assembly considers it necessary to set up a transversal Council of Europe project on migrants, asylum seekers and displaced persons in Europe, with a key focus on the protection of their rights and promotion of their integration.
8. The Assembly pays tribute to the European Committee on Migration (CDMG) and its work on the protection of the human rights and dignity of vulnerable migrants as well as its work on empowering migrants and strengthening social cohesion in its 2009-2012 programme of action. It also merits praise for promoting coherence between migration, development and integration through encouraging dialogue between the countries of origin, transit and destination. The Assembly also pays tribute to the work of the other inter-governmental committees, the Congress of Local and Regional Authorities and monitoring mechanisms that have, in particular, tackled many important human rights and integration issues. Furthermore the Council of Europe Commissioner for Human Rights should be singled out for his principled stand on many migration, asylum and displacement issues.
9. The Assembly also pays tribute to the Committee of Ministers for taking up many migration, asylum and displacement issues but regrets that the Committee of Ministers has not yet made progress on examining calls for the introduction of a committee to replace the former Ad hoc Committee of Experts on the Legal Aspects of Territorial Asylum, Refugees and Stateless Persons (CAHAR), which previously provided the Organisation with valuable expertise on asylum, refugee and IDP matters. Such a committee could develop

close links with the CDMG and other inter-governmental committees, ensuring that, on the one hand, the legal safeguards in the asylum and displacement process are critically examined and, on the other hand, the impact of those safeguards is looked at in a practical sense.

10. In the light of the above, the Assembly recommends that the Committee of Ministers:

10.1. create a post of migration, asylum and displacement co-ordinator tasked with preparing a medium-term strategy on migration, asylum and displacement and implementing a transversal project on migrants, asylum seekers and displaced persons in European societies;

10.2. establish a new inter-governmental committee with a permanent mandate to examine asylum, refugee and displacement issues to replace the Ad hoc Committee of Experts on the Legal Aspects of Territorial Asylum, Refugees and Stateless Persons;

10.3. support the European Committee on Migration (CDMG) and other steering committees and bodies within the Council of Europe in their work on helping to develop coherent migration policies and protect the rights of those involved in the migration, asylum and displacement process.

11. The Assembly recommends that in devising a medium-term strategy on migration, asylum and displacement, the Committee of Ministers takes into account the following priority issues and the need to:

11.1. sign, ratify and implement all Council of Europe Conventions affecting migrants, asylum seekers, refugees and displaced persons, including, inter alia, the European Convention on Human Rights (ETS No. 5), the Framework Convention for the Protection of National Minorities (ETS No. 157), the Council of Europe Convention on the Legal Status of Migrant Workers (ETS No. 93), the European Convention on the Participation of Foreigners in Public Life at Local Level (ETS No. 144), the European Convention on Nationality (ETS No. 166), The Council of Europe Convention on the avoidance of Statelessness in relation to State Succession (CETS No. 200), and the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197). In appropriate circumstances the Committee of Ministers should consider revising conventions where too few states are prepared to sign and ratify these;

11.2. fill the gaps in current Council of Europe legal standards through developing further hard and soft law instruments and practical activities pertaining to migrants, asylum seekers, refugees and displaced persons. In this respect the Committee of Ministers is encouraged to take into account, inter alia, the following specific issues, some of which are the subjects of past Assembly recommendations:

11.2.1. including the right to apply for asylum in the European Convention on Human Rights;

11.2.2. revising the European Social Charter to ensure that all regular migrants come within its scope of application and that at least minimum rights guaranteeing human dignity are included for irregular migrants;

11.2.3. elaborating further standards and guidelines on the integration of migrants in European societies;

11.2.4. working towards common standards in providing minimum rights for irregular migrants and providing strategies for dealing with irregular migrants who cannot or will not be returned;

11.2.5. supplementing the European Prison Rules with European rules on detention centres for migrants and asylum seekers;

11.2.6. elaborating guidelines on alternatives to detention of irregular migrants and asylum seekers;

11.2.7. considering the need for guidelines on “non refoulement” in the light of growing numbers of cases concerning expulsion before the European Court of Human Rights and problems linked to interventions at sea;

11.2.8. considering the need for monitoring the quality and consistency of asylum decisions in Europe;

11.2.9. preparing guidelines on voluntary return to supplement the Committee of Ministers’ guidelines on forced returns as well as guidelines on implementation of readmission agreements;

11.2.10. preparing guidelines on reintegration of people returning to their countries of origin whether voluntarily or forced;

11.2.11. finding sustainable solutions for the return, local integration or resettlement of displaced persons and guaranteeing the protection of their rights;

- 11.3. promote closer European and international co-operation involving countries of origin, transit and destination;
- 11.4. strengthen co-operation and assistance in the field of migration, asylum and displacement by:
 - 11.4.1. supporting an assistance programme for member states, funded by voluntary contributions, to strengthen capacity in the area of migration policy and planning, in particular for countries of origin and transit;
 - 11.4.2. supporting an assistance programme, funded by voluntary contributions, to allow member states, countries of destination, to benefit from the experience of other member states in tackling the difficult issue of integration;
 - 11.4.3. strengthening co-operation with key actors in the field of migration and asylum, notably the United Nations High Commissioner for Refugees (UNHCR), the International Organisation for Migration (IOM), the International Labour Organization (ILO), the International Committee of the Red Cross (ICRC) and international and national non-governmental organisations;
 - 11.4.4. strengthening co-operation with the European Union, in particular in the light of the recently adopted Stockholm Programme and the work of agencies such as Frontex, the Fundamental Rights Agency and the soon to be established European Asylum Support Office;
- 11.5. step up efforts of helping migrants to understand not only their rights but also their obligations in order to assure a better integration and acceptance by the host society;
- 11.6. enhance the impact and visibility of the work of the Council of Europe on the rights of migrants, asylum seekers, refugees and displaced persons by:
 - 11.6.1. publishing a compendium of the human rights standards of the Council of Europe applicable to migrants, asylum seekers, refugees and displaced persons;
 - 11.6.2. providing support for an interactive migration and asylum website shared by the different sectors of the Council of Europe working on the issue;
 - 11.6.3. support and strengthen the work of the informal internal Council of Europe Task Force on Migration, which is a liaison mechanism within different sectors of the organisation involved in migration as well as asylum issues.
12. The Assembly encourages the Council of Europe Commissioner for Human Rights to continue to give priority to the issue of rights of migrants, asylum seekers, refugees and displaced persons in his work.
13. The Assembly invites the Committee of Ministers to report back to the Assembly within two years on the progress made in implementing this Recommendation.

B. Explanatory memorandum by Mrs Fiala, rapporteur

1. Introduction

1. The current report is a response to the recommendations of the report of the Global Commission on International Migration entitled "Migration in an interconnected world: New directions for action", which was published in 2005 upon the initiative of the then United Nations Secretary-General Kofi Annan with a view to forging guidelines on policy action that would live up to the challenges posed by international migration in the globalised world.
2. The report identified six major policy areas, including management of labour migration, reinforcing the economic and development impact of international migration, addressing irregular migration, strengthening social cohesion through integration, protecting the rights of migrants, and enhancing governance through coherence, capacity-enhancement and co-operation, which required action at global, regional and national level.
3. Five years from the publication of the report of the global commission, it is worth taking stock of the Council of Europe's activities in the above areas, analysing what has been achieved and the ways to go ahead. The following chapters present a number of recommendations leading to the setting of priorities by the Council of Europe in dealing with issues of migration and asylum. In addition, in proposing a framework of action for asylum seekers and refugees, it will also consider the UNHCR's 10 point plan of action on refugee protection and mixed migration. Furthermore the report will also take into account the situation of displaced persons and the Council of Europe's role in this respect.
4. With the enlargement of the European Union and the EU's efforts to streamline its immigration and asylum policies through the European Pact on Immigration and Asylum and its Eastern Neighbourhood Policy, questions have sometimes been asked whether the Council of Europe should be dealing with migration and asylum issues at all. The present report shows that the two European institutions have their own distinct competences and complementary roles *vis-à-vis* the various migration- and asylum-related challenges faced by European societies, notwithstanding that these should, however, be better co-ordinated. Consequently, while considering future policy and action to be taken by the Council of Europe, the report will also look in parallel to the action proposed in the European Union's Stockholm Programme, "An open and secure Europe serving and protecting the citizens", which draws up major EU policy lines for 2010-2014 in the area of freedom, security and justice, including migration and asylum matters.
5. It goes without saying that the Council of Europe should focus on the areas in which it has a comparative advantage and where it can provide added value. In this respect, the rapporteur welcomes the extensive reform programme recently launched by the new Secretary General of the Council of Europe and hopes that the Assembly's recommendations arising from this report will form a blueprint for streamlining the Council of Europe's activities in the field of migration, asylum and displacement.
6. Migration being intrinsically linked with important global issues, such as development, economic growth, poverty and human rights, it presents significant challenges. Some migrants are exploited and their human rights abused; integration in destination countries can be difficult; states cannot always attract the migrants they need and open themselves up to irregular migration. Furthermore, migration can deprive countries of origin of important skills. For these reasons and more, migration matters to all 47 member states of the Council of Europe. It is important that all 47 work together as equal partners to deal with the current migration challenges.
7. In the course of preparing this report, the rapporteur sent a questionnaire to all relevant directorates and departments of the Council of Europe engaged in activities related to migration and asylum, and carried out a fact-finding visit to Strasbourg on 23 and 24 March 2009 to hold discussions with interested parties. She is grateful to all colleagues in the Council of Europe who provided information for this report, whether in writing or through availing their time for discussions.

2. Major migration, asylum and displacement challenges from the Council of Europe perspective

8. Europe has always been a continent in migration motion. While it was initially a place of origin, it has now clearly become a host continent. It receives most migrants; more than a third of the world's migrants now live here, representing some 9% of the total population in Europe,¹ with considerable variation between countries and regions.

9. Migration movements continue to shape Europe, with migration pressures altering. The Council of Europe area includes countries of origin, transit and destination, with a growing number of countries being all three at the same time. Many countries that were not traditionally countries of destination have now become so, and it is becoming increasingly important for Europe to have a coherent migration policy so as to attract migrants who are needed, to integrate them fully and to tackle irregular migration.

10. Immigration to Europe is inevitable: demographic disparities, transport facilities, regional economic integration and income differentials between the developed and developing worlds encourage mobility towards Europe. Such mobility is likely to increase further, and will be multi-directional and circular rather than taking the form of a one-way flow as in the past.

11. Borders within Europe and with the European Union are permeable notwithstanding efforts of the European Union and its border agency Frontex, and irregular migration is flourishing. There are believed to be at least 5 to 6 million irregular migrants in EU countries today, with some 500 000 migrants estimated to arrive illegally in the EU every year.

12. The absence of adequate legal routes for migration has also led to a significant expansion in human trafficking and smuggling networks, which are both dangerous and exploitative in nature. Notwithstanding the efforts by the EU and various European state governments to combat irregular migration, not all of the 5 or 6 million irregular migrants can be forced to return or return voluntarily. What to do with these persons who will not, or cannot be sent back, is a rule of law and human rights issue that remains a big challenge for Europe.

13. Migratory flows are also becoming increasingly complex and mixed in nature. More and more, these include both irregular migrants and people seeking international protection, often using the same routes, transport or networks of smugglers and traffickers. States have responded to the challenges of these irregular mixed migratory movements principally by increased control measures, often without incorporating sufficient protection safeguards in the processes such as interception at sea, border controls, detention or return.

14. The demand for female migrant workers has grown so that women increasingly come under pressure to go abroad to find a job. Half of all international migrants today are women, often leaving their children and families behind. Many in Europe are engaged as domestic workers and they are often in an irregular situation. They are particularly vulnerable to abuse, exploitation and trafficking, and are in an urgent need of reinforced protection.

15. On the whole, notwithstanding the ratification by Council of Europe member states of a large number of international and European treaties guaranteeing respect for human rights and dignity of persons under their jurisdiction, too many migrants, asylum seekers and refugees fall victim to discrimination, exploitation and abuse. Migrants, refugees and asylum seekers continue to be among the most vulnerable persons in society. Irregular migrants have particular problems in accessing rights in the context of detention, expulsion or return. Claiming asylum has become increasingly difficult within the mixed migration flows. Migrants and asylum seekers are also frequent targets of hate speech, harassment and violence. They are often unfairly blamed for crime and economic difficulties, and are subjected to widespread discrimination.²

16. There is clearly a discrepancy between public perceptions and reality, which is largely formed by irregular migration. This makes the integration of migrants and refugees into society a major challenge for Europe. This is one of the reasons why it is important not only to talk about the rights but also about the obligations of migrants. Moreover, the fact that immigration issues are often approached within the framework of a public security policy, which equates migrants to criminals, does not favour the integration of migrants and refugees, and creates an atmosphere of xenophobia, racism and intolerance. In addition, it inhibits access to essential services and severely jeopardise the health, safety and rights of migrants.

17. In the above circumstances, politicians and policy makers face the real challenge of looking at migration flows and the presence of migrants, asylum seekers and refugees in their territory in a new light. This is particularly true in the context of the global economic crisis, which has exacerbated the vulnerability of migrants, who are often both the first victims of the crisis and those most severely affected. Earlier crises have proved restricting immigration as a response ineffective. Demographic projections and growing economic integration have an impact on employment needs and the need for mobility.

1. "Migration in Europe: The CEB's Experience", Executive Summary, Council of Europe Bank. According to the RGC, there were 56.1 million migrants in Europe (including the European part of the former USSR) in 2005.

2. United Nations Secretary-General Ban Ki-moon's message for International Migrants Day, 18 December 2009.

18. That being said, the Council of Europe as the key protector of human rights across Europe has a particular role to play in upholding fundamental human rights and protecting the welfare of all migrants, asylum seekers and refugees, whatever their reasons for moving or status in the host country, since all are vulnerable to abuse and exploitation. Whereas the European Union continuously reaffirms that migration and asylum policies must comply with the norms of human rights and dignity, its policies are geared more towards the processes that are relevant for the protection of the common internal market rather than on the people, that is, the migrants, asylum seekers and refugees themselves.

19. The Council of Europe, on the contrary, should explicitly advocate its goal to put individual people in the heart of the matter and pursue a human rights based approach to migration and asylum matters. It should particularly focus on strengthening the rights of migrants, refugees and asylum seekers and encouraging their effective integration. The Council of Europe should continue to take action to curb xenophobia and discriminatory practices and tackle the negative portrayal of persons belonging to this group, monitoring developments as necessary. In doing this the Council of Europe should co-operate with relevant EU bodies in the framework of the 2007 Memorandum of Understanding with a view to further strengthening human rights protection safeguards in EU migration and asylum policies.

20. The Council of Europe should also not forget the 2.5 million internally displaced persons on its territory as a result of protracted conflicts in Europe. Reinvigorated efforts are needed to find political solutions to these conflicts and to build up strong legal and normative frameworks ensuring that internally displaced persons can fully enjoy their human rights, improve their living conditions and be able to integrate – even if temporarily – in their places of displacement or elsewhere in the country. The continued failure to tackle the root causes of these displacements, impunity for past crimes and negligence of the interests of the displaced carry a serious political risk – as seen in August 2008 by the war on the Georgian territory. These protracted conflicts may reignite at any time and may lead to new displacements.

21. Finally, climate change, which is causing serious degradation of environmental conditions, ever more frequent natural disasters and depletion of natural resources is also creating new challenges and putting new pressures on human mobility and international protection, which need to be tackled both at global and regional level. Adequate measures for prevention, adaptation and mitigation need to be taken by the global community in order for the “hotspot” countries to reduce their vulnerability to the impacts of environmental disasters and manage the evolution of environmental processes. But also the Council of Europe could play a proactive role here and make sure that international protection and operational frameworks are updated and that no category of people forced to flee or seek safer existence or is left without effective national or international protection.

3. Activities of the Council of Europe in the priority areas identified in the Global Commission’s report on international migration

3.1. A world of work: migrants in a globalising labour market

22. In view of managing international migration and migrants in a globalising labour market, the global commission called upon states and other stakeholders to take due account of the trend of expanding migration in formulating migration policies. In this respect it recommended pursuing more realistic and flexible approaches to international migration, based on recognition of the potential for migrant workers to fill specific gaps in the global labour market. It called on designing temporary migration programmes as means of addressing the economic needs of both countries of origin and destination as well as reviewing the existing barriers to the mobility of highly skilled professionals. Greater efforts were also to be made in creating jobs and sustainable livelihoods in developing countries, so that the citizens of such states would not feel compelled to migrate.

23. The Council of Europe has a long history in dealing with migration management, including issues dealing with legal channels of labour migration and the status of migrant workers as well as with the increasing concerns of smuggling and trafficking of migrants into Europe. In 1998, the Council of Europe was the first European organisation to make a systematic attempt to devise a migration management strategy. This was based on four integrated principles: orderliness (to maximise the opportunities and benefits to individual migrants and to host societies and to minimise trafficking and illegal movement), protection, integration and co-operation. This strategy placed the protection of individual human rights as the basis for migration management. An important part of this strategy was also designed to concentrate on increased co-operation between the countries of origin and destination and the successful integration of immigrant populations, with a particular attention paid to full respect of migrants’ human rights and diversity.

24. Three policy recommendations of the Committee of Ministers have resulted from the pursuit of this strategy: on the admission, rights and obligations of migrant students and co-operation with countries of origin (CM/Rec(2006)9), on life projects of unaccompanied migrant minors (CM/Rec(2007)9), and on co-development and migrants working for development in their countries of origin (CM/Rec(2007)10). In addition, in 2006, the European Committee for Migration (CDMG) published a policy report entitled *Towards a Migration Management Strategy: Challenges for Countries of Origin*, which provides details on how to achieve a more concerted dialogue between countries of destination and countries of origin (whether member states or countries outside Europe).

25. The 8th Council of Europe Conference of Ministers responsible for Migration Affairs (Kyiv, 4-5 September 2008) moved its migration management objectives to focus more around the areas of promoting and protecting the human rights of migrants and guaranteeing their rights to equal treatment of opportunities, with special attention to vulnerable groups of migrants; strengthening dialogue and co-operation between receiving, transit and origin countries, particularly within Europe; and promoting coherence between migration, development and integration.³

26. These objectives have transformed into two activity programmes for 2009-2012:⁴ on “Empowering migrants and strengthening social cohesion” and on “Protecting the human rights and dignity of vulnerable migrants”. In addition, the Council of Europe has been particularly concerned about the fate of unaccompanied migrant minors. In 2007, the Committee of Ministers adopted a recommendation on life projects of unaccompanied migrant minors (CM/Rec(2007)9), which aims to develop the capacities of minors allowing them to acquire and strengthen the skills necessary to become independent, responsible and active in society.

27. The rapporteur commends the work carried out in developing the migration management strategy for the Council of Europe, which has evolved with time. She believes that the prime task of the Council of Europe is to ensure that migration flows and policies do not lead to human rights violations. This means respect for the European Convention on Human Rights as well as respect for Articles 18 and 19 of the Revised European Social Charter *vis-à-vis* all persons on the move, at all stages of their move, irrespective of their formal status.

28. The rapporteur welcomes the work carried out by the CDMG in the context of the integrated approach to economic migration, social cohesion and development adopted at the 2008 Kyiv ministerial conference, which aspires to bring together countries of origin, transit and destination in a context of dialogue and joint development initiatives, for this is undoubtedly the best basis for co-operation on a continent as diverse as Europe.

29. In order for the migration management strategy to be sustainable, it is important to create first of all legal channels for migration (for example, possibility for businesses to recruit directly), reflecting societies' real needs in terms of demography and high- and low-skilled labour. Europe has to define clearly what its needs are and whom it needs to attract. Those needs may be established by means of targeted, flexible policies able to be adapted to changing situations.

30. The latter is not an easy task. The European Union has been striving for years to develop a comprehensive and sustainable European migration and asylum policy framework, aimed at proactive management of fluctuations in migration flows, balance and co-operation. The 2010-2014 Stockholm Programme lays much emphasis on strengthening dialogue and partnership between the EU and third countries, placing migration as part of the EU's external policy. In addition, as part of the future common migration and asylum policy, the European Pact on Immigration and Asylum, adopted last year, committed member states to organise legal immigration to take account of the priorities, needs and reception capacities of member states and to enhance control of illegal immigration through return and readmission to countries of origin or transit. It furthermore sought to make border controls more effective, establish a common asylum procedure and a uniform status for those granted international protection. These are highly ambitious goals.

31. From the Council of Europe's perspective, however, the EU policies have limits that the Organisation of 47 should not close its eyes to, and where it should closely work with the EU to complement pan-European policies through its own activities.

3. Final Declaration of the 8th Council of Europe Conference of Ministers responsible for Migration Affairs, Kyiv, 4-5 September 2008, CDMG (2008) 43fin.

4. CDMG, Project descriptions 2009-2012 (extracts), 23 January 2009, CDMG (2009) Misc 3.

32. It has been highlighted in the Parliamentary Assembly's [Recommendation 1624 \(2003\)](#) on common policy on migration and asylum, that the common EU policy could produce considerable disparities between EU and non-EU members, with EU member states of the Council of Europe following one path and non-member states following their own paths. This would undermine the establishment of greater unity among member states, which is a fundamental aspiration of the Council of Europe.

33. In order to achieve a Europe-wide area where migrants and people in need of protection enjoy a treatment in line with human rights and the rule of law, there is a specific need to further develop an approach that would integrate human rights into migration and asylum policies at national and European levels, harmonising those policies not only at the EU level but also across the whole Council of Europe area. This approach should take account of human rights concerns at all stages of procedures, including departure, interception at sea, border control, control mechanisms of irregular migration, detention and return. The Council of Europe is well placed to carry out this task.

34. *Recommended action:* In the light of the above, the rapporteur suggests that the Council of Europe should continue to build on the directions established by the 2005 3rd Summit of Heads of State and Government of the Council of Europe and at the 2008 Kyiv ministerial conference and define its own common, medium-term strategy on migration, asylum and displacement in Europe, comprising minimum standards which should be shared by all Council of Europe member states irrespective of their membership of other international organisations and without prejudice to more favourable provisions applicable in some member states. This common strategy should:

- strengthen the application of the conventional basis of existing international legal instruments applicable to migrants and asylum seekers, such as the European Convention on Human Rights (ETS No. 5), the Council of Europe Convention on the Legal Status of Migrant Workers (ETS No. 93), the 1990 UN Convention on the Protection of Rights of All Migrant Workers and Members of their Families, the 1949 ILO Migration for Employment Convention (revised) (No. 97) and 1975 ILO Migrant Workers (Supplementary Provisions) Convention (No. 143) or the 1951 Geneva Convention on refugees;
- elaborate, where appropriate, new standards for strengthening the protection of human rights of migrants, asylum seekers, refugees and IDPs at all key stages of movement;
- provide mechanisms for strengthening the channels of legal migration through the promotion of temporary and circular migration programmes;
- improve integration of migrants and refugees in society, including through enhanced respect for cultural diversity and the fight against discrimination, xenophobia, intolerance and racism;
- promote coherence between migration, development and integration.

3.2. Migration and development: realising the potential of human mobility

35. In terms of migration and development, the report of the global commission recommended states and stakeholders to: develop co-operative relationships between labour-rich and labour-poor countries in order to promote the development of a global pool of professionals; facilitate remittance flows through easier and cheaper transfers and by combining the investment of remittances with macro-economic policies in the countries of origin; encourage diasporas to promote development by saving and investing in their countries of origin and participating in transnational knowledge networks; and formulate policies and programmes that maximise the developmental impact of return and circular migration.

36. The Council of Europe has played a significant role at the global level in promoting solutions for development and co-development. In 2007, the CDMG contributed to the Global Forum on Migration and Development with an issue paper on migration and diasporas.⁵ The Committee of Ministers' recommendations on co-development and migrants working for development in their countries of origin (CM/Rec(2007)10) and on the admission, rights and obligations of migrant students and co-operation with countries of origin (CM/Rec(2006)9) are equally noteworthy within the debate on migration and development nexus.

37. In 2008, the Final Declaration of the Kyiv ministerial conference established specific measures for strengthening the contribution of migrants and diasporas to development in the countries of origin and destination, and their involvement in co-development programmes. These include, *inter alia*, developing measures that seek to reduce the adverse effects in countries of origin of the loss of migrants' skills;

5. CDMG(2007)32.

encouraging investment in education and training in countries of origin, facilitating the transfer of capital, skills and technology by migrants to their countries of origin; strengthening co-development initiatives as well as the role of migrant diasporas as development actors in international relations.

38. In 2009, the Parliamentary Assembly adopted [Resolution 1696](#) and [Recommendation 1890](#) on engaging European diasporas: the need for governmental and intergovernmental responses. It called on the member states to focus on elaborating migration policies that are comprehensive and regard diasporas as vectors of development, promote an institutional role for diaspora through dialogue and regular consultation, and offer policy incentives to diaspora communities or representatives willing to engage in homeland development.

39. *Recommended action:* Considering the role the Council of Europe has played at policy level in this field and not withstanding its limited resources to deal with development issues, the rapporteur would see the benefit of incorporating development issues within the proposed common medium-term strategy on migration, asylum and displacement, albeit with a limited mandate covering certain development and co-development, training and promotion of circular migration issues. Further focus should also be given to enhancing relations with European diasporas, on the one hand, via the establishment of a Council of Europeans Abroad as suggested by the Parliamentary Assembly on several occasions,⁶ and on the other hand, through harmonising policy incentives such as facilitating remittance flows and institutionalising relations of member states with their diaspora communities.

3.3. The challenge of irregular migration: state sovereignty and human security

40. Irregular migration is a highly complex issue, which is driven by the lack of jobs and other livelihood opportunities in countries of origin (push factors) and the demand for cheap and flexible labour in destination countries (pull factors). The growth of irregular migration in recent years is also linked to a lack of regular migration opportunities, and is facilitated by criminal networks that profit from migrant smuggling and from human trafficking. The growth of diaspora communities and transnational social networks also contribute to people moving from one country to another in an irregular manner.

41. Combating irregular migration is certainly one of the most difficult tasks for European states today. Whereas it is well established that states have the sovereign right to decide who enters and remains on their territory, entering a country in violation of its immigration laws does not deprive migrants of their fundamental human rights provided by the human rights instruments, nor does it affect a state's obligation to protect migrants in an irregular situation. According to the existing treaty and customary law, states have a minimum obligation to uphold the fundamental rights of all human beings.

42. Besides being a protection issue, irregular migration is also a particularly emotive matter, and one that tends to polarise opinion. Those who are concerned about border control and national security are often opposed by those whose main concern is the human rights of the migrants concerned. In political and media discourses, irregular migration is often portrayed as constituting a threat to the state. Where it involves corruption and organised crime, irregular migration may indeed become a threat to public security. This is particularly the case where illegal entry is facilitated by migrant smugglers and human traffickers, or where criminal gangs compete for control of the labour of migrants after they have arrived. Where the state receives substantial numbers of irregular migrants and asylum seekers it may seriously challenge the capacity of the state to cope with the situation. When there is a great deal of media attention, irregular migration can also undermine public confidence in the integrity and effectiveness of a state's migration and asylum policies. Irregular migrants thus can undermine governments and impact on their ability to expand regular migration channels.

43. Equally, however, irregular migration can undermine the human security of migrants themselves. Each year, as many as 2 000 migrants are estimated to die while trying to cross the Mediterranean from Africa to Europe. Furthermore, the unlawfulness of their residence makes irregular migrants live in constant insecurity and they are exposed to all kinds of risks, including exploitation and being deported. In most countries, they are also barred or have great difficulties in using the full range of services actually available to them, including emergency healthcare.

44. In search for responses to the above challenges, the global commission identified five areas where states and other stakeholders should make special efforts. These include: engagement in an objective debate about the negative consequences of irregular migration and its prevention; addressing the human rights deficit in interstate dialogue and co-operation; providing additional opportunities for regular migration; and taking

6. Assembly Recommendations 1410 (1999), 1650 (2004) and 1890 (2009).

action against employers who engage migrants with an irregular status; combating migrant smuggling and human trafficking; and respect towards the human rights of migrants, the institution of asylum and the principles of refugee protection.

45. As the key intergovernmental human rights organisation in the European continent, the Council of Europe has a particular role to play in promoting the rights of irregular migrants, even if this is politically difficult. These include, among others, the right to human dignity, physical integrity as well as safety and freedom from racism and discrimination and minimum social rights.

46. Of the work carried out in this field, the most relevant contributions to date are the 20 guidelines on forced returns (CM(2005)40addfinalE), adopted in 2005 by the Committee of Ministers upon the recommendation of the Parliamentary Assembly, and the life projects of unaccompanied migrant minors (CM/Rec(2007)9), the latter encouraging the design and implementation of sustainable return and reintegration of children. The Parliamentary Assembly has in recent years adopted a number of resolutions and recommendations on the rights of irregular migrants, including on the mass arrival of irregular migrants, the “boat people”, trafficking, exploitation of irregular migrants, regularisation programmes, return programmes and the legality of detention and minimum standards of conditions of detention of irregular migrants. These and other related issues have also been of concern to the Human Rights Commissioner, the European Committee for the Prevention of Torture (CPT), the European Committee on Migration (CDMG), and a range of inter-governmental bodies within the Council of Europe.

47. Various issue papers are also worth mentioning: in 2006, the Directorate General of Social Cohesion published a study on *Irregular migrants: access to minimum social rights*, which made recommendations on provision of housing, education, social security and social and welfare services, fair employment conditions and regularisation. In 2008, the CDMG published two series of reports on national policies with regard to irregular migrants with a view to identifying best standards and ways of improving co-operation between countries of origin and host countries. The conclusions of this national policy study still remain to be published. Most recently, the Human Rights Commissioner issued a paper entitled “Criminalisation of migration in Europe: human rights implications”, which calls the Council of Europe member states to reverse the ever-increasing tendency to criminalise migration and to establish a human rights-compliant approach to irregular migration.

48. The rapporteur is nevertheless of the opinion that the Council of Europe has not yet seized its full potential to set and implement standards for the treatment of irregular migrants. She shares the Human Rights Commissioner’s concern about the development and implementation of the EU immigration policy and notably the procedures applicable to border control, detention and return of irregular migrants under the Stockholm Programme.

49. Recommended action: To this end, the rapporteur deems it important that the Council of Europe should take a proactive position – as it has done many times in the past – and develop its own set of common standards and bold guidelines for action guaranteeing a rights-based treatment of irregular migrants. The latter should include:

- rules concerning detention of irregular migrants akin to the European prison rules, guidelines concerning voluntary returns programmes for irregular migrants and asylum seekers, human rights safeguards in readmission agreements and human rights safeguards at border crossings;
- commitment to reversing the current trend of criminalisation of migration;
- providing for specific protection needs of the most vulnerable groups such as unaccompanied minors, children of irregular migrants and women, especially victims of trafficking who should be treated as victims and not as irregular migrants;
- improvement of access to social rights; in this context the Revised European Social Charter needs updating in order to ensure that at least minimum rights guaranteeing human dignity are clarified for irregular migrants;
- regularisation of irregular migrants: not all irregular migrants can be forced to return or will return voluntarily. It is therefore essential to find responses to how to deal with the millions of irregular migrants that remain and the options that exist for regularising their situation (whether through one-off regularisation programmes or through individual applications or other methods) and/or guaranteeing these persons at least certain minimum rights.

50. The rapporteur also encourages the CDMG to present, as soon as possible, the conclusions of the study on national policy analysis with regard to irregular migrants with a view to sharing best practices.

51. The rapporteur recognises that mechanisms need to be found to cut down on irregular migration and to return irregular migrants to their countries of origin. Alongside the human rights protection issues, the Council of Europe should also be looking at how to support readmission agreements and make them more efficient, while ensuring respect for human rights. Furthermore, the rapporteur considers it important to hold an open debate between countries of origin, transit and destination on the root causes of irregular migration and to elaborate training and support programmes for those who are in direct contact with migrants in an irregular situation.

52. In order to deal effectively with the above, the rapporteur proposes setting up a specific transversal Council of Europe project for dealing with the challenges of irregular migration, or alternatively as part of a wider transversal project on migrants, asylum seekers and displaced persons in European societies.

a. Irregular migration and asylum

53. The global commission report does not specifically look at the issue of asylum as such; however, it touches upon asylum in the context of mixed migratory flows and the danger of confusing the issues of irregular migration and asylum, thereby jeopardising the rights of people claiming refugee status.

54. Important linkages do exist between irregular migration and asylum: first, movements from a single country may include some people who qualify for asylum and others who do not, especially when that country is simultaneously affected by human rights violations, armed conflict, political instability and economic collapse. Second, many asylum seekers move in an irregular manner, often making use of migrant smuggling networks, because they are unable to gain the documents they need to travel in an authorised manner. Third, some migrants who manifestly have no need of international protection nevertheless submit an asylum application once they have arrived in another country, so as to maximise the time that passes until they become liable to repatriation. Finally, migrants who move for economic reasons may become destitute and vulnerable to human rights abuses while they are in transit, and require protection and assistance, even if they do not have a valid claim to refugee status.

55. As highlighted by the global commission, the institution of asylum should not be undermined by efforts of states to stem irregular migration. Article 31 of the 1951 UN Refugee Convention specifies that refugees must not be penalised on account of their illegal entry or presence in the country provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence. Concerned about the limbo asylum seekers often live in for months and sometimes years because of backlogs, the Commission urged all states to establish fast, fair and efficient refugee status determination procedures. In situations of mass influx, it recommended the states to consider offering the new arrivals *prima facie* refugee status.

56. At European level, there are significant disparities among the 47 member states of the Council of Europe when it comes to the ways in which refugees and asylum seekers are received and their protection needs to be recognised and applications processed. Whereas the rapporteur welcomes the EU project to establish a Common European Asylum System (CEAS) in its 27 member states by 2012 and to set up a European Asylum Support Office (EASO) in the course of 2010, she finds that it is essential to assure harmonisation of asylum rules and to ensure their coherent application throughout all Council of Europe member states.

57. Recognising the quality and consistency of asylum decisions as a major challenge in Council of Europe member states, the Parliamentary Assembly adopted recently a resolution ([Resolution 1695 \(2009\)](#)) and a recommendation ([Recommendation 1889 \(2009\)](#)) on this subject. It highlighted that the very low recognition rates in certain countries, or for certain groups of asylum seekers, were due to a range of problems including difficulties in accessing the asylum process, poor procedural safeguards, restrictive and divergent interpretation of eligibility criteria, lack of objective and reliable country of origin information, poor evidential assessment, political pressure and lack of training of personnel. The Assembly invited the Committee of Ministers to prepare guidelines to address the difficulties outlined above.

58. Over the years the Committee of Ministers has adopted a number of pan-European standards including, *inter alia*, recommendations covering the training of officials in charge of asylum procedures, the detention of asylum seekers, the return of rejected asylum seekers as well as subsidiary and temporary protection.⁷

7. www.coe.int/T/E/Legal_Affairs/Legal_cooperation/Foreigners_and_citizens/Asylum_refugees_and_stateless_persons/

59. The protection of asylum seekers in Europe has particularly been strengthened through the application of the European Convention on Human Rights and notably its mechanism (Rule 39 – Interim Measures) for preventing the extradition of persons who may face treatment contrary to the European Convention on Human Rights. It is a binding measure for all member states, the failure of which results in a breach of the state's international human rights obligations and the asylum law principle of *non-refoulement*.

60. The rapid increase of Rule 39 applications to the European Court of Human Rights (mostly concerning expulsion/extradition) is of considerable concern. The number of requests to apply the rule grew from about 1 000 in 2007 to over 3 000 in 2008, and 2 083 applications in 2009 (of which 621 were granted). This represents only the tip of the iceberg in terms of the number of requests that could be made, and the Court and the Committee of Ministers of the Council of Europe will need to review how best to deal with this ever-growing flow of requests. The Assembly is currently preparing a report on this issue and will be making further recommendations to the Committee of Ministers on this matter.

61. Increasingly, member states of the Council of Europe have also come under pressure to process asylum claims rapidly. In its [Resolution 1471 \(2005\)](#) on accelerated asylum procedures in Council of Europe member states, the Assembly recommended that accelerated asylum procedures should only be applied as an exception and highlighted that such procedures risked lowering the quality and coherence of asylum procedures. In 2008, the Steering Committee on Human Rights (CDDH) prepared "Guidelines on Human Rights Protection in the Context of Accelerated Asylum Procedures". The rapporteur welcomes that the Committee of Ministers took up this important subject but regrets that these guidelines fell short on some of the Assembly's recommendations, in particular, they failed to express clearly that such procedures should remain exceptional in practice and recommend member states to refrain from automatic and mechanical application of short-time limits for lodging asylum applications as had been requested by the Assembly in view of the judgment of the European Court of Human Rights in the case of *Jabari v. Turkey*.⁸

62. In this context, the rapporteur regrets that the Assembly's recurrent call on the Committee of Ministers to ensure the incorporation of the right of asylum into the European Convention on Human Rights⁹ has not been followed up. While the rapporteur understands the difficulties placed on member states entertaining such a change to the Convention at this moment in time, sight should not be lost of this ambition in view of the importance of this judicial right under the Convention.

63. The rapporteur also deplores the dissolution of the Ad hoc Committee of Experts on the Legal Aspects of Territorial Asylum, Refugees and Stateless Persons (CAHAR) in 2006, which deprived the Council of Europe of its expert body for monitoring and devising new standards on matters related to asylum, refugees and internally displaced persons. The Parliamentary Assembly has repeatedly recommended the Committee of Ministers to establish a new permanent committee within the Council of Europe with a mandate to examine issues pertaining to asylum and internally displaced persons. Establishing such a committee should constitute one of the major priorities for the Organisation – as it has a major role and responsibility in improving the standards of protection of asylum seekers and refugees and contributes towards the harmonisation of the procedures pertaining to asylum around Europe. The clearest evidence of this role is shown by the presence in the Council of Europe of an office of the UNHCR. No other international organisation considers the work of the Council of Europe so significant as to merit an office. The UNHCR has also consistently supported calls for the re-establishment of the CAHAR.

64. *Recommended action:* The rapporteur is adamant that the Council of Europe should deal with raising standards of international protection of asylum seekers, especially considering the increased mixed flows of migrants into Europe. She sees the two following absolute priorities for the Council of Europe, in the order mentioned:

- the establishment of a new inter-governmental committee with a permanent mandate to examine asylum, refugee and displacement issues to replace the CAHAR. This committee should be tasked with examining the different asylum, refugee and displacement issues raised by the rapporteur in this report. It should furthermore be tasked with ensuring that relevant human rights standards are included within the European asylum regime and applicable to all member states of the Council of Europe;
- the incorporation of the right to asylum in the European Convention on Human Rights.

8. *Jabari v. Turkey*, Application No. 40035/98, judgment of 11 July 2000.

9. The Assembly's Recommendation 1440 (2000) called upon the Committee of Ministers to "initiate action to ensure the incorporation of the right of asylum into the European Convention for the Protection of Human Rights and Fundamental Freedoms and report back on progress made towards the fulfilment of this objective within a year".

3.4. Diversity and cohesion: migrants in society

65. Effective integration of migrants and other minority groups represents a “soft” security for European societies, which is why social cohesion and promoting cultural diversity and inter-cultural dialogue in Europe are among the most testing and challenging issues that states across Europe are struggling to devise strategies for. Tolerance and pluralism constitute the foundations of genuinely democratic societies, and states have an important role to play in creating a society where migrants can live without fear of xenophobia, racism and discrimination. On the other hand, integration is a two-way process: migrants need to integrate, but the host society needs to adapt as well and integrate migrants. Migrants furthermore also have obligations and responsibilities *vis-à-vis* their host countries that they must be willing to respect.

66. Integration is not a precise science, and the many different efforts being taken across Europe need to be shared in order to build up as much good practice as possible. Language learning, citizenship awareness, democratic participation, access to work, education and housing, protection of rights and community bridges are all essential for integration and need to be examined in any integration strategy.

67. While recognising the right of states to determine their own policies in relation to the situation of migrants in society, the global commission established that in the first place all migrants must be able to exercise their fundamental human rights and benefit from minimum labour standards. They should be properly informed of their rights and obligations. Authorised and long-term migrants should be encouraged to become active citizens in the country to which they have moved. Secondly, it established that integration processes should value social diversity, foster social cohesion and avert the marginalisation of migrant communities. Thirdly, the global commission considered that particular attention should be given to the empowerment and protection of migrant women, who should also be actively involved in the implementation of integration policies and programmes. The global commission also considered that the rights, welfare and educational needs of migrant children must be fully respected and those individuals and organisations that have an influence on public opinion have to address the issue of international migration in an objective and responsible manner.

68. Promoting integration and intercultural dialogue contributes to the core objective of the Council of Europe. The 3rd Summit made integration one of the priorities for the Organisation in migration matters. It also put great emphasis on intercultural dialogue as a means of promoting awareness, understanding, reconciliation and tolerance, as well as preventing conflicts and ensuring integration and the cohesion of society. It is therefore of no surprise that many sectors of the Organisation have dedicated time and resources to projects that relate to these issues.

69. Of the projects undertaken, the rapporteur would like to specifically mention the integration indicators,¹⁰ prepared by the CDMG in 2004 in the form of a series of eight indicators covering employment, income, housing, health, nutrition, education, information and culture, which serve as a reference tool for those responsible for developing integration policies for migrants.

70. The rapporteur would also like to mention the work carried out by the Social Policy Department on the implementation of the programme of action of the “Report of High-Level Task Force on social cohesion in the 21st Century: towards an active, fair and socially cohesive Europe” (document CM(2007)175). The four elements of the programme are relevant to migrants and migrant communities as they specifically refer to the need to reinforce rights-based policies aimed at integrating migrant workers, to building a Europe of shared and social responsibilities, to strengthening representation and democratic decision making and expanding social dialogue and civic engagement, and to the need for an international campaign to adopt codes of good practice in regard to migration and the integration of migrants.

71. In April 2008, the Committee of Ministers adopted a recommendation on strengthening the integration of children of migrants and of immigrant background (CM/Rec(2008)4), which recommended to introduce into member states’ policy and practice measures to improve the integration of newly-arrived children of migrants into the education system, provide children of migrants with adequate language skills at a preschool level, prepare them for a successful transition from school to the labour market, and overcome the difficulties faced by these children living in segregated and disadvantaged areas.

72. Managing Europe’s increasing cultural diversity while respecting human rights and fundamental freedoms is a tremendous task ahead. In May 2008, the Council of Europe ministers for foreign affairs at their 118th Ministerial Session launched the “White Paper on Intercultural Dialogue: Living Together As Equals in

10. Document MG-ID(2004)5rev.

Dignity". The White Paper argues that if there is a European identity to be realised, it will be based on shared fundamental values, respect for common heritage and cultural diversity as well as respect for the equal dignity of every individual. It therefore proposes a conception based on individual human dignity.

73. The rapporteur also considers it important to mention the Assembly's work on the integration of immigrants in Council of Europe member states ([Recommendation 1625 \(2003\)](#)) and on measures to improve the democratic participation of migrants ([Recommendation 1840 \(2008\)](#)).

74. The Congress of Local and Regional Authorities has published a number of reports on integration issues, including on the participation of foreign residents in local public life ([Recommendation 76 \(2000\)](#)), on the participation of foreign residents in local public life: consultative bodies ([Recommendation 115 \(2002\)](#), [Resolution 141 \(2002\)](#)), on a pact for the integration and participation of people of immigrant origin in Europe's towns, cities and regions ([Recommendation 153 \(2004\)](#), [Resolution 181 \(2004\)](#)), on effective access to social rights for immigrants: the role of local and regional authorities ([Recommendation 194 \(2006\)](#), [Resolution 218 \(2006\)](#)), on improving the integration of migrants through local housing policies ([Recommendation 252 \(2008\)](#), [Resolution 270 \(2008\)](#)), and on inter-community dialogue with a particular focus on the faith-based communities (particularly Muslim) and local responses and preventive measures against radicalisation (currently in the course of preparation).

75. The Congress, together with the CDMG, is actively participating in the CLIP (Cities for Local Integration Policy) Network. This is a European network of cities for local integration policies of migrants which was launched in 2006. The objective of this initiative is to stimulate the exchange of innovative ideas on local measures to integrate migrants and in so doing, bring together and strengthen links between European cities on integration issues. The first research module of the network has resulted in the publication of a report on housing and integration of migrants in Europe. The network comprises more than 25 cities today.

76. Another relevant initiative involving cities and the integration of migrants is the Intercultural cities project – a joint initiative of the Council of Europe (Directorate of Culture and Cultural and Natural Heritage) and the European Commission, launched in 2008.

77. One of the key actors not only in the Council of Europe, but within the whole of Europe in combating racism and discrimination is the ECRI (European Commission against Racism and Intolerance) with its country monitoring work and its work on general themes. Other important work is also being carried out in the areas of social cohesion and education within the Council of Europe. For example, the widespread use of the Council of Europe language competence is having a major impact on policy and practice relating to formal requirements, training, and testing for entry, residence and citizenship. The rapporteur would also like to underline two seminars on "Raising young refugees' voices in Europe today" organised in 2006-2008 by the Directorate of Youth and Sports.

78. *Recommended action:* The rapporteur commends the work undertaken by the Council of Europe covering a wide array of aspects of integration of migrants into European society. She deems it, however, desirable for the Organisation to pay much greater attention to this issue of integration and pursue a more coherent approach. Most importantly, the Council of Europe should examine further how further standards or guidelines on integration could be developed within the Council of Europe. The integration indicators defined by the CDMG could be taken as a basis.

3.5. A principled approach: laws, norms and human rights

79. In the area of protection of rights of migrants, the global commission emphasised the need for the strengthening, more effective implementation and non-discriminatory application of the legal and normative acts affecting international migration;¹¹ ensuring that the principle of state responsibility to protect those on

11. . At global level, the most important basis for the legal and normative framework affecting migrants is to be found in the Universal Declaration of Human Rights and seven UN human rights treaties which give legal effect to the rights in the Declaration: the 1965 International Convention on the Elimination of All Forms of Racial Discrimination; the 1966 International Covenant on Civil and Political Rights; the 1966 International Covenant on Economic, Social and Cultural Rights; the 1979 Convention on the Elimination of All Forms of Discrimination against Women; the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the 1989 Convention on the Rights of the Child, and the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. Besides, important provisions relating to migrant rights can be found in ILO labour conventions, as well as the 1951 UN Refugee Convention and its 1967 Protocol, the Vienna Convention on Consular Relations and the two protocols on human trafficking and migrant smuggling of the UN Convention against Transnational Organised Crime.

their territory is put into practice; and ensuring that migrants are able to benefit from decent work and are protected from exploitation and abuse, making special efforts to safeguard the situation of migrant women domestic workers and migrant children.

80. Over the years, the Council of Europe has built up a significant *acquis* encompassing legal obligations that member states are bound to respect. Its core instruments for the protection of migrant workers and their families and asylum seekers and refugees include: the European Convention on Human Rights (ETS No. 5), the European Agreement on the Abolition of Visas for Refugees (ETS No. 31), the European Social Charter (revised) (ETS Nos. 35 and 163), the European Convention on Social Security (ETS No. 78), the European Convention on the Legal Status of Migrant Workers (ETS No. 93), the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126), the European Convention on the Participation of Foreigners in Public Life at Local Level (ETS No. 144), the European Convention on the Exercise of Children's Rights (ETS No. 160), the European Convention on Nationality (ETS No. 166), Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 177), the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197), the Council of Europe Convention on the avoidance of Statelessness in relation to State Succession (CETS No. 200) and the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201 – not yet in force).

81. The two recent instruments on trafficking and on children are particularly important in the context of protection against exploitation and abuse. The Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197) came into force in 2008 and is the first European treaty in this field. It is a comprehensive treaty focusing mainly on the protection of victims of trafficking and the safeguard of their rights. The Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse has been elaborated in the framework of a transversal programme, "Building a Europe for and with Children", in the context of which children in particularly vulnerable situations, notably victims of sexual exploitation and abuse, as well as children that are victims of trafficking and unaccompanied minors have received special attention.

82. One of the key strengths of the Council of Europe's work lies in its independent treaty-based monitoring. The European Commission against Racism and Intolerance (ECRI) is an important vehicle tasked with combating racism, xenophobia, anti-Semitism and intolerance from the perspective of protection of human rights. The European Committee of Social Rights (ECSR) rules on the conformity of the situation in states with the European Social Charter, the 1988 Additional Protocol and the Revised European Social Charter. It adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure. The European Committee for the Prevention of Torture (CPT) clearly plays an important role in monitoring detention of irregular migrants and asylum seekers and developing standards. The Group of Experts on Action against Trafficking in Human Beings (GRETA) is in charge of monitoring the Council of Europe Convention against Trafficking in Human Beings. The Council of Europe Commissioner for Human Rights, serving in an independent capacity, is also giving particular attention to the rights of migrants as a major theme under his mandate.

83. Other bodies within the Council of Europe also play an important role, including the European Committee on Migration (CDMG), which follows up on the legal status of migrants, or the North-South Centre which has developed into an important point of dialogue between cultures and a bridge between Europe and its neighbouring regions.

84. The Council of Europe has also elaborated a number of soft law instruments in the form of recommendations, rules or guidelines, which have been mentioned in previous chapters. These instruments essentially reflect the case law of the European Court of Human Rights on issues such as procedural guarantees, effective and suspensive remedies, social and medical assistance and the protection of private and family life, and the protection of particularly vulnerable persons.

85. The rapporteur regrets, however, that despite the integral monitoring mechanisms of several of the Council of Europe legal instruments and the many international endeavours calling on states to strengthen the rights of migrants through adhesion and implementation of relevant international treaties, these attempts have been far from successful. For instance, the 2000 UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families has been ratified only by 30 states, including only four Council of Europe member states (Albania, Azerbaijan, Bosnia and Herzegovina and Turkey), none from among the EU countries.

86. The same is true for the Council of Europe treaties: apart from the European Convention on Human Rights and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which have been acceded to by all member states, the pace of adherence to these instruments

has remained slow: the Council of Europe's Convention on the Legal Status of Migrant Workers has only been ratified by 11 countries so far, the European Convention on Social Security and the Convention on the Participation of Foreigners in Public Life at Local Level both by eight countries, the European Convention on Nationality by 16, and the revised European Social Charter by 29 countries.

87. It is also regrettable that the European Union pays insufficient heed to the existing frameworks elaborated by the Council of Europe although the current progress of accession to the European Convention on Human Rights is to be welcomed.

88. *Recommended action:* The Council of Europe should step up its efforts linked to normative work concerning migrants, asylum seekers, refugees and internally displaced persons. This should be an important element in the proposed medium-term strategy on migration, asylum and displacement (see paragraph 89), and should comprise four elements:

- strengthening the existing Council of Europe conventional basis by encouraging member states to sign and ratify the relevant conventions. Consideration should be given to revising conventions where insurmountable problems exist preventing signatures and ratifications;
- filling gaps in the current legal standards through updating the existing Council of Europe treaties to ensure protection of migrants and asylum seekers, for example, by including the right to asylum within the European Convention on Human Rights, revising the European Social Charter to ensure that all regular migrants come within its scope of application and that at least minimum rights guaranteeing human dignity are included for irregular migrants, and accepting that migrants fall within the scope of protection of the Framework Convention for the Protection of National Minorities, at least within its Article 6. In addition, the future Council of Europe convention to prevent and combat violence against women and domestic violence should include the legal protection and support of migrant women from gender-based violence and abuse, irrespective of their legal status;
- filling gaps in existing standards by elaborating new relevant standards in areas where the Council of Europe can make a strong impact, for example, on the integration of migrants, refugees and displaced persons in European societies;
- filling gaps in existing standards by elaborating comprehensive sets of standards or guidelines that could strengthen the rights of all categories of migrants, asylum seekers, refugees and displaced persons throughout the different stages of departure, transit, arrival, stay and return. Of priority, the following guidelines and rules should be considered:¹²
- guidelines on “non refoulement” in the light of growing numbers of cases concerning expulsion before the European Court of Human Rights and problems linked to interventions at sea and rescue at sea;
- guidelines on harmonising the protection mechanisms pertaining to the entry, stay and return of unaccompanied minors;
- guidelines on common standards in providing minimum rights for irregular migrants;
- rules on detention centres for migrants and asylum seekers to supplement the European Prison Rules;
- guidelines on alternatives to detention of irregular migrants and asylum seekers;
- recommendations on ensuring and monitoring the quality and consistency of asylum decisions in Europe;
- guidelines on voluntary return to supplement the Committee of Ministers’ guidelines on forced returns;
- guidelines on implementation of readmission agreements.

89. The existing Council of Europe standards applicable to migrants, asylum seekers, refugees and IDPs should be published as a compendium, which should be updated at regular intervals.

3.6. Creating coherence: the governance of international migration

90. In view of improving the governance of international migration, the global commission highlighted the need for improved coherence and strengthened capacity at the national level, greater consultation and co-operation between states at regional level, and more effective dialogue and co-operation among governments and between international organisations at the global level. To this end, it recommended, *inter alia*, states to

12. A number of these have already been mentioned in the text, but are repeated here to give an overall view of the wealth of possible activities which could be undertaken.

establish coherent national migration policies and invited the international community to support the efforts of states to formulate and implement national migration policies by contributing resources, appropriate expertise and training.

91. One of the statutory roles of the Council of Europe is to support inter-governmental co-operation and to assist member states in policy making and policy aligning. The CDMG is the main intergovernmental body responsible for developing European co-operation in the field of migration, social integration and community relations. It has organised eight conferences of ministers responsible for migration affairs, which have offered formidable opportunities for member states at the highest governmental level to have a dialogue and set agendas on issues of common interest.

92. The CDMG also offers support to individual countries through assistance programmes. It is very much in the interest of the international community to support those countries that need to strengthen their capacity in the area of migration policy, whether through the provision of technical and financial resources, the sharing of appropriate expertise or the establishment of training initiatives. More specifically, such efforts should assist states to:

- define the objectives of their national migration policy;
- establish a functioning, effective and equitable legal system in relation to migration;
- create a well-trained cadre of migration officials, including civil servants, police officers, border guards and refugee status determination officers;
- develop an infrastructure that provides social, educational and legal assistance to migrants, and helps the host society adapt to the presence of migrants;
- build up a capacity for data collection and analysis, research, monitoring and evaluation.

93. In keeping with this objective, the Council of Europe should focus its assistance on strengthening the capacity of countries which have traditionally been countries of origin and transit in the area of migration policy and planning. Co-operation should also be enhanced in the field of integration of migrants, refugees and internally displaced persons.

94. In terms of international co-operation, various bodies of the Council of Europe are engaged in migration and asylum issues and work in partnership with various key actors in the field of migration and asylum, notably with the UNHCR, OHCHR, IOM, ILO, ICRC and now increasingly with the EU.

95. The rapporteur is particularly concerned about the unused potential of co-operation between the Council of Europe and the European Union. Notwithstanding the large participation of the EU in co-financing Council of Europe assistance programmes, the rapporteur's interviews with many sectors of the Organisation confirmed that there is very limited scope of co-operation in real terms.

96. Most importantly, the rapporteur finds that the increased convergence in membership between the Council of Europe and the EU calls for a much more coherent system of fundamental rights protection and a common legal space for the whole continent, thereby ensuring maximum benefit for all individuals and countries concerned. In this respect, the accession of the EU to the European Convention on Human Rights is a pivotal step for the relationship. Much better coherence should however also be ensured between European Union law and the standards of Council of Europe conventions. This requires improved consultations at an early stage in the process of elaborating standards, as foreseen in the 2007 Memorandum of Understanding between the European Commission and the Council of Europe.

97. Another concern for the rapporteur is the frequent absence of Council of Europe representatives from key international migration forums, such as the Global Forum on Migration and Development. This deprives the Organisation not only of the visibility of its valuable work at regional level but also of keeping up with the most recent trends and advocating its human rights standards. Therefore, notwithstanding the budgetary constraints, efforts should be made for enhanced advocating of the Organisation's work.

3.7. Increasing intra-institutional cohesion and capacity

98. In the process of preparing this report, the rapporteur was impressed by the enormous amount of energy and effort dedicated by the various bodies and sectors of the Council of Europe on issues relating to the status, protection, rights and integration of migrants, asylum seekers, refugees and the displaced as well as on combating negative societal phenomena such as xenophobia and racism or smuggling and trafficking of human beings.

99. The activities range from inter-governmental co-operation, through individual complaints to the European Court of Human Rights and collective complaints under the European Social Charter. It covers monitoring work, *inter alia*, by the European Committee for the Prevention of Torture (CPT), the European Commission against Racism and Intolerance (ECRI), the Council of Europe Commissioner for Human Rights, GRETA, and the Parliamentary Assembly's own Committee on Migration, Refugees and Population. There is also all the work on media and combating racism and intolerance, the work on education and culture, the contribution of the North-South Centre in Lisbon and the Council of Europe Bank, and there is the work of the Congress on Local and Regional Authorities.

100. However, these different sectors are structurally independent, having their own objectives, programmes of activity and limited resources, which leave little space for co-ordinated action. In-house information flows are restricted and mostly based on informal contacts, which result at times in duplication of work or different approaches on the same subjects presented by different sectors of the same organisation.

101. In response to these structural weaknesses, an informal Inter-Secretariat Task Force on Migration was set up in 2006 in order to improve synergies and exchange between the secretariats involved in migration-related matters. Even though much appreciated by many of the respondents to the questionnaire prepared by the rapporteur and certainly a welcomed initiative, the task force has had difficulties to function efficiently in the conditions of missing political support, human resources or access to funding. In addition, the prevailing in-house working culture in the Organisation is not conducive to promoting internal or external visibility or advocacy of the work done.

102. The rapporteur is convinced that much better internal co-operation is necessary in order to marshal scarce resources around politically relevant issues in a way that has more impact and visibility. It remains unsure whether an informal structure (as at present) or a more formal structure is more appropriate for achieving the objective of improved internal synergies. However, the task force as such and migration, asylum and displacement-related issues should receive much stronger support from the Secretary General and the Executive Board.

103. *Recommended action:* With regard to the above, and considering the urgent need for the Council of Europe to achieve more impact, the rapporteur proposes creating a post of a migration, asylum and displacement co-ordinator. The co-ordinator should be tasked, *inter alia*, with:

- preparing a medium-term strategy on migration, asylum and displacement;
- taking the lead position in the proposed transversal project on migrants, asylum seekers and displaced persons in European societies;
- liaising with the various different sectors of the Organisation involved in international migration matters and disseminating information;
- harmonising and supervising the regular updating of the interactive migration website;
- supervising the publication of a compendium on the human rights of migrants, asylum seekers, refugees and internally displaced persons based on the work of the various bodies of the Council of Europe;
- acting as a focal point on migration and asylum in international communication.

4. Conclusions and ways forward

104. Human mobility is today part and parcel of the interconnected globalised world. It is a highly complex and sensitive issue, linked to many challenges as discussed throughout the present report. Whilst the Council of Europe can be proud of its achievements – of which there have been many, and which have developed perfectly in line with the recommendations of the global commission, it must now look to the challenges that lie ahead for the member states and see how best to respond to those challenges. As discussed throughout the present report, there are a number of issues of concern that warrant further attention and protection-sensitive and human rights-tailored responses from the Council of Europe.

105. First of all, the Organisation definitely needs to upgrade the profile and importance it attaches to issues related to migrants, asylum seekers, refugees and displaced persons in European societies. Migrants, asylum seekers, refugees and displaced persons are among the most vulnerable people; therefore strengthening the protection of their human rights as well as the respect of cultural diversity and standards of integration of

migrants and refugees should be among the priorities of the Organisation. This should also imply allocating more resources to related activities. These resources need not be substantial, what is more important is to bring the work together and give it a visibility and a whole which is currently lacking.

106. Second, the Council of Europe needs to have a clear vision and establish a mid-term strategy on migration, asylum and displacement. This strategy should include measures to enhance the effective protection of human rights and fundamental freedoms of all migrants, regardless of their immigration status, asylum seekers, refugees and displaced persons. It should also continue to provide a comprehensive approach to migration management.

107. Third, the Council of Europe needs to rethink how to achieve a greater impact and visibility of its work in the field. It has a wealth of legal norms and standards to rely on and it possesses an advantage of bringing together the positions of governments, parliaments, local authorities and civil society of almost the entire Europe in a common vision on migration, asylum and displacement issues and solutions. This constitutes a significant bargaining power that the Organisation should much better apply in its relations with the European Union or other partners. Also, in order to make an impact, the Council of Europe should be willing and able to network and be present more significantly at relevant international forums.

108. Fourth, following from the above and in view of improved internal cohesion as well as grooming a common vision on migration, asylum and displacement-related matters, there needs to be a significant boost in internal co-ordination and information exchange. This would not require substantial structural changes in the functioning of the Organisation. However, the creation of a post of a migration, asylum and displacement co-ordinator would be desirable.

109. Finally, in order to balance out inter-governmental work carried out in the migration field and in asylum and displacement issues, it is highly recommended that a new inter-governmental committee with a permanent mandate to examine asylum, refugee and displacement issues be set up which would need to work closely with other steering committees, including the Steering Committee for Human Rights, the European Committee on Migration (CDMG) and the Steering Committee on Legal Co-operation (CDCJ).

Reporting committee: Committee on Migration, Refugees and Population

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NB: The names of the members who took part in the meeting are printed in bold

Secretariat of the committee: Mr Neville, Mrs Odrats, Mr Ekström