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Position Paper

Circular Migration – regulatory approaches of the European Union*

The concept of circular migration has been used for a few years now in different political contexts and is defined in very different ways¹. This paper attempts to describe and assess the different approaches to circular migration. While the free movement of goods, services, capital investments and information has become proverbial and national borders are hardly a barrier nowadays, the same cannot be said at all for the free movement of persons, despite the fact that refugees have to leave their countries of origin due to persecution or war. Moreover, many people are compelled to leave their countries of origin owing to the poor general living conditions. The main causes of this form of migration are asymmetrical economic conditions, a worldwide structural policy to the detriment of developing countries in the global South, and a European economic and trade policy with African countries based on

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¹ On the “flexibility” of this concept see also *Steffen Angenendt*, *Zirkuläre Migration. Ein tragfähiges migrationspolitisches Konzept?* SWP-Aktuell 27 (April 2007) p. 2f., at <http://www.swp-berlin.org>.

price-subsidies for export goods². In addition, the countries from which migrants and refugees come are characterised by a lack of democratic procedures and the internal abuse of power. The report of the Global Commission on International Migration says that “in too many parts of the world [...] migration has become a survival strategy, employed by people who are seeking a way to escape armed conflict, human rights violations, authoritarian and corrupt governments, as well as unemployment and poverty.”³ Additional migratory movements are on the horizon as a consequence of climate change and the accompanying threat to livelihoods.

As long as these conditions are not changed, the decision to migrate will continue to remain one that is controlled by external factors rather than being purely voluntary.⁴

The different attempts to find a definition⁵ of circular migration demonstrate that it is not a very precise concept and is thus open to discretionary political interpretation. There is a further advantage in the use of this term: it can be used as a slogan in political debate and suggest certain political goals, which, however, may be linked to quite different interests and objectives. In fact, the concept of circular migration primarily only denotes a regulated form of migration allowing for a certain degree of mobility between two countries.

This paper will begin by presenting models of circular migration that have been introduced into political debates. Then it will explain the human rights requirements that need to be met when introducing a regulated form of migration and, finally, assess the policies presented on the basis of these requirements.

We are basically concerned here with three questions requiring assessment and aligned to the timeline of migration. The first is: what channels are permitted for controlled, i.e. legal migration to Europe and how do they relate to existing options for refugees that are already permitted under international law, i.e. uncontrolled forms of migration? Secondly, what legal status do migrants need to have – and should have – during their residence in Europe? And, thirdly, what appropriate and inappropriate mechanisms of state control exist when their period of residence comes to an end, including deportation?

A kind of cross-cutting issue running through all three questions is the connection between circular migration and the degree of development in the countries of origin. In the policy debate, the existence of this connection is claimed more often than it is proven, and for that reason alone it needs to be examined more closely. It is a cross-cutting issue because, seen from the angle of human rights, the assessment of the connection between circular migration and development depends on the preservation

² See *German Watch*, Impact of EU’s agricultural trade policy on smallholders in Africa. Bonn 2007; *Jean Ziegler*, Report of the Special Rapporteur on the right to food. United Nations Human Rights Council, Document No. A/HRC/4/30, Geneva, 19 January, 2007. On the self-interested, discriminatory differences in EU economic and trade policy towards the USA, Asia and Africa see *Petra Pinzler*, Regeln gesucht. In: DIE ZEIT No. 50, 6. December 2007, Hamburg, p. 36.

³ Global Commission on International Migration, Migration in an interconnected world, see footnote 7 below, chapter 5 para. 26.

⁴ The voluntary requirement should also apply in principle *mutatis mutandis* to the decision of migrants to return to their country of origin or stay longer than at first intended in their host country, even if a return may promise short-term advantages from the development policy point of view, according to *Andreas Fisch*, Über Arbeitsmigration zur Entwicklung, footnote 24 below. Just as there is no general human right to (cross-border) migration, there is no general right to permanent residence in a foreign state.

⁵ See footnote 1

of the human rights of the migrants concerned. This applies in all stages of the migration process - before migration, during residence in the host country and, finally, during and after the process of concluding migration. If the rights-based approach adopted by development cooperation is taken seriously, human rights should be both the means and the end (i.e. purpose) of development,⁶ and so this should also apply in the context of circular migration.

I. Models of circular migration

Global attempts to find a definition

One of the first definitions of circular migration was supplied by the United Nations. In its final report of 2005, the Global Commission on International Migration, set up in 2003 by the Secretary General of the United Nations and a number of UN member states, stressed the potential of what it called “temporary” migration for the economic development of the countries of origin and countries of destination⁷. In this context “circular” means for migrants the possibility of multiple entry and departure, with both countries of origin and destination respecting their human rights. While living in the destination country, migrants acquire experience and skills that they can use on their return to their country of origin.

European policies

The European Union has discovered the concept of circular migration for its own purposes. Probably in the wake of the relevant global discussions, the European Commission has been using it since 2005 to cover practically every kind of migration involving a return option and above all linking it with the objectives of development policy⁸. However, this approach was soon almost reversed through the integration of the Franco-German initiative (see below). At the meeting of the European Council in December 2006 the argument used to justify the admission of circular migration was the labour market requirements of the member states, and no longer primarily development policy advantages.⁹

In summer 2007 the arguments used by the European Commission became correspondingly subtle in that circular migration was still always defined in terms of the original development-policy approach of the Commission but was assigned to home

⁶ United Nations Development Programme, Human Development Report 2000, New York/Oxford 2000, p. 2: “In short, human development is essential for realizing human rights, and human rights are essential for full human development.”

⁷ Global Commission on International Migration, Migration in an interconnected world: New directions for action (October 2005), <http://www.gcim.org>.

⁸ European Commission, Communication on Migration and Development: some concrete orientations, COM (2005) 390 final of 1 September 2005, p. 7f.

⁹ Conference of the European Council on 14-15 December 2006, Presidency Conclusions, Council Document 16879/1/06 REV 1 of 12 February 2007, para. 24.

affairs through the instrument of mobility partnerships¹⁰. Circular migration was now only to be allowed for migrants from such countries of origin as had concluded a “mobility partnership” with the European Union and had committed themselves to very far-reaching cooperation regarding the regulation of legal and the prevention of “illegal” migration and thereby also the prevention of refugee flows. Here too we see the priority given to migration control over development policy. The conceptual work at the level of the European Union came to a provisional close with the adoption of the conclusions of the Council on Mobility Partnerships and Circular Migration on 10 December 2007¹¹, of which the European Council took note in mid-December 2007¹².

These “mobility partnerships” with EU neighbouring states are being tested with North African states, in particular. In return for their cooperation in border protection and taking back migrants with irregular status in the country of destination these states are to be offered quotas for legal temporary labour migration to the EU, with skilled workers being given preference. This could be the object of a number of criticisms but even this restrictive approach to migration policy has hardly been implemented at all. Germany, at least, tends to be unattractive for skilled migrants as they do not speak German and also need to overcome high bureaucratic hurdles¹³.

In European governmental circles, finally, circular migration gained importance mainly through a Franco-German initiative of October 2006, with which the two interior ministers Wolfgang Schäuble and Nicholas Sarkozy propagated a new European migration policy¹⁴. It states that migrants should be able to stay in Europe temporarily - for about three to five years - in order to work, thereby contributing to the development of their countries of origin through acquiring skills. The approach has the merit of critically reflecting on earlier experience with the brain drain, or the loss of skilled workers. The countries of origin had been particularly hard hit by the loss of skills in the health and education sectors. However, what is now said to be European immigration policy, and is partly linked with policies on development cooperation, stems from the drastic combating of irregular migration and the effort Europe-wide not to grant irregular migrants subsequent legal status: the document produced by the Franco-German initiative gives equal importance to stronger cooperation between European states in regulating legal migration and preventing irregular (“illegal”) migration.

¹⁰ European Commission, Communication on circular migration and mobility partnerships between the European Union and third countries of 16 May 2007, COM (2007) 248 fin., p. 7: “Examples of the measures that could be agreed to facilitate circular migration [mobility partnerships] are given in Chapter III.”

¹¹ Draft Council Conclusions on Mobility Partnerships and Circular Migration in the Framework of the Global Approach to Migration, Council Document 15737/07 of 26 November 2007, adopted by the Justice and Home Affairs Council of Ministers on 6 December 2007 and on 10 December 2007 by the General Affairs and External Relations Council.

¹² European Council meeting of 13-14 December 2007, Presidency Conclusions, Council document 16616/1/07 REV 1 of 14 February 2008, point 17.

¹³ See Herbert Brückner / Sebastian Ringer: 2008; Petra Follmar-Otto: 2007; Steffen Angenendt: 2007.

¹⁴ Franco-German initiative for a new European migration policy (October 2006), some of the details at <http://www.proasyl.de> (Archive of Newsletter 117 of October 2006).

II. Migration channels to Europe: what is “regular” and “irregular” migration?

With its overarching policy of stopping irregular migratory movements to Europe the European Union has long been pursuing the goal of involving the countries of origin and transit of the migrants in the regulation or prevention of migration. Migration is to be more effectively prevented not just by securing Europe’s external borders, e.g. through the EU frontier protection agency FRONTEX, but also through action in the regions from and through which migrants come.

In the context of circular migration, we find that all proposals, while seeking to open up some channels for legal migration, are concerned to tackle irregular migration more consistently than before. Initiatives to prevent irregular migration include target information campaigns, efforts to improve border controls, strengthening the role of FRONTEX, increased exchange of information between authorities concerned plus measures to combat human trafficking¹⁵. All this should not just be implemented by the European Union and its member states but also and precisely by the third countries that are willing to cooperate.

Against all experience, it is suggested that migration can be controlled to the point of either taking place legally in the context of migration programmes or not at all. In reality, however, migration to Europe takes place in many mixed movements, among which there are people who are in need of protection according to applicable international law instruments. This particularly arises from the right to access to an asylum procedure, laid down in the Geneva Refugee Convention of 1951 and the non-refoulement provision contained in e.g. Article 33 of the Geneva Refugee Convention and Article 3 of the UN Convention against Torture. These provisions prohibit the refoulement of people if they are threatened with persecution, torture or inhuman treatment.

The EU member states do not do justice to this obligation. Rather, they blatantly flout the international law obligations of non-refoulement, in particular on the high seas. Reports from refugees and non-governmental organisations show that people are frequently turned away without being checked to see whether they include some who should receive protective status in the EU. The fact that a relevant percentage of arrivals are indeed in need of protection is shown by the fact that in 2006 a good 2000 of those arriving by sea lodged an application for asylum on the Italian island of Lampedusa alone. They accounted for 60 % of all asylum applications in Italy. Almost half of the asylum seekers were recognised in Italy as refugees within the meaning of the Geneva Refugee Convention or as otherwise in need of protection. Half of those who arrive in Malta by boat and apply for asylum are recognised as refugees or obtain subsidiary protection.

For people who only have a chance of reaching European soil if they arrive clandestinely, the route via the Mediterranean and the Atlantic off West Africa has proved particularly dangerous. The figures on the deaths in the Mediterranean fluctuate greatly. In 2006 the Spanish government assumed that 6,000 people had drowned just before reaching the Canary Islands.

By attempting to regulate migration through cooperation with third countries, the European Union ignores the fact that these states do not respect the human rights of

¹⁵ European Commission, Communication COM (2007) 248 fin. of 16 May 2007, see footnote 10 above, p. 4f.

migrants. For example, human rights groups have accused Ukraine of deporting Uzbek refugees in need of protection. Libya likewise deports refugees or deposits them in the desert, exposing them to life-threatening dangers. By using the concept of “external dimension” the European Union ignores human rights criteria. A rights-based policy must not employ third countries to conduct offshore migration controls if they do not respect human rights and refugee law.

- *Approaches to circular migration must thus not be allowed to continue to constitute a threat to refugee protection. Europe’s borders must again be opened and made surmountable for those seeking protection. The European Union and its member states have the responsibility to guarantee this at all times, in dealing with mixed migratory movements as well.*
- *Instead of financing the technical equipment of border guards or the erection of deportation detention centres, the European Union should persuade third countries to observe the human rights of migrants and refugee law.*

III. Rights of migrants in Europe

From the approaches to circular migration presented by the Franco-German initiative and the European Union we can only speculate about what rights migrants admitted under the migration programmes are to have in Europe. Since it is meant to be a question of admitting migrant workers, the authors expressly only mention the access of migrants to the labour market, without giving any further details. Instructions under European law for the legal status of nationals of third countries in the European Union have hitherto existed only in limited areas, and they have not yet been generalised and applied to the concept of ‘circular migration’. One example is the Directive on family reunification¹⁶ and the Directive on long-term residents¹⁷. These directives grant third-state nationals residing in the EU the right to be united with their families under certain conditions and after five years a right to a permanent residence permit granting freedom of movement in the whole EU.

If merely temporary migration is allowed it may well be that these rights are not to be granted under the existing directives. Instead, the migrants would receive a special status as ‘new guest-workers’. It may already be observed that third-country nationals are disadvantaged over EU citizens by the immigration law of the EU states. For the migrants admitted in the context of migration programmes special new legal regimes would be created leading to selection and rejection. In order that this cannot happen at the level of the European Union or its member states, human rights requirements must be consistently respected, without exception, when it comes to establishing the legal status of migrants¹⁸. Furthermore, the concept of circular migration described seems to be a remake of the failed guest-worker model of the 1970s. In terms of integration policy that showed how problematic it was to attract people to Germany only for purposes of work, without guaranteeing that they could then settle there. At the international level, the rights of migrants are comprehensively protected,

¹⁶ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.

¹⁷ Council Directive 2003/109/EC of 25 November 2003 on the status of third country nationals who are long-term residents.

¹⁸ For a detailed account see *Petra Follmar-Otto*, *Temporäre Arbeitsmigration in die Europäische Union. Menschenrechtliche Anforderungen*, Berlin 2007 p. 8, at <http://www.dimr.de>.

particularly by core UN human rights instruments. They commit the signatory states to respect and guarantee the rights of all persons residing in their sovereign territory. The fact that these rights also apply to migrants follows from the terms of the human rights covenants. Except for very few exceptions, the rights of all those in the sovereign territory of the signatory states or under its control are guaranteed. This also applies to the European Convention on Human Rights and its protocols. The UN Migrant Workers Convention of 1990, even though it has not yet been ratified by any of the member states of the European Union, may likewise be cited as a substantive yardstick for protecting the human rights of migrant workers.

The European states would be well advised to ratify the UN Migrant Workers Convention. This convention is an essential instrument for improving the legal situation of migrant workers worldwide, in that it reinforces and supplements rights for migrant workers following from other human rights instruments and deals with their specific needs in greater detail than any other human rights instrument¹⁹.

In consideration of the special situation in which migrant workers find themselves in the countries of destination, special precautions must be taken by the European destination countries in order to prevent the vulnerability of migrants leading to discrimination or other human rights violations. The human rights only involving defence against violations (*Abwehrrechte*) also involve a 'duty to prevent'²⁰. Hand in hand with the right to work and have a work permit must go the guaranteed independence of the (temporary) residence permit from the actual workplace, so that migrants are not prompted not to assert their rights through the threat of losing their jobs²¹.

The principle of family unity and the right to family life, that can be derived inter alia from Article 8 of the European Convention on Human Rights, must also apply to migrant workers in the receiving countries. Therefore migrants coming to Europe in the context of migration programmes must be allowed to have their family join them. The EU proposals do not provide for this. A 'typical' problem of migrants who work in a destination country for a restricted period is ultimately the transferability of social insurance claims. This is part of the approach of the Global Commission on International Migration. The UN Migrant Workers Convention also provides that the states endeavour to achieve such transferability (Article 61).

- *All EU member states must ratify the UN Migrant Workers Convention in order to guarantee compliance with basic human rights standards in the treatment of migrants. The convention supplements the other human rights protection instruments.*
- *In the context of circular migration, migrants must not suffer discrimination compared to other third state nationals living in Europe with regular status. The independence of the residence permit from the actual job must be guaranteed and they must be able to have their families join them. The transferability of social insurance claims after returning to their country of origin must be guaranteed by means of concrete agreements. Access to the integration instruments of the destination country (language, labour market) and to education and training must be guaranteed.*

¹⁹ See Katharina Spieß, Die Wanderarbeitnehmerkonvention der Vereinten Nationen, Deutsches Institut für Menschenrechte 2007.

²⁰ Petra Follmar-Otto, Temporäre Arbeitsmigration in die Europäische Union. Menschenrechtliche Anforderungen, Berlin 2007 p. 8.

²¹ Ibid.

- *The social rights of temporary migrants, in particular the right to work, rights at the workplace, the right to education and the right to health must be respected and protected.*
- *The opportunity to obtain permanent residence must be available from the start.*

IV. Rights for migrants who return voluntarily

From the viewpoint of migrants there may be good reasons for returning to their countries of origin. The state should enable such a return on the basis of a voluntary decision in such a way that the persons concerned do not suffer any disadvantages under social legislation, in particular. Pension claims and other entitlement from social insurance schemes should not be lost and should also be available in the other state. A policy of return migration should also grant the option to return, or to enjoy flexible residence rights²². Such rights-based approaches would preclude the violation of the human rights of migrants. The European Commission has already made proposals along these lines²³.

- *The approach of wanting to regulate circular migration primarily through obligations to return runs counter to a rights-based policy. Accordingly, migration policy should not be unilaterally focused on a forced return. Deportations should not take place at all, if the person concerned has a right to protection from persecution, death, torture or inhuman treatment or is entitled to stay on the basis of the right to respect for private and family life.*
- *If migrants want to return voluntarily to their country of origin this should be facilitated by an improved legal position, e.g. by opening up return options, making visa and residence permit instruments flexible and increasing the freedom of movement of migrants as a whole.*

V. Forced return of migrants

An essential part of the home affairs concern that circular migration and mobility partnerships are intended to implement is doubtless the facilitation of the forced return of third country nationals²⁴. It is no accident that the text of the Franco-German initiative of October 2006 starts with the “re-admission” of third country nationals and the combating of “illegal migration”²⁵, as does the Communication of the European

²² A method certainly not to be recommended is that of signing a “personal obligation to return”, as called for by *Frithjof Zerger*, *Migrationssteuerung und Entwicklungseffekte durch zirkuläre Migration?*, in the journal *Zeitschrift für Ausländerrecht und Ausländerpolitik* 1/2008, p. 4.

²³ *Ibid.* p. 12f.: introducing positive incentives through the prospect of future opportunities of legal migration (i.e. return option), simplified and accelerated admission procedure for bona fide migrants, support for occupational reintegration in the country of origin.

²⁴ See *Andreas Fisch*, *Über Arbeitsmigration zur Entwicklung. Sozialethische Analyse des Konzepts ‚Zirkuläre Migration‘* (Schäuble/Sarkozy), in: Hermann-Josef Große Kracht; Christian Spieß (ed.), *Christentum und Solidarität. Bestandsaufnahme zwischen Sozialethik und Religionssoziologie*, Paderborn 2008 (forthcoming) and *Petra Follmar-Otto*, *Temporäre Arbeitsmigration in die Europäische Union*, see footnote 18 above, p. 13.

²⁵ Franco-German initiative, see footnote 14 above, p. 1.

Commission on circular migration, the policy requirements of which had been set by the Council of the European Union²⁶. This is not just a matter of the return or deportation of migrants who have entered the European Union in the framework of migration programmes but of all other migrants residing in Europe.

In order to flesh out this concern, the proposals name the usual range of steps by which the repatriation of third country nations without residence rights is to be achieved. Countries of origin intending to participate in programmes of circular migration with individual EU states must accordingly conclude agreements with the European Union to re-admit returning migrants and promise to work actively together, even in individual cases of the identification and forced acceptance of their own and foreign nationals, whether they have entered the European Union in the context of migration programmes or not. National identity papers must be made forgery-proof, if possible by using biometric features.

The EU states, for their part, should – as proposed by the EU – cooperate better in the case of deportations, so that collective deportations can be organised more simply. Third states, finally, which cannot agree to such cooperation or which during the process become “unwilling to cooperate”²⁷, should not just be excluded from migration programmes but also have to fear sanctions. In addition, the EU member states should also commit themselves to “avoid” “collective and premature legalisations” of irregular migrants, which have taken place in the past in some member states like Spain or Italy²⁸.

A European migration policy that puts the forced removal of migrants in the forefront would also undermine the overall approach of development policy cooperation²⁹ and, at the same time, accompanying human-rights standards could be infringed³⁰.

That would be precisely the case if legal migration were only allowed to happen at a price – i.e. if migrants who come to Europe on migration programmes not just only obtained a temporary right to stay but were, in addition, exposed to an unconditional obligation to return, allowing of no flexibility. This would cement the temporary status of the migrants admitted in the context of circular migration, which would not just mean excluding them from participation in society but also not leave them any scope to consider their own interests when planning their own lives.

The example of former ‘guest-worker migration’ along with current developments likewise show all too clearly that, even in cases in which only temporary migration was intended, reality was, and is, often quite different³¹. In addition, there is a not unlikely risk of migrants preferring to move into illegality rather than to return, should the obligation to return be strictly implemented³².

²⁶ European Commission, Communication COM (2007) 248 fin. of 16 May 2007, see footnote 10 above, p. 4f.

²⁷ Franco-German Initiative, see footnote 14 above, p. 3.

²⁸ Ibid. p. 2.

²⁹ *Andreas Fisch*, in *Über Arbeitsmigration zur Entwicklung*, see footnote 24 above, already notes a devaluation or lack of credibility.

³⁰ See along this line *Petra Follmar-Otto*, *Temporäre Arbeitsmigration in die Europäische Union*, see footnote 18 above, p. 13.

³¹ See *Dovelyn Rannveig Agunias*, *Kathleen Newland*, *Circular Migration and Development: Trends, Policy Routes and Ways Forward*, Migration Policy Institute Policy Brief (April 2007) p. 2, at <http://www.migrationpolicy.org>.

³² *Petra Follmar-Otto*, *Temporäre Arbeitsmigration in die Europäische Union*, footnote 18, p. 9.

Life in illegality has very unfavourable consequences for migrants and their children. The states cannot be interested in having an irregular population group living permanently in their territory.

It must be said that, in certain cases, forced repatriation is strictly prohibited anyway, for reasons of human rights or refugee rights. The first reason is the danger of persecution in the country of origin, which can only arise after leaving the destination country and in the event of which the Geneva Refugee Convention would prohibit a forced return. Similar bans are relevant when there is a threat of death, torture or inhuman treatment in the country of origin³³. Finally, the right to respect of family and private life follows from Article 8 of the European Convention on Human Rights and is thus relevant in human rights terms. In an individual case, this right could lead to a legally recognised consolidation of the right to stay that would also prohibit a forced return.

VI. Circular migration and development

It has already been pointed out that the policy area of development cooperation is always secondary in the context of migration policy. In contrast to the array of position papers of the German Federal Ministry for Economic Cooperation and Development on differing policy segments of development cooperation there is only one position paper, specifically on Africa. The memoranda of the ministry's scientific advisory council likewise indicate no urgent engagement with the topic. This allows the conclusion that the dynamics in programme development on the topic of migration in Germany are determined by domestic policy and not based on development policy. This is not very different in the European neighbouring countries.

There are two points of relevance in the relationship between migration and development policies: first, the participation of migrants in the planning and designing of migration programmes up to the actual choice of the migrants eligible for legal migration and, second, the political obligation of Europe to show awareness and responsibility for the causes of global migrant and refugee movements, precisely when allowing legal migration.

The European concept of circular migration has hitherto been an instrument to be agreed by governments with governments, e.g. in the framework of the envisaged mobility partnerships. Dialogues planned nowadays are only between government authorities³⁴, whereas earlier proposals foresaw a more comprehensive dialogue³⁵. The right way forward, prescribed by human rights, would be to actively involve all the actors in the process of circular migration, which should first naturally include the migrants themselves, but then also non-governmental organisations and civil societies actors like trade unions. Only if migrants and societal groups are involved in the planning can circular migration last, and be understood, as a credible instrument. Excluding it from participation would mean achieving results in planning circular mi-

³³ See above for details under II.

³⁴ European Commission, Communication COM (2007) 248 fin. of 16 May 2007, see footnote 10 above, p. 3.

³⁵ European Commission, Communication COM (2005) 390 fin. of 1 September 2005, see footnote 8 above, p. 11: "exchanges with other stakeholders, in particular NGOs, social partners and civil society [...]."

gration that would at best be one-sided and distorted, and at worst ineffective and lacking in credibility³⁶.

From the development-policy viewpoint it is an approach that names the social actors; i.e. migrants, who have rights and can demand their rights³⁷, thus are not just “agents of development”. Thus the UN Migrant Workers Convention contains e.g. the right of migrant workers to be informed in good time of all circumstances in their destination country relevant to migration and the admission to employment (Article 33, Article 37), a similar obligation is found in the convention of the Council of Europe against human trafficking in respect to conditions of entry and residence (Article 5). If the decision to migrate – assuming there is an appropriate state offer – should be a deliberate and voluntary decision and not a ‘controlled’ decision that leaves the individual hardly any choice, presupposes full information and also participation by the potential migrants: only if a person knows their rights can they also exert them³⁸.

For the concept of circular migration it means, in any case, that they are supposed to create advantages not only for the receiving countries and their migration-policy interests, but also improve the living conditions and thereby the human rights situation in the countries of origin, so that the decision for or against migration can be taken by the migrants themselves³⁹. This can only happen if mobility partnerships or migration programmes are not aimed for and agreed in isolation but in the context of an overall approach, including also foreign, economic and, precisely, development policy.

Those involved in development policy discussion in Germany have recently begun to link up policy areas: here the interaction of development and migration policy to become the object of their own policy approach with autonomous development momentum: skilled workers collect experience in the receiving country for a limited period, which they can use when they go back to their country of origin. They can migrate again and refresh their experience. The skills formed in this way are promoted by investment assistance, easier remittances and reintegration measures. The country of origin receives support funding at the same time in order to be able to improve its institutional conditions, primarily in the fields of politics, business, constitutional procedures, training and social infrastructure⁴⁰.

- *The result for the organisation of circular migration is that migrants, civil society and the countries of origin must not only be granted scope for considering their own interests but that they must also be consistently involved for such migration programmes to succeed*
- *Circular migration must be based on informed and truly voluntary decisions of the migrants. Migration as a last resort is mostly a consequence of human*

³⁶ Amnesty International, Contribution to the Global Forum on Migration and Development, Brussels 10-11 July 2007, AI-Index POL 33/003/2007 (July 2007), p. 7.

³⁷ *Andreas Fisch* comes to the same conclusion, although using a social ethical argument, in: *Über Arbeitsmigration zur Entwicklung*, see footnote 24 above.

³⁸ See *Katharina Spieß*, *Die Wanderarbeitnehmerkonvention der Vereinten Nationen*, Deutsches Institut für Menschenrechte 2007, p. 33.

³⁹ That is the approach of the Franco-German initiative, footnote 14 above, p. 4: “[..] Bekämpfung von Fluchtursachen [...]”.

⁴⁰ See *Dietrich Thränhardt*, *Entwicklung durch Migration. Ein neuer Forschungsansatz*, in: *Aus Politik und Zeitgeschehen* 27/2005, pp. 3-11.

rights violations, and not only that – it is also a very poor basis for the further protection of the human rights of migrants during migration.

- *Circular migration should thus be established not just as an isolated instrument but as part of an overall approach to promote the development of the countries of origin. The goal of advancing the development of human rights in the countries of origin through circular migration must be visible in all policy areas in relations between the European Union, the European states and the countries of origin.*

VII. Final comment

The way in which circular migration is currently understood and presented by the chief political actors in Europe is deceptive. The allowing of circular migration is prima facie justified by development policy considerations but it is really only intended to help to implement the migration-policy interests of the European Union and its member states. Since the issue of circular migration falls under the responsibility of interior ministers it will not be in the best of hands for the foreseeable future. Particularly foreign and development policy-makers are challenged to shake off the dominance of interior policy in the context of migration policy. (Yet we also have urgent recommendations to home affairs policy-makers regarding this topic.)

In addition, civil society actors must commit themselves to stand by individuals in distress and those who are seeking to make a decent living. This commitment can help to guarantee human rights, the rule of law and, not least, the transparency of migration policy.

The challenges posed by international migration are comprehensive and complex, and therefore quick or easy answers are not to be expected from the introduction of circular migration alone.

VIII. Circular migration: a survey of demands

1. Approaches to circular migration must not continue to constitute a threat to refugee protection. Europe's borders must be open and surmountable for those seeking protection. The European Union and its member states have the responsibility to guarantee this at all times, in dealing with mixed migratory movements as well.
2. The external dimension of European migration policy is to be reinforced by the establishment of mobility partnerships and circular migration, but this ignores the fact that many third countries do not respect refugee law and human rights. The European Union should concentrate on enabling those seeking protection to gain access to Europe and assume a large share of responsibility for refugee protection worldwide.
3. All EU member states must ratify the UN Migrant Workers Convention. This convention contains fundamental human rights standards for dealing with mi-

grants which supplement other instruments to protect human rights and which the EU member states should also recognise.

4. Migrants must not be discriminated against in the context of circular migration in relation to other third state nationals living in Europe with regular status. The independence of the residence permit from the actual job must be guaranteed and they must be able to have their families join them. There must be an option to obtain a permanent residence permit from the start. The transferability of social insurance claims after returning to their country of origin must be guaranteed. Access to the integration instruments of the destination country (language, labour market) and to education and training must be guaranteed.
5. The approach of wanting to regulate circular migration primarily through obligations to return is in contrast to a rights-based policy. Accordingly, migration policy should not be unilaterally focused on a forced return. Deportations should not take place at all, if the person concerned has a right to protection from persecution, death, torture or inhuman treatment or is entitled to stay on the basis of the right to respect for private and family life.
6. If migrants want to return voluntarily to their country of origin this should be facilitated by an improved legal position, e.g. by opening up return options, making visa and residence permit instruments flexible and increasing the freedom of movement of migrants as a whole.
7. In the organisation of a future European migration policy, migrants, civil society and the countries of origin must not only be granted scope for considering their own interests but also be consistently involved if such migration programmes are to succeed.
8. Circular migration must be based on informed and truly voluntary decisions of the migrants. Migration as the last resort is mostly a consequence of human rights violations, and not only that – it is also a very poor basis for the further protection of the human rights of migrants during migration.
9. The previous approach to ‘circular migration’ has been an isolated instrument that has not been part of an overall approach to promoting the development of the countries of origin. The goal must be to emphasise the development of human rights in the migrants’ countries of origin and in all policy areas in relations between the European Union, the European states and the countries of origin.