



NGO Committee on Migration

A committee of the Conference of NGOs in consultative status with the UN Economic and Social Council
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Statement for the 2008 Global Forum on Migration and Development

A Call for a Human Rights-Based Approach to Migration and Development

The increased focus on human rights planned for the 2008 Global Forum on Migration and Development (GFMD) as compared to GFMD 2007 should be viewed as some indication of progress. However, it is still far from adequate. In particular, the questions posted on the official GFMD website¹ intended to frame the debate and discussion at GFMD fail to address the root causes of migration and the inter-relationship between human rights and migration. We believe the following questions reflect more fully the framework for necessary dialogue:

- *How would a deeper commitment to human rights on the part of both wealthy and less wealthy nations, sending and receiving countries, improve progress towards a more equitable worldwide development, thereby reducing the pressure to migrate, and ensuring that all migration that does take place is truly voluntary?*
- *How do human rights violations in both the global North and South impact the rate of migration?*
 - *How do land disputes, seizures of traditional indigenous lands, and other human rights violations in the global South exacerbate outward migration?*
 - *How do human rights violations in receiving countries provide an effective cheap labor subsidy that further drives demand for easily exploitable migrant labor in the global North?*

With these questions in mind, we call for the following to be adopted both within the GFMD framework and more generally, in national and international approaches to Migration and Development:

¹ www.gfmd2008.org

Chair: Dr. Rosa Perla Resnick

Vice Chair: Dr. Eva Sandis · Secretary: Eva Richter · Treasurer: Weishan Huang

Members-at-Large:

Tom Brennan · Richard Mandelbaum · Mary Jo Toll

- That the existing international framework of Declarations and Conventions be accepted as the basis for all deliberations and decisions made by states at the GFMD.
- That all deliberations at the GFMD be based on the understanding that international migration, development and human rights are intrinsically interrelated, interconnected and interdependent. Human rights and root causes of migration must be dealt with as cross cutting issues.
- That receiving states recognize the contribution to their economies of migrant workers by respecting the human rights of migrant workers and granting such workers the opportunity to remain with regular status and to integrate into Society, if that is their wish.
- That states grant to all migrants, including irregular immigrants, all rights in accordance with the *Universal Declaration of Human Rights* and Conventions of the International Labour Organisation.
- That states, in particular industrialized nations of the global North (receiving states), ratify the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*.
- That states reduce the root causes of worldwide migration by eliminating discriminatory trade and economic policies in the industrialized North that prevent sustainable development in the sending countries, undermine economic stability, and exacerbate outward migration.
- That governments comply with existing UN instruments and agreements in order to develop effective institutional and policy coherence regarding migration and development.
- That migrants themselves and the organizations which speak for them be given the space to participate systematically in the process of developing effective institutional and policy coherence regarding migration and development.
- Finally, that future multilateral dialogues on migration and development include the full and equal partnership of civil society and governments, both with respect to the contents of the dialogue and the process of participation.

Background

The Centrality of Human Rights as a Framework for Addressing Migration and Development

There has been in recent years increasing recognition by governments and inter-governmental organizations of the valuable contribution of migrant workers to the economic and social well-being of both their sending and host countries.² An objective documentation of the positive economic impact that migrants have on both their countries of origin and their countries of

² For instance, see A/63/265 International Migration and Development, Report of the Secretary-General, 11 August 2008, Sections II(5), III.C(67); and A/60/871, International Migration and Development, Report of the Secretary-General, 18 May 2006, Chapter I, Sections A ,B,C

destination makes a valuable contribution to the current worldwide debate on migration. It is clear that migrants – including low wage and irregular migrants – support the economies of the countries they work in, more so than they are subsidized by them.³ This is an important point to stress at a time when anti-immigrant sentiments are rising and xenophobic scapegoating of migrants is becoming more commonplace in receiving nations in both North and South.

However, there has been a disturbing trend to relegate the question of human rights to a perfunctory discussion secondary to the question of development, rather than to recognize (1) the centrality of human rights as a fundamental framework in which discussions of migration should take place, and (2) the deep inter-relationship between human rights, migration, and development. In this last regard certain progress has been made in the framing of the Global Forum on Migration and Development since Brussels 2007, as expressed in the following description of the contextual framework for the 2008 GFMD:

There is increasing evidence that the benefits of international migration, not only for migrants themselves but also for origin and host societies, are contingent on the protection of migrants' rights. It is reasonable to assume that migrants are best able to contribute to development in both the countries of origin and host countries, when they are protected and empowered socially, economically and in terms of their basic human rights, regardless of their migration status.⁴

At the same time, we can see that this language continues to frame respect for human rights primarily as a means by which development can be achieved. Human rights should not be viewed solely as a means to achieve an end, in this case economic goals. This narrow view of human rights leaves open the possibility of varying interpretations of human rights depending on nations' economic and development policies, and is a troubling dilution of the intent of international human rights law as expressed in the Preamble of the Universal Declaration of Human Rights:

...Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world⁵

Human Rights and Root Causes of Migration

There is a strong consensus within Civil Society, including migrants and their organizations, NGOs, and trade unions, on the need to address root causes of migration, and that the violation of human rights is one of the most fundamental of these root causes.⁶ These violations take the form of violent conflict, racism or other forms of discrimination that force people to emigrate. In

³ *ibid*

⁴ Official website, Global Forum on Migration and Development, <http://government.gfmd2008.org/roundtable1.html>

⁵ Preamble, paragraph one, Universal Declaration of Human Rights

⁶ A/61/187, II, 20 Summary of General Assembly Informal Interactive Hearings, July, 2006

addition, it must be emphasized that the growing economic disparity between rich and poor nations, and indeed between the rich and poor within nations, has also led to a sharp increase in migration worldwide.⁷ It is essential to include in our discussions the question of workers' responsibilities⁸ in addition to rights, and also to distinguish between political refugees, victims of violence and overt discrimination on the one hand, and economic migrants on the other. At the same time, we must recognize that migration born of economic necessity cannot be viewed as purely voluntary if it means that the migrant must leave his or her family behind, often for years at a time. Indeed, economic desperation in and of itself is a violation of human rights as expressed in Article 25 of the Universal Declaration:

Every one has a right to a standard of living adequate for the health, and well being of himself and of his family.

It is therefore inadequate to ask the question,

*What are some key effective practices by governments to maximize the potential of migrants to contribute to the development of their countries of origin?*⁹

In order to address the root causes of migration, we must also ask:

How is the uneven impact of globalization contributing to migration? What policies, including trade, agricultural subsidies, and others, are in place, particularly in receiving nations, that are exacerbating the growing international economic disparity and increasing rates of poverty, and in turn the rates of international migration?

Lastly, there are disturbing signs that this growing disparity in wealth between sending and receiving nations will only grow in coming years as it is exacerbated by the environmental degradation caused by climate change and other factors. Unless they are addressed through policy initiatives to ensure support for those nations most impacted, these factors will contribute significantly to increased migration. It must be noted that for the most part the carbon emissions responsible for climate change have historically been caused primarily by receiving nations of the Global North, which will be much more economically capable of mitigating the impact of climate change on agricultural production and rising sea levels, than will be the sending nations.^{10 11} The wealthier, industrialized nations must recognize their overwhelming responsibility for the impact of climate change, including but not limited to the exacerbation of migration.

⁶ A/61/187, A. 30, Summary of General Assembly Informal Interactive Hearings, July , 2006

⁸ *Universal Declaration of Human Rights*, Article 29 (1): "Everyone has duties to the community in which alone the free and full expression of his personality is possible."

⁹ <http://government.gfmd2008.org/roundtable1.html>

¹⁰ *Climate Change, Environmental Degradation and Migration*, Geneva, Feb. 2008 Executive Summary Full report p. 7

¹¹ IOM Publication MRS No. 31, *Migration and Climate Change*; see <http://www.iom.int/jahia/Jahia/cache/offonce/pid/1674?entryId=16561>

Protecting Migrants' Rights and Promoting Decent Work

The existing international framework - *if fully recognized and enforced* – is adequate for protecting the rights of migrant workers. Unfortunately, many of the fundamental human rights of migrant workers and migrants in general continue unrecognized by both sending and receiving nations. Universal ratification and implementation of *The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, and as a priority, ratification by receiving nations, must be a cornerstone of policy approaches to migration and development.

To emphasize the existing commitment all nations have made to respect labor rights, we again refer to the Universal Declaration on Human Rights:

- 1) *Every one has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment*
- 2) *Everyone, without discrimination, has the right to equal pay for equal work.*
- 3) *Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary by other means of social protection*
- 4) *Every one has the right to form and to join trade unions for the protection of his interests*¹²

In addition, we refer to the established body of Conventions of the International Labour Organisation, and in particular to the *ILO Declaration on Fundamental Principles and Rights at Work*, which clearly expresses the obligations of all ILO member states that:

All Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely:

- (a) freedom of association and the effective recognition of the right to collective bargaining;*
- (b) the elimination of all forms of forced or compulsory labour;*
- (c) the effective abolition of child labour; and*
- (d) the elimination of discrimination in respect of employment and occupation.*¹³

The necessity to fully respect the rights in particular of the most vulnerable migrants must also be emphasized. Policy initiatives need to address specifically the special challenges faced by women and child migrants, who are disturbingly frequently the objects of trafficking, sexual and other exploitation, and violence. Family unification and the well being of the family unit must be a cornerstone of Migration policy.¹⁴ It is crucial that states institute effective formal and

¹² Universal Declaration of Human Rights, Article 23

¹³ ILO Declaration on Fundamental Principles and Rights at Work, paragraph 2.

¹⁴ Universal Declaration of Human Rights, Article 16: "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State."

informal measures to prevent abuse of, and violence against, women and child migrants, especially in the informal sector and domestic work.

The current increase in economic desperation referred to earlier has also resulted in massive increases in irregular migration. This has been exacerbated by what in many cases has been a failure on the part of receiving nations not only to recognize their own role in this trend, but also in some cases, to make available an adequate number of work visas to fulfill their own stated labor needs.¹⁵ The resulting death and injury caused by dangerous border crossing by both land and sea is a humanitarian crisis that must be addressed in a way that does not place blame on the migrants themselves and which provides for opportunities to cross borders in a safe fashion. While we know that smuggling and trafficking are distinct phenomena, the tremendous increase in irregular migration has as its consequence the sale and slavery of persons in smuggling gone awry. In addition, the rights of irregular migrants must be respected. As cited previously, international human rights and labor law very clearly do not distinguish between categories of people: *human rights are universal*.

Increasingly nations of the global North are relying on temporary worker programs to fulfill their labor requirements. This is a disturbing trend, in that temporary worker programs are generally exploitative of workers and are designed for maximum economic benefit to employers while minimizing any social contract that receiving states must make with participating workers. Such programs lock migrants into permanent seasonal migrant status and often violate fundamental human rights of workers - such as equal access to the courts. While it is true that workers in the global South willingly register for such programs, it is a mistake to consider such programs to be mutually beneficial when these workers often have no other choice presented to them. In order to respect the international requirements as embodied in international labor law and human rights law, temporary worker programs need to be fundamentally reformed to: (1) grant workers full rights under law equal to all other workers, (2) provide full access to courts and other systems of redress of grievances, (3) not tie employment of the worker to one sole employer, and (4) provide for a path to residency and citizenship for those workers who desire it.

Finally, the often draconian enforcement initiatives on the part of receiving nations are an additional example of the increasing trend to punish and place the blame on migrants who have crossed borders out of economic necessity and make a valuable contribution to the economies of receiving states. Workplace raids, lengthy detentions that commingle irregular immigrants with a general criminal population, lack of consular access, seriously inadequate medical care for detained migrants, the separation of parents from young children, and excessive prison terms all represent an increasing criminalization of migrant workers and their families, and must be reversed.¹⁶

¹⁵ Summary Report, Global Forum on Migration and Development, Belgium, 2007, Recommendations and Proposed Actions, p. 18, “Human Rights” #5

¹⁶ For example the EU “Return Directive”, and the US IRAIRA *Illegal Immigration and Immigrant Responsibility Act, 1996*