



WORKSHOP REPORT

UNITAR/UNFPA/IOM KEY MIGRATION ISSUES WORKSHOP SERIES¹:

MIGRATION AND HUMAN RIGHTS²

27 June 2006, United Nations Headquarters, New York

BACKGROUND

On 27 June 2006, the United Nations Institute for Training and Research (UNITAR) in collaboration with the United Nations Population Fund (UNFPA) and International Organization for Migration (IOM) hosted a workshop on Migration and Human Rights as part of the “UNITAR/UNFPA/IOM Key Migration Issues Workshop Series”.

The event was held in the Dag Hammarskjöld Auditorium of the United Nations Library at UN Headquarters and at the Church Center. The attendees included 36 delegates representing 32 countries; 31 staff from UN Secretariat, agencies and other international organizations; and 13 members of civil society.

OBJECTIVES

This workshop’s objectives focused on: how migrants’ rights can be ensured; how responsibility for the protection of migrants’ rights can be shared internationally; what linkages exist between the respect for human rights, development and international migration; how a rights-based approach to child migration can be put into practice; and what kind of risks and opportunities exist for youth migrants.

More generally, this Series is intended to provide participants with greater knowledge on key migration issues, and offer a forum for discussion and awareness-raising prior to the General Assembly’s High Level Dialogue, which will focus on International Migration and Development on 14-15 September 2006.

Information on upcoming briefings and workshops in this Series is available from info@unitarny.org or at www.unitarny.org

SUMMARY OF INTERVENTIONS

Session I: From state control to shared responsibility: international migration and human rights

Dr. Jorge Bustamante, the UN Special Rapporteur on the Human Rights of Migrants, opened the session with candid remarks concerning states’ responsibility vis-à-vis undocumented migrants as many states tacitly accept a large presence of undocumented migrants in their territory as these individuals give support to their economies. One of the many examples cited was the case of the state of California, which

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² This Workshop is financially supported by the Government of Liechtenstein.



is responsible for approximately one third of food production in the United States, and where 90 percent of the workforce is Mexican, 60 percent of whom are undocumented. Dr. Bustamante pointed to an asymmetry of power between nationals and non-nationals, which often leads to discrimination and policies that justify resulting inequalities. He proposed that work must be done on seeing how states can be made to meet their responsibilities to those individuals who are buttressing their economies but who are ineligible for basic human rights protections in return.

Mrs. Mary Robinson, President of Realizing Rights: The Ethical Globalization Initiative and former UN High Commissioner for Human Rights, emphasized the need for a human-rights based approach to migration policy-making and implementation. Underpinning this approach is the protection of migrants' rights regardless of their status. Some concerns to which she alluded are: increased national security and border restrictions and resulting human rights violations, and victims of trafficking who are often treated as criminals rather than as victims of an international crime worthy of the protections afforded under the UN Protocol to prevent, suppress and punish trafficking in persons, especially women and children. Mrs. Robinson called upon the international community to ratify the international legal texts covering migration and in particular the 1990 UN Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, in addition to the international legal framework on human rights. This framework is an essential feature of policy making, and states must be reminded of the inalienable rights of all migrants. Respect for human rights, it was argued, contributes to economic and social development.

Mrs. Robinson also emphasized the importance of institutional coherence beginning with a need to coordinate between relevant ministries on migration issues, and complementary approaches to migration and co-development to counter brain drain, support diaspora initiatives or otherwise. In citing the work of the Global Commission on International Migration and its Final Report, Ms. Robinson stated that examples already exist on how to promote co-development.

Further, Mrs. Robinson suggested that human rights should *not* be considered as a separate topic in the General Assembly's High Level Dialogue on International Migration and Development. Rather, human rights should be mainstreamed into all discussions and round tables planned. It was further suggested that migration be a core area of consideration for the Human Rights Council's work.

Ms. Gabriella Rodriguez, Head of the IOM Mission in Santiago de Chile and former UN Special Rapporteur on the Human Rights of Migrants, recounted testimonies of discrimination and other violations against undocumented migrants including those relating to detention practices, confiscation of identity documents, forced slavery, non-payment of wages, expulsion and deportation. She cautioned against the particular vulnerabilities of women and unaccompanied minors. Dr. Rodriguez emphasized the need to sensitize those who come into contact with migrants (including smuggled persons and trafficking victims) of their human rights. She suggested this be done through appropriate training of border guards, consular officials and others, with the assistance of relevant agencies including IOM and UNHCR. As the speakers before her, she called on the need to recognize the co-responsibility of individuals and states when addressing migration, and referred to IOM's International Migration Law project as one way to sensitize all those concerned to the legal aspects of international migration.

This panel also addressed development and the relationship between migration, human rights and development. From the outset, it was pointed out that insufficient dialogue and understanding exists between development and migration policy makers.

Dr. Naresh Singh, Executive Director of the Secretariat of the High Level Commission on Legal Empowerment of the Poor, reflected on these inter-relationships with the following set of observations.



He began by stating that in the development world, comprehension is scant as to what a “human right based approach to development” is. There is thus a need for a conceptual shift in how respect for rights is perceived. In this context, he challenged the audience to consider the question of the universality of human rights and whether a human rights approach to development must also be universal. Dr. Singh suggested that if states are considered to not have the capacities to fulfill human rights obligations, they should work towards “progressive delivery based on current capacities”. He also noted the role of the courts, stating that in his native Canada, attention was brought to civil and political rights but the same was not true for economic and social rights. Finally, Dr. Singh invited the audience to consider whether human rights could be measured and by extension, whether the relationship between human rights, migration and development could be quantified.

Dr. Singh concurred with Dr. Bustamante that economic deprivation and social marginalization are symptomatic of power asymmetries. In addressing one aspect of this situation, the work of the High Commission on Legal Empowerment of the Poor is to make legal systems more participatory. Dr. Singh raised the issue of why so many poor people are increasingly going towards the informal sectors of the economy; “what is wrong with the formal legal sector?”, he posited. Dr. Singh stressed the need for legal reforms that are more poor-friendly, including in the areas of: property rights; acquisition of identity documents; labour rights; expanding legal business opportunities; and generating political momentum for institutional reform. Specifically with respect to migration, he suggested the need to counter problems such as discrimination in public education for undocumented migrants’ children; the illegal status of migrants; and the non-issuance of birth certificates to migrants’ babies.

Dr. Singh was skeptical of the outcome of the High Level Dialogue since it currently “remains at the level of principles”. To progress, this dialogue must be anchored in an action plan with key actors from all sectors to take the plan forward. In terms of concrete goals which could be incorporated in such an action plan, Dr. Singh enumerated: founding networks between national counterparts and diaspora to support diaspora initiatives including by establishing public policy think tanks as divergent voices in developing countries is critical to growth and democracy; encouraging links between national lawyer associations in origin and destination countries; promoting investment funds; and working to re-conceptualize state sovereignty through, for example, the granting of dual citizenship.

Ms. Barbara Masciangelo, Acting Chief of the Treaty Section of the UN Office of Legal Affairs (OLA), described the Treaty Section’s work including OLA’s partnership with UNITAR on the seminar on deposit of treaty actions with the Secretary-General and registration of treaties. On behalf of Mr. Nicolas Michel, Under-Secretary-General, The Legal Counsel at the Office of Legal Affairs, Ms. Masciangelo detailed the OLA’s Treaty Event. This event held annually since 2000, serves as a collective effort to encourage states to ratify international legal instruments. Each year, the Treaty Event is on a particular theme. In 2006, the Treaty Event is “crossing borders”. Ms. Masciangelo expressed OLA’s appreciation for this event and its support for activities tied to strengthening the understanding of international law and the promotion of the rule of law.

Questions from the floor touched upon: the utility of pre-departure training to inform migrants of the risks and rewards of migration; the need for migrants to obey laws of the host society; whether migration-specific legal texts undermined protections afforded in other instruments covering all human beings; the sovereign right of states to defend their borders; issues pertaining to proposed repayment schemes; the role that employer associations can play in protecting migrants’ rights in particular domestic workers; and why the Migrant Workers Convention has so little support amongst destination countries.

In response, Ms. Robinson described the Migrant Workers Convention as a legal text that “brings together existing legal obligations”. The GCIM Report endorsed the view that all migrants have rights regardless



of their status. Dr. Rodriguez stressed to the audience that based on her experience, migration should not be considered an individual choice in most cases. A human rights approach to migration, she argued, does not entail “an open door to all”. Rather, it means that migration should take place in a space that is governed by dignity and order. Dr. Bustamante emphasized again the need for states to recognize their responsibilities vis-à-vis undocumented migrants as the latter fuel nations’ economies. He proposed more work on labour demands in destination countries and how these generate irregular migration.

Session II: Sharing responsibilities – different perspectives

Looking at the responsibilities of countries of origin, transit and destination, **Ms. Mariana Olivera West**, Third Secretary at the Permanent Mission of Mexico to the United Nations, highlighted the importance for all stakeholders in the migration process, including international organizations and civil society, to cooperate on the basis of well-defined roles and obligations. She identified irregular migration as being one of the main concerns to be addressed through international cooperation, as it negatively affects the realization of migrants’ human rights in many ways. These rights are codified in what is referred to as the international human rights regime, and especially the 1990 UN Migrant Workers Convention, the ILO Conventions no. 97 and 143 and the two Protocols against Smuggling and on Trafficking in Persons supplementing the UN Convention against Transnational Organized Crime. Ms. Olivera mentioned that the main challenge is to achieve universalization and effective implementation of these instruments.

She also highlighted the practical relevance of the Vienna Convention on Consular Relations for the protection of migrants, as Article 36 states the right of nationals abroad to communicate with a representative of their home country upon arrest or detention. Thus, Ms. West emphasized that its consular network, with 46 consulates in the US, is Mexico’s strongest tool of protection for nationals abroad. It offers advisory services to migrants and provides legal protection through the registration of nationals abroad, the issuing of identification documents and the facilitation of legal defense in case of detention. In addition, a new programme has been launched to address domestic violence against Mexican women and children living in the US. The Mexican Government also conducts an active outreach policy to migrant communities, aiming at involving them in policy formulation concerning the interests of migrants. Ms. West also mentioned that it is an obligation of countries of origin to inform potential migrants about the realities of the migration process and to prevent irregular migration. In this regard, not only law enforcement, but also effective protection of victims is required.

Referring to the responsibilities of countries of transit and/or destination, Ms. West stressed their obligation to ensure respect for the human rights of migrants regardless of their status. Transit and host countries must protect migrants not only from abuses by the border police and other government authorities, but also by third parties. Thus, migrants have to be protected against xenophobic or racist acts, as well as from discrimination and exploitative practices of employers. Countries of destination should promote tolerance and implement related educational measures. They are also responsible for integrating immigrants as equals, not as “second class citizens”, notably with regard to family reunification policies. In view of the General Assembly’s High Level Dialogue, Ms. Olivera stressed the need for participants to seek common ground. Referring to statements by Mr. Peter Sutherland, the Secretary General’s Special Representative for International Migration, she agreed that the High Level Dialogue should mark the beginning and not the end of a process, and that states should identify a follow-up agenda.

Mr. Peter Lilius, Consul (Immigration) at the Canadian Consulate in New York, gave an overview of Canada’s policies concerning migration and human rights, given the threefold role of the state as guarantor a) of the economic and social welfare of its citizens; b) national security and public safety and c) the protection of the human rights of all people on its territory, whether they are citizens or not. He explained that, in accordance with its responsibility for border protection, Canada has managed migration



programmes that allow for legal immigration of certain categories of migrants. Fair and transparent decision-making processes about who may come and stay in Canada and who must leave, foster public support for migration.

The Canadian authorities provide migrants with information on the legal conditions for entry, stay and employment in Canada and also inform them about the dangers of human trafficking. However, Mr. Lilius noted that this is only possible, where migration is officially processed and documented. As undocumented migrants avoid government offices and officials, this makes it harder for authorities to provide them with information and protect their rights. Addressing the vulnerability of irregular migrants, Canada is actively fighting trafficking and smuggling in human beings internationally and provides human rights training to immigration and border officials. The Canadian Government also cooperates closely with international organizations on human rights issues; it regularly reports to monitoring bodies of the international human rights instruments it is party to, and accepts the authority of the monitoring committees to hear complaints under the Optional Protocol to the International Covenant on Civil and Political Rights and the Committee Against Torture. Mr. Lilius also mentioned that Canada was the first country to receive a visit of the first Special Rapporteur on the Human Rights of Migrants.

On the domestic scene, Canada's international obligations are complemented by national and provincial human rights legislations that protect migrants regardless of their status. Canada does not only recognize its obligation to respect the human rights of all persons on its territory, but also promotes the respect for human rights in countries of origin and assists them in meeting human rights obligations. Citing from a statement made by Canada in the Third Committee of the UN General Assembly in fall 2005, Mr. Lilius emphasized that his country considers human rights "not as luxuries", but as "essential to sustainable development, legitimate and effective democracies, and improved security and stability."

Following the discussion on potential synergies between a human rights based approach (HRBA) to development and to migration that took place in the morning, **Ms. Carola Hausotter**, a Legal Consultant at the Poverty Group of UNDP in New York, focused on how a HRBA to poverty reduction can be put into practice, and also explored some potential linkages with migration. After 1990, it has been increasingly recognized in the UN context that human rights are both, the aims and means of a development process that pursues the empowerment of people and the rule of law. This emerging consensus in conjunction with the Millennium Development Goals, notably the first goal on poverty reduction, provide the framework for a UNDP pilot project on a HRBA to poverty reduction, which was initially launched by the German Ministry for Economic Cooperation and Development in 2004. It is part of a broader approach within UNDP to strengthen human rights, mainly conducted by the HURIST program (<http://www.undp.org/cso/areas/human.html>).

The HRBA is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. It seeks to analyze inequalities which lie at the heart of development problems and redress discriminatory practices and unjust distributions of power that impede development progress. Ms. Hausotter presented some first evidence from the project that aims at mainstreaming a HRBA into either the national or the local development strategies in eight countries in Europe, Asia, Africa and Latin America. Regarding the projects working at the local level where the project is actively supporting the elaboration of development strategies, she stressed that one cross-cutting element of the project is to strengthen the capacity of municipal and other stakeholders throughout the project cycle of assessment, planning, implementation and policy development. First lessons learned at the local level point to the importance of involving all stakeholders, which requires an assessment of who is usually excluded from deliberation and decision-making processes, focusing especially on the vulnerable groups. Moreover, for the successful



implementation of the HRBA, it is also crucial to have pro-active local governments that are willing to collaborate.

Regarding the impact of migration movement she acknowledged that the phenomenon is still not considered in an adequate manner in development policies. Therefore one of the aims of the pilot projects must be to improve the human rights situation through the implementation of development strategies in order to make migration a choice.

Session III: Migration and Children's Rights

Mr. Andrea Rossi, Child Protection Officer at UNICEF in New York, looked at the impact of migration on children, noting that, so far, little attention has been paid to children in the international migration debate, although they are actually big stakeholders. It is estimated that, for example in China about 20% of all migrants are children (19,81 million). Children, meaning everyone under the age of 18 years, are affected by migration in different ways: they move with their parents or alone, are left behind or live in a context in which they become affected by migration. Mr. Rossi stressed that in each of these situations children may face negative effects, but do also experience development benefits. Therefore, no general judgment on the impact of migration on children can be made. Instead, one needs to look at the impact on each child.

However, as Mr. Rossi pointed out, this impact is difficult to assess, as one would need to compare, for example, the inflow of remittances on the one hand, and the lack of parental care on the other. He mentioned that growing up without one or both parents, due to migration, is a normal experience for many children in developing countries and that leaving children behind can actually be a means of protecting them. Mothers or children often gain new decision making powers, if fathers go away. Therefore, one needs to look at *who* uses remittances to assess their impact, but also at different remittance sending behaviours. For example, findings indicate that women/mothers who migrate tend to remit more than their male counterparts. Given this mixed evidence, it is for policy makers to identify and develop policies that increase the positive impact of remittances and migration, instead of judging it on the basis of general assumptions.

With regard to the protection of migrant children, Mr. Rossi highlighted the special vulnerability of children in an irregular situation to become victims of abusive practices, such as child labour, trafficking and violence or to encounter conflicts with the law. He emphasized that the Convention on the Rights of the Child (CRC), which provides the most comprehensive legal framework for the protection of children's rights, does not discriminate between national and migrant children, regardless of their status. He also emphasized that negative impacts of migration on children are often linked to problems that are proper to the context in which migration occurs, e.g. lack of birth registration, early marriage and discrimination against certain groups and populations – rather than to migration itself. Adopting a child rights approach to migration means applying the principle of non-discrimination, acting in the best interest of the child and taking the child's motivation and own view into account. Finally, Mr. Rossi formulated a number of recommendations concerning principles for action: 1. reach children; 2. do evidence-based programming; 3. adopt a cross-sectional approach; 4. reach out to youth and adolescent migrants and 5. monitor the enforcement and impact of protective measures.

Ms. Anna di Mattia, Associate Social Affairs Officer at the Youth Programme of the UN Department for Economic and Social Affairs, focused on risks and opportunities for youth migrants, stating that 1.) the opportunities and risks of migration are particularly important for youth; 2.) young people are likely to be able to take advantage of the opportunities that arise from migration, because of their flexibility; 3.) there



is no one-size-fits-all policy for youth migrants, because of their heterogeneity as a group. Therefore, policy responses have to be developed from case to case.

Ms. di Mattia defined "youth migrants" as "young women and men with a migration background and recently immigrated young people", with youth being defined by the United Nations, as between the ages of 15 to 24. Youth are important stakeholders in migration processes, as according to World Bank estimates (2006), about one third of migrants from all developing countries are aged 12 to 24 and half are 12 to 29 years old. Also, 50 to 90 per cent of youth in some countries state they would migrate, usually temporarily, if they had the opportunity to do so.

Ms. Di Mattia focused on three areas of risks for young migrants:

- 1.) Lower educational performance, resulting from factors such as a lack of language skills, the migrant families' educational and social status in the host society, the referral of migrant youth to special education programmes, and the segregation or self-segregation of immigrant communities. Noting that it is "decisive to start early and to involve parents", Ms. Di Mattia recommended the provision of systematic language support for migrant youth, e.g. through immersion programmes and bilingual language support programmes, the extension of pre-school provisions and an active outreach to parents through acculturation classes, guidance and counseling.
- 2.) Unemployment and/or exploitation in the labour market, often times in the informal economy, due to poor working conditions, long working hours, no or little basic social security, low salaries, and dangerous working environments. With regard to strategies addressing these risks, Ms. Di Mattia pointed to The National Action Plans for youth adopted by lead countries of the Youth Employment Network (YEN, 2006), which aim at reducing the pressure for migration.
- 3.) Gender specific discrimination and/or violence, which is linked to the relegation of young female migrants to gender specific occupations and to the fact that they are more often victims of trafficking and related (sexual) exploitation. In this regard, Ms. di Mattia stressed the need for a gender sensitive approach to migration and for information campaigns targeting potential young female migrants.

She then looked at opportunities for young migrants, which derive from their inherent characteristics – resilience, flexibility and energy –, and include the potential empowerment of youth as senders of remittances, a role that can enhance their self-esteem, and their status and decision-making powers within families. Youth migrants also represent a source of "human capital" for ageing societies and are likely to integrate successfully into the host environment, as they are capable of adapting to new challenges. In terms of gender equity, migration may offer gains in financial independence and autonomy for young women.

Ms. Kristina Touzenis, a Consultant with the IOM Office in Rome, looked at the legal framework for the protection of children victims of trafficking. She pointed out the difficulty of distinguishing between migrants, victims of trafficking and refugees, as they often use the same migration channels and children sometimes migrate on their own with the plan to make money, this needs to be recognized in order to avoid failed assistance programmes which may end up actually pushing migrant children into exploitive situations. When dealing with trafficked children, it is important that all children, not only girls, but also boys, are recognized and treated as victims of trafficking and not as illegal immigrants.

Drawing the attention to the root causes of trafficking in children, Ms. Touzenis mentioned that poverty often makes parents encourage their children to migrate, but that trafficking in children is also demand driven, as it often occurs for labour purposes, exposing children to harsh working conditions. She also emphasized that trafficking is made easier by a lack of registration at birth and education of children and families.



Ms. Touzenis stressed that cooperation between states should address these root causes and not be understood solely as police cooperation, noting that too restrictive migration policies would rather tend to 'help' smugglers and traffickers. The existing international legal framework provides a number of instruments for the protection of victims of trafficking, such as the Slavery Conventions, the ILO Convention no. 182 on the Worst Forms of Child Labour, the UN Migrant Workers Convention, and the UN Protocol on Trafficking. However, Ms. Touzenis also identified 'gaps', where additional action is needed. An important feature of the ILO Convention is that it spells out a child's right to vocational training and social reintegration, which is most important. But the focus should be first and foremost on preventing children from becoming victims to trafficking in the first place. The UN Migrant Workers Convention is comprehensive in that it covers all stages of the migration process, and it needs to be recognized that people under 18 years work and need legal protection so that their work is not transformed into exploitation.

Mr. Brian Gorlick, Senior Policy Adviser at UNHCR in New York, gave an account on the often difficult conditions when working with refugee children, mainly because of a lack of funds attributed to this issue. He observed that budget cuts often concern women and children, as programmes relating to education and community services are targeted first. With regard to the neglect of the subject in discussions on international migration and development, Mr. Gorlick underlined that refugees should be considered as migrants of a particular category that is as forced migrants. He noted that, while a high percentage of refugees are children, protective provisions are usually not tailored to their needs and concerns. Thus, it is difficult for children to deal with often complicated asylum procedures.

He then outlined UNHCR's global strategy for refugee boys and girls, which combines 3 main components: I.) It focuses on 5 priority issues that it seeks to address. These are 1) preventing the separation of refugee children from family and caregivers; 2) protecting them against sexual exploitation, abuse and violence; 3) preventing military recruitment of refugee boys and girls; 4) providing them with access to education; 5) addressing the specific concerns of adolescents, notably with regard to participation and youth employment. II.) UNHCR provides training and capacity development for partner organizations in order to enhance awareness for the specific concerns of refugee boys and girls. III.) A third component of the global strategy consists in strengthening inter-agency cooperation with other UN organizations, NGOs and governments to optimize the protection and care provided to refugee children.

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