

NGO Committee on Migration

The increased focus on human rights for the 2008 Global Forum on Migration and Development (GFMD) as compared to 2007 GFMD should be viewed positively. However, the recent focus on migration and human rights is far from adequate in addressing the root causes of migration and the inter-relationship between human rights and migration. The NGO Committee on Migration believes the following questions reflect more fully the framework for necessary dialogue:

- (a) How would a deeper commitment to human rights on the part of both more developed and less developed regions and sending and receiving countries, improve progress towards a more equitable worldwide development, thereby reducing the pressure to migrate and ensuring that all migration is truly voluntary?
- (b) How do human rights violations in both the more developed regions and the less developed regions impact migration?
 - (i) How do land disputes, seizures of traditional indigenous lands and other human rights violations in the less developed regions exacerbate emigration?
 - (ii) How do human rights violations in receiving countries drive the continued demand for easily exploitable migrant labour in the more developed countries?

With these questions in mind, the NGO Committee on Migration calls for the following points to be incorporated, both within the GFMD framework and more generally, in national and international approaches to migration and development:

- (a) 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;
- (b) That all deliberations at the GFMD be based on the understanding that international migration, development and human rights are intrinsically interrelated; human rights and root causes of migration are cross-cutting topics of the present time;
- (c) That receiving countries recognize the contribution of migrant workers to their economies, respect their human rights and grant them the opportunity to remain with regular status and to integrate into society, if they so desire;
- (d) That countries grant migrants, including irregular immigrants, all rights in accordance with the Universal Declaration of Human Rights and conventions of the International Labour Organization (ILO);
- (e) That countries, in particular those in the more developed regions of the world, ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;

- (f) That countries reduce the root causes of worldwide migration by eliminating discriminatory trade and economic policies in the more developed regions that prevent sustainable development in the sending countries, undermine economic stability and exacerbate outward migration;
- (g) That governments comply with existing United Nations instruments and agreements in order to develop effective institutional and policy coherence regarding migration and development;
- (h) That migrants themselves and the organizations which speak for them be given the opportunity to participate systematically in the process of developing effective institutional and policy coherence regarding migration and development;
- (i) Lastly, that future multilateral dialogues on migration and development offer full and equal partnership to civil society and governments, both with respect to the contents of the dialogue and the process of participation.

A. BACKGROUND: THE CENTRALITY OF HUMAN RIGHTS AS A FRAMEWORK FOR ADDRESSING MIGRATION AND DEVELOPMENT

In recent years, there has been increasing recognition by governments and intergovernmental organizations that migrant workers make valuable contributions to the economic and social well-being of both sending and host countries (United Nations, 2006a and United Nations, 2008). It is clear that migrants—including low-wage and irregular migrants—are net contributors to the economies of the countries in which they work.¹ 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 countries of both more and less developed regions.

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: (a) the centrality of human rights as a fundamental framework in which discussions of migration should take place, and (b) the deep interrelationship between human rights, migration and development. In this regard certain progress has been made since the 2007 Brussels Global Forum on Migration and Development (GFMD), as expressed in the following description of 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 destination, when they are protected and empowered socially, economically and in terms of their basic human rights, regardless of their migration status.²

At the same time, the language used in the political debate 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 countries' 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 world.³

B. HUMAN RIGHTS AND ROOT CAUSES OF MIGRATION

There is a strong consensus within civil society, including migrant organizations, non-governmental organizations and trade unions, on the need to address the root causes of migration, including the violation of human rights (United Nations, 2006b). These violations take the form of violent conflict, racism and other forms of discrimination that force people to emigrate. In addition, the growing economic disparity between rich and poor countries, and between the rich and poor within countries, has also led to a sharp increase in the number of international migrants worldwide (United Nations, 2006b). In this discussion it is essential to include the question of workers' responsibilities⁴ 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, one has to 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 is a violation of human rights as expressed in Article 25 of the Universal Declaration of Human Rights:

Everyone 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?”⁵, in order to address the root causes of migration, one must also ask: (a) how is globalization contributing to migration? and (b) what policies, including trade, agricultural subsidies, and others, are in place, particularly in receiving countries, that are exacerbating the growing international economic disparity, increasing rates of poverty, and rising international migration?

Lastly, there are signs that the growing disparity in wealth between sending and receiving countries will only increase 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 countries most affected, these factors will contribute significantly to increased migration. For the most part, the carbon emissions responsible for climate change have historically been caused by receiving countries of more developed regions, which will be more economically capable of mitigating the impact of climate change on agricultural production and rising sea levels than will be the sending countries (Brown, 2008; United Nations Institute for Training and Research, 2008). The wealthier more developed regions must recognize their responsibility for climate change, including, but not limited to, the exacerbation of migration.

C. PROTECTING MIGRANTS' RIGHTS AND PROMOTING DECENT WORK

The existing international human rights 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 to be unrecognized by both sending and receiving countries. Universal ratification and implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families must be a cornerstone of policy approaches to migration and development.

In order to emphasize the existing commitment all countries have made to respect labour rights, the following paragraph summarizes key elements of the Universal Declaration of Human Rights:

- (a) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment;

- (b) Everyone, without any discrimination, has the right to equal pay for equal work;
- (c) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection;
- (d) Everyone has the right to form and to join trade unions for the protection of his interests.⁶

Furthermore, the conventions of the ILO, and in particular of the ILO Declaration on Fundamental Principles and Rights at Work, which clearly expresses the obligations of all ILO member States, include the following key elements:

All member States, even if they have not ratified the conventions in question, have an obligation arising from the very fact of membership in the ILO 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;
- (d) The elimination of discrimination in respect of employment and occupation.⁷

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 challenges faced by women and child migrants, who are frequently the objects of human trafficking, sexual and other exploitation and violence. Family unification and the well-being of the family unit must be a cornerstone of migration policy.⁸ It is crucial that countries institute effective formal and informal measures to prevent abuse of, and violence against, women and child migrants, especially in the informal sector and domestic work.

The current financial crisis is likely to contribute to an increase in irregular migration. This has been exacerbated by a failure of receiving countries 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 labour needs. The resulting death and injury caused by dangerous border-crossings is a humanitarian crisis that must be addressed in a way that does not place blame on the migrants and which provides for opportunities to cross borders in a safe way. While smuggling and human trafficking are distinct phenomena, both have at their core the sale and slavery of persons. In addition, the rights of irregular migrants must be respected. As cited previously, international human rights and labour law do not distinguish between categories of people: human rights are universal.

Increasingly, countries of the more developed regions are relying on temporary worker programmes to fulfill their labour requirements. This is a disturbing trend, in that temporary worker programmes are generally exploitative of workers and are designed for maximum economic benefit to employers while minimizing any social contract that receiving countries must make with participating workers. Such programmes lock migrants into seasonal migrant status which often violate fundamental human rights of workers —such as equal access to the courts. While workers in the less developed regions freely register for such programmes, it is a mistake to consider such programmes to be mutually

beneficial when these workers often have no other choice but register so that they can obtain work. In order to respect the international requirements as embodied in international labour law and human rights law, temporary worker programmes need to be fundamentally reformed to: (a) grant workers full rights under law equal to all other workers; (b) provide full access to courts and other systems of redress of grievances; (c) not tie employment of the worker to one sole employer, and (d) provide for a path to long term residency and citizenship for those workers who desire it.

The strict enforcement practices by receiving countries 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 who also make a valuable contribution to the economies of receiving countries. Workplace raids, lengthy detentions that fail to distinguish between irregular and other foreigners who have committed a crime, lack of consular access, 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.⁹

NOTES

¹ See http://government.gfmd2008.org/index2.php?option=com_docman&task=doc_view&gid=132&Itemid=45 (accessed 24 April 2009).

² See <http://government.gfmd2008.org/roundtable1.html> (accessed 13 January 2009).

³ See Universal Declaration of Human Rights, Preamble, paragraph 1.

⁴ See 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.”

⁵ See <http://government.gfmd2008.org/roundtable1.html> (accessed 13 January 2009).

⁶ See Universal Declaration of Human Rights, Article 23.

⁷ See ILO Declaration on Fundamental Principles and Rights at Work, paragraph 2.

⁸ See 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.”

⁹ See, for instance, the European Union “Return Directive”, and the United States Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

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