



WORKSHOP REPORT

UNITAR/UNFPA/IOM KEY MIGRATION ISSUES WORKSHOP SERIES¹:

IRREGULAR MIGRATION

organized jointly with UNHCR

30 August 2006, United Nations Headquarters, New York

BACKGROUND

On 30 August 2006, the United Nations Institute for Training and Research (UNITAR) in collaboration with the United Nations Population Fund (UNFPA), the International Organization for Migration (IOM) and the UN High Commissioner for Refugees (UNHCR) hosted a workshop on Irregular Migration as part of the “UNITAR/UNFPA/IOM Key Migration Issues Workshop Series”.

The event was held in the Dag Hammarskjöld Library Auditorium at United Nations (UN) Headquarters.

The attendees included 52 delegates representing 44 countries; 14 staff from UN Secretariat, agencies and other international organizations; and 19 members of civil society.

OBJECTIVES

This workshop’s objectives focused on: identifying causes and consequences of irregular migration and understanding the role of illicit intermediaries; enhancing participants’ knowledge on situations of irregularity and on the problems and needs of migrants in these situations; presenting national responses to irregular migration; understanding the benefits and deficiencies of existing migration control measures and of new technologies for identification in light of the rights and interests of all stakeholders involved; discussing how common policy approaches to the issue of irregular migration can be developed; and how irregular migration can be integrated into development cooperation policies between states with a view to addressing its root causes.

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

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

¹ This Series is financially supported by UNFPA



SUMMARY OF INTERVENTIONS

Introduction: Irregular Migration - Concepts, Causes, Consequences

Mr. Khalid Koser, Deputy Director of the Brookings-Bern Project on Internal Displacement at the Brookings Institution in Washington D.C., started the meeting by discussing the implications of different terms applied to irregular migration, such as illegal, undocumented or unauthorized migration. Situations of irregularity may either result from entering or staying in a country in breach of national laws, including victims of trafficking and unsuccessful asylum seekers. Many migrants undergo rapid changes of status that make it difficult to ‘measure’ irregular migration. However, despite a lack of data and access to data on the issue, evidence suggests that irregular migration is a global phenomenon, even if the meaning of the concept varies, depending on regional differences in border enforcement and registration on birth.

Identifying causes of irregular migration, Mr. Koser stated that these are basically the same as for regular migration, including global demographic imbalances, disparities in development and democratic governance, and the incentives and opportunities that globalization provides in terms of communication and travel. Facilitators of irregular migration are transnational networks - friends and family already abroad - and a ‘migration industry’ of intermediaries, such as labour recruiters, immigration lawyers, travel agents, brokers, housing providers, remittances agencies, immigration and customs officials etc. Given that legal migration channels are often restricted, this industry also comprises illicit elements involved in migrant trafficking and smuggling.

Finally, Mr. Koser identified a number of mostly negative consequences of irregular migration for both host countries and migrants: 1.) Irregular migration undermines State sovereignty and, if involving corruption and organized crime, can be a threat to public security. 2.) It can engender xenophobic sentiments against foreigners in general, notably in the context of high unemployment amongst nationals in the host country. 3.) Irregular migration can imply health risks. 4.) It can undermine public confidence in the integrity and effectiveness of a State’s migration and asylum policies. Consequences for the human security of migrants tend to be even more negative: they often risk death, exploitation and abuse, paying high fees to intermediaries. In the segmented labour markets of developed countries, they often work in low-paid, so called ‘3D jobs’ with dirty, dangerous and difficult working conditions that can deprive them of using their skills. Women, in particular, encounter gender-based discrimination and violence, often working in informal sector jobs as domestic or sex workers, where they are exposed to health risks. In addition, irregular migrants often do not have access to or fear to make use of social and legal public services.

1st Session: Living undocumented: the status of irregular migrants

Donald Kerwin, Executive Director of Catholic Legal Immigration Network Inc. in Washington D.C. discussed the situation of undocumented migrants in the United States as regards access to legal services and counsel in deportation/removal procedures. He warned against the creation of different sub-categories of rights-holders leading to a growing population of second-class non-citizens that are unable to fully participate in society. With respect to the United States, he stated that undocumented migrants, like US citizens, cannot claim social and economic rights. He further commented that there is a growing divide between the treatment of US citizens and non-citizens in general – not just the undocumented – with regard to certain rights and benefits, notably stemming from the 1996 immigration and welfare reform legislation. Immigrants can be deported for a growing litany of offenses; immigration violations are increasingly prosecuted as criminal offenses; and immigration procedures are used to classify migrants as a ‘national security threats’. However, the U.S. Constitution grants civil rights to undocumented migrants,



such as the right to assemble, to due process of law, to a speedy trial, to legal counsel in criminal matters etc. Also, according to a 1982 Supreme Court decision, undocumented children have a right to public education in the US on equal protection grounds. At the same time, courts have recognized the federal government's plenary power to regulate immigration, and to decide on who can enter, who must leave and who can stay in the country. Immigration regulations and classifications adopted by States and localities have regularly been struck down on constitutional grounds as an infringement on the federal government's authority in this area. Mr. Kerwin also spoke of deportation or removal procedures. These are considered "civil" proceedings and, as such, do not require government-appointed legal counsel. Thus, whereas immigrants in criminal proceedings do have right to appointed counsel, those facing deportation do not, though the procedures and consequences are comparable and the impact is considerable. As Mr. Kerwin explained, 93% of unrepresented asylum seekers are denied asylum, compared to 64% of those represented. He mentioned that many people in removal proceedings cannot afford legal counsel and must represent themselves at their own peril.

Mr. Don Flynn, Chair of PICUM, the Platform for International Cooperation on Undocumented Migrants, a network of non-governmental organizations located in Brussels, outlined the international legal instruments that grant migrants equal access to housing, health and education, notably the International Convention on Economic and Social Rights and the 1990 Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. However, the enforcement of existing rights is not guaranteed for undocumented migrants who, for example, often do not have access to state-run housing schemes. Citing a number of NGO-run housing projects for undocumented migrants, he highlighted the role that civil society currently assumes in servicing undocumented migrants across Europe. He also mentioned that, in the European context, the provision of health care is increasingly dependent on a migrant's status. Undocumented migrants' access to health care tends to be limited to emergency services, which often exclude certain types of urgently needed care such as psycho-social help. With regard to education, three areas of concern arise from a migrants' rights perspective: the denial of school registration for migrant children; the reporting obligation of schools to immigration control authorities; and the lack of language and vocational training for adults. Mr. Flynn noted that there is a general trend towards using the provision of public services as an instrument of immigration control. However, the denial of access to public services leads to a number of negative effects, including the social exclusion of undocumented migrants, the emergence of self-help solutions and the erosion of existing standards in all three service areas discussed.

Ms. Carolyn de Leon-Hermogenes, Director of the Women Workers Project of the Committee Against Anti-Asian Violence (CAAAV), a New York based NGO working with Asian immigrant communities, presented some insights on New York City's domestic work industry. According to findings from a survey, this sector relies mainly on immigrant women, with 99% of domestic workers being foreign born and 93% of them female. Many face difficult working and living conditions, earning low wages, working overtime without payment and struggling to afford health care for example. The majority of the domestic workers do not have employment based visas, but families who rely on their support, which makes them vulnerable to abuse and threats of reporting, detention and deportation. In other cases, domestic workers become irregular when they escape abusive employment situations, because their status is often tied to their employers. Some employers withhold the passports of their domestic workers. One third of women surveyed reported verbal or physical abuse by their employers, out of which 30% attributed these to their race or immigration status. Interviews with employers suggested that there is a need for industry standards that clearly spell out the legal and ethical responsibilities of employers and ensure fair labor practices, recognition and human treatment for domestic workers. In addition to calling for the legalization of undocumented migrants, Ms. de Leon-Hermogenes advocated for legislative action, citing the example of



the New York State Domestic Workers Bill of Rights, which grants domestic workers a living wage and safety net, including notice of termination, severance pay, paid vacation, holidays, sick days, health care and protection from unjust firing.

2nd Session: Responses I: National strategies

Mr. Brian Gorlick, Senior Policy Advisor at UNHCR in New York, shared some of the agencies experiences concerning the impact of irregular migration on asylum regimes, starting with a look at the size of the phenomenon. The OECD estimates that between 10-15 % of Europe’s 56 million migrants are in an irregular status; estimates for India are as high as 20 million, and over 10 million undocumented migrants currently live in the United States. He then focused on a number of asylum considerations noting that, while States legitimately aim at effective border control, they must respect their obligations under international law towards the human rights of migrants, the institution of asylum and the principles of refugee protection. Under the UN Refugee Convention, States must not penalize refugees for illegally entering a country. Indeed, many asylum seekers have no chance of securing documentation and authorized access to the country of destination. Also, where refugees are not provided with adequate protection and decent living conditions in the host country, they may seek to move on, often in an irregular manner. To avoid such situations, States should provide training for law enforcement officials and immigrant and asylum officers. Mr. Gorlick also recommended that they establish fast, fair and efficient asylum procedures; and provide assistance to developing countries, which host the majority of the world’s 9.3 million refugees (almost 75%), targeting areas with large refugee populations and expanding refugee resettlement programmes.

Mr. Gareth A. Murillo, Assistant Director of Immigration and Nationality Services Department of the Government of Belize, presented the Belizean biometric passport issuance system. This system provides a good example of international capacity-building in the field of migration control, bringing together Canadian technology, US funding from the Bureau of International Narcotics and Law Enforcement Affairs, IOM project management, and Belizean Government implementation. In the context of a highly mobile native population and significant migration flows into and out of Belize, the objective of the biometric passport issuance system is to enhance the integrity and security of the documentation issued in accordance with international standards. Thirty-seven thousand passports were issued in eighteen months, using facial and fingerprint biometrics. As Mr. Murillo explained, templates are stored in a database that can be searched and compared against with each new application and upon passport renewal. He also gave some insights on the populations’ views concerning this system. A survey conducted by Immigration and Nationality Belize produced mixed results: while high numbers of respondents were in favour of introducing biometric data in their passports (82 %) and thought that this would enhance the security of their documentation (80%), about forty percent tended to consider biometrics as an infringement to their civil liberties and were concerned about the security of their data. These findings point to some of the remaining challenges, notably, improving the security of the system and the service by reducing processing time. Also, access to the system for the Belizean diaspora has yet to be ensured.

Mr. Gerry Van Kessel, former Coordinator of the Intergovernmental Consultations on Asylum, Refugee and Migration Policies (IGC) and former Director General, Refugees at Citizenship and Immigration Canada, discussed regularization as a policy option for governments dealing with irregular migration. Also referred to as “amnesty”, “legalization”, “normalization” or “administrative review”, regularization programmes, since 1980, have benefited over 6 million people in the industrialized countries – 3.5 million in Europe and about 2 million in the United States and Canada. Common features of many regularization



programmes include the requirement that the applicant a) has a job or has been employed for a specified period; b) has been in the country for a certain period of time; c) applies for regularization within a certain deadline; and, increasingly, d) meets criminal and security background checks.

Through such programmes, governments pursue a number of objectives: legalizing persons and avoiding their removal; giving a regular status to persons legally in the country in backlogged immigration or asylum processes; improving migrants' social conditions by making them more able to deal with exploitative living and working conditions; controlling the informal economy; counter-balancing other, stricter policies and enforcement of border control, visa and labour market regulations. However, Mr. Van Kessel emphasized that there are costs associated with regularizations that governments must consider. Regularization is an admission of failure, in so far as existing laws were not properly applied or amended, or simply inadequate. Regularization undermines policies where migrant workers are used to balance supply and demand in the domestic labour market. Regularizations tend to encourage more illegal immigration by sending the message that "if one waits long enough one will be regularized". And, there are "downstream consequences" of regularization in terms of family unification, public health, education and welfare provision at the local level.

In conclusion, Mr. Van Kessel offered a personal assessment of regularization as a migration policy tool. He suggested that regularizations do not provide long term solutions, as they fail to address the underlying problems of irregular migration, while eroding confidence in the rule of law and penalizing those who follow the law. However, regularization is an inevitable and proper exceptional last resort in some cases. Further, enforcement and control are effective means to curb illegal entry, stay and work of migrants, but a country that relies *solely* on such measures will face greater problems than those that use other policy tools. For countries with strong economies but without an adequate domestic labour supply, a combination of legal offshore worker programs, border and inland enforcement and effective oversight of the labour market is most likely to reduce irregular immigration. Finally, regularization is in the best interests of the undocumented migrant. However, positive results of regularizations in terms of immigration integration and advancement still depend on the skill profile of the individual migrant, his or her prospects for employment, and the character and duration of the status he or she is granted.

3rd Session: Responses II: International cooperation, training and capacity building

Mr. Charles Harns, Director of IOM's Technical Cooperation on Migration Division in Geneva, spoke on the topic of visa regulations, border control and data exchange. Mr. Harns distinguished three basic migration management tasks, depending on the status or category of migrants, namely: facilitation (legal migrants), enforcement (illegal immigrants) and protection (asylum seekers, victims of trafficking). When thinking of how to manage irregular migration through international cooperation, he posited three crucial questions: Is fighting illegal migrants worth the effort? Who pays for it? And, who should pay for it? Looking at the example of the European Union, Mr. Harns stated that migration control should be implemented in as close cooperation as possible with countries of origin. As many developing countries cannot afford expensive management practices including, for example, documentation with biometric data, improvements in migration management will depend on whether technological advances are made available to all countries through cooperation and capacity-building. Thus, an effective prevention strategy of irregular migration requires sufficient financial resources, effective information exchange, and a general linking of migration management with capacity building in terms of development, democracy and good governance.

Describing how to develop common policy approaches, **Mr. Khalid Koser** focused on ways and possibilities of making irregular migration a part of development cooperation. Raising the question why



irregular migration should be integrated in such cooperation, he enumerated a number of reasons. Firstly, underdevelopment causes migration. Also, undocumented migrants are potential contributors to development in their countries of origin, but their knowledge and skills often get 'wasted' in the host country. Therefore, more pro-active, long-term approaches to migration management are needed, combining control measures with root causes of international migration. Mr. Koser then looked at how the irregular migration-development nexus can be incorporated in policy. As mentioned by the Global Commission on International Migration, the three keywords in this regard are coherence, at the national level, coordination between ministries and with all stakeholders involved, and capacity, which is built through training and the establishment of partnerships. As a third consideration, Mr. Koser offered some thoughts on who should be responsible for policy-making on irregular migration and development, calling for a multi-layered and multi-stakeholder approach. He noted, however, that in most consultative processes amongst governments, the focus is still on the control and restriction of international migration. The development perspective thus still needs to be more systematically included.

Mr. Don Flynn spoke of international civil society cooperation on irregular migration. Civil society organizations act as supplements to public services, responding to gaps in service provision and protection under existing migration policies. Most often, civil society stakeholders are public service professionals who deal with social policy, faith-based or ethically motivated groups and, increasingly, trade unions. Mr. Flynn stressed the need to internationalize civil society cooperation regarding undocumented migrants to engage with networks in all world regions, and to seek the critical dialogue with governments in international policy debates. In this respect, he advocated for including civil society and especially the experiences of undocumented migrants in the discussions at the High Level Dialogue on International Migration and Development.

Mr. Charif Cherkaoui, Counsellor at the Permanent Mission of the Kingdom of Morocco to the UN, rendered a statement on behalf of his Government in relation to the Euro-African Ministerial Conference on Migration and Development that took place on 10-11 July 2006 in Rabat. At this occasion, participating States endorsed a Plan of Action on strengthening cooperation between countries of origin, transit and destination on a variety of migration related issues, including migration and development and irregular migration. In light of this common approach and in view of the High Level Dialogue on International Migration and Development, Mr. Cherkaoui underlined his Government's commitment to engaging in partnerships with migrant destination countries. He also emphasized the need to enhance development efforts in Sub-Saharan Africa to address the root causes of migration, notably insecurity and economic misery.

Mr. Thomas Lothar Weiss, Regional Representative of the IOM Mission in Helsinki with Regional Function for the Baltic and Nordic States and the European Neighbourhood countries, presented the Southern Caucasus Cluster Process, a series of consultative meetings between countries of origin transit and destination in Western and Northern Europe and the South Caucasus. Mr. Weiss emphasized that the Cluster Process is a good example of regional initiatives, bringing together countries of origin and destination, to enhance effective migration management and favour multilateral strategies especially in the fight against irregular migration. Thus, the Process aims at increasing cooperation on return of rejected asylum seekers and irregular migrants. It facilitates voluntary return and reintegration of persons returning home and also establishes mechanisms for working together to prevent irregular migration and to open up more regular migration avenues for labour migration. The Cluster Process has provided an effective forum for facilitating technical cooperation between migration authorities and strengthening border management capacities of the Caucasus countries, including through border guard training,



technical assistance, and information campaigns to help prevent irregular migration. Each South Caucasus country has established special mechanisms within its ministries to coordinate better with European counterparts, and facilities to disseminate information and counseling to would-be migrants and returning migrants (e.g. the Migrant Service Point in Armenia). In view of the concrete outcomes of the Cluster Process, Mr. Weiss recommended the project as a model practice in building mutually beneficial, regional cooperation.

During the discussion it was highlighted that including the question of development in the debate on irregular migration opens up a new and fruitful perspective. However, whereas more and more research on the linkages between migration and development is done, it is still hard to find a consensus on actions to be taken. In this respect, Mr. Harns stressed the need to gather and share more quantitative evidence on the relationship between migration and development and to evaluate in quantitative terms, how migration practices can impact development efforts. Given the complexity of international migration, Mr. Van Kessel stressed the benefit of creating consultative fora at all levels of migration governance that would allow for a continued learning process for government officials, helping them to better understand their respective countries' positions and the issues at stake.

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