

The International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families

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Let me first thank the UNITAR, UNFPA and IOM for organizing this Workshop on Labour Migration and for inviting me to make a presentation on the UN Convention for Protection of All Migrant Workers and Members of Their Families.

This is a timely initiative specially, in view of the forthcoming High-Level Meeting next year on the topic of *Migration and Development*. Moreover, there is an urgent need to focus on a rights based approach for labour migration with a view to preventing any room for treating labour migrants as commodities.

There are almost *200 million* international migrants today and this figure is more than double that was recorded in *1980*, just *25* years ago. How can this be explained? The process of globalisation has transformed States, societies, economies and cultures in all regions, making the world an increasingly integrated and inter-dependent community. With the advent of new technologies and the expansion of the global economy, new opportunities are being created all the time for people in different parts of the world. Nevertheless the impact of globalisation has been uneven and growing disparities in living conditions both within and between countries are becoming apparent. This, no doubt, has contributed to an increase in the scale of international migration.

The debate on how best to manage Migration, to enable a win-win situation for countries of the North and of the South has become so important for the international community that a decision has now been taken to discuss the issue at a high level UN meeting next year on the topic of "Migration and Development". In the recently concluded 60th Session of the UN High Level Summit, in its Outcome Document world leaders unanimously agreed that there is an "important nexus between international migration and development and the need to deal with the challenges and opportunities that migration presents to countries of origin, destination and transit". And very significantly our leaders also reaffirmed their resolve to take "measures to ensure respect for and protection of the human rights of migrants, migrant workers and members of their families". This assertion of rights based approach at the UN Summit, specifically recognising the need to address human rights of migrant workers is an important aspect that must weigh in the evolution of policy on international migration.

Concern about individual rights and fundamental freedoms has been on the increase in recent times. As a result, the UN has given the lead to the establishment of a series of international treaties and Conventions codifying human rights norms and standards with a view to recognising the inherent dignity

and the equal and inalienable rights of all members of the human family. The scope of many of these agreements includes the rights of migrants in some form or the other. Important provisions relating to the rights of migrants are found in the Universal Declaration of Human Rights, ILO labour Conventions, UN Refugee Conventions, Vienna Conventions of Consular Relations, the UN Convention against Trans-National Organised Crime, the International Covenant on Civil and Political Rights, the International Convention on Economic, Social and Cultural right, the International Convention on the elimination of All Forms of Racial discrimination, the Convention Against Torture, the Convention on the Elimination of All forms of Discrimination against Women and the Convention on the Rights of the Child.

The International Convention on the Protection of All Migrant Workers and Members of their Families is the most comprehensive international treaty dealing with rights of migrant workers. This Convention, popularly referred to as the International Convention on Migrant Workers (ICMW) is also the latest of the seven "core" international human rights treaties, which together form the United Nations human rights treaty system. Most of the rights contained in six other "core" treaties also apply to non-citizens and thus provide a basic protection for migrant workers and their families against discrimination and other violations of their fundamental human rights. However, the Convention brings coherence in the protection of human rights of migrant workers. It codifies existing standards in a forward looking manner. The Convention protects the human rights of migrant workers at all stages of the migration process, in the country of origin, transit and employment, by clarifying obligations of the States parties.

The drafting of the ICMW began in 1980, after the United Nations General Assembly established an Open-ended Working Group to draft an international instrument specifically for the promotion and protection of the rights of migrant workers. Membership of the working Group was open to all UN member States and it benefited from the cooperation of the UN Commission on Human rights, the UN Commission for Social Development, ILO, UNESCO and WHO. After ten years of negotiations the text was finalised and the Convention was adopted without a vote at UN General Assembly and opened for signature on *18 December 1990*.

The Convention has nine parts comprising of 93 articles and in particular facilitates the protection of certain rights that are of special relevance to migrants. It also aims at assisting Governments in developing strategies to prevent illegal migration movements. Part IV of the Convention contains provisions on the promotion of sound, equitable, humane and lawful conditions in connection with international migration. In particular, Article 68 requires States to collaborate in order to prevent and eliminate illegal or clandestine movements and employment of migrant workers in an irregular situation. Steps to be taken by States entail measures against the dissemination of misleading information, measures to detect and eradicate illegal or clandestine movement of migrants and to impose effective sanctions on those who organize and operate such movements. When

discussing migration management, therefore, the Convention due to its comprehensive nature is extremely relevant as guidance to States.

Therefore the Convention can provide solutions for the problems of today's international migration, in the light of changing patterns of migration. The Committee on Migrant workers can provide guidance to States on concrete rights based application of the internationally accepted standards to the situations faced by States. Like other treaty bodies, the Committee on Migrant workers will develop standards on specific issues through the application of the general norms and provisions of the Convention to specific cases. The timely presentation reports by States parties under the convention will give the committee the occasion to concretely assist States in the implementation of the Convention in specific situations. At present the Committee has before it for examination, reports by Mexico and Mali

A broader acceptance of the Convention by UN Member States will engender a strong Committee that will be able to provide concrete guidance to States on the application of the Convention to all present day situations involving every stage of the migration process. In this regard, in my view UN special agencies like ILO which enjoys a symbiotic role in the Convention and inter-governmental organizations like IOM can work hand in hand with interested Governments and Migrant Workers Committee in providing policy advice and capacity building to ensure a more human migratory process for migrant workers.

Despite the intrinsically progressive nature of the Convention, ratification remains far below expectations. Parties to the Convention are still predominantly labour sending States. To date, none of the major labour receiving States in the Western hemisphere are among the current 33 parties to the Convention. It is unfortunate that no Western State has yet signed or ratified the convention despite some of those States having actively participated in drafting the Convention and none having voted against the ICMW at the time of its adoption by the United Nations, by consensus.

This brings us the question as to why the Convention has met with insufficient enthusiasm on the part of many States, especially those States that usually champion human rights issues. There has been several interesting views on this matter and let me reflect on some of these:

The Convention has given rise to many misconceptions. One common misconception is the often expressed opinion that the convention favours irregular migration and granting more rights to migrants would make a State more attractive to irregular migrants. On the contrary, the Convention obliges States parties to take measures to counter illegal migration. The preamble and article 35 reflect these ideals. The concept of giving rights to irregular migrant workers was inspired not only by the basic principle of respect for the dignity of all human beings, but also by the desire to discourage recourse by employers to irregular labour, by making such recruitment much less economically advantageous.

It is also possible that the contents of some provisions of the ICMW may be unacceptable to some States, because provision of some rights may be perceived as beyond the economic and social capacity and imperatives of a particular State. However, the convention itself has foreseen this possibility and has provided for entering reservations to the application of certain articles. Therefore this constraint can be overcome by a careful study of the compatibility of the domestic legislation with the rights contained in the convention. However let me add that I do not personally advocate such reservations.

I would also reckon that many States fear the high cost of developing an infrastructure for the implementation of the Convention. The Convention is a long and complex instrument that provides many rights in different fields, and the implementation therefore consequently involves many government departments, coordination of which may not be an easy task. It is also possible that some States may have only a small number of migrants and do not see a need to legislate on this complex issue and for some others the Convention is not well known and therefore not high on their political agenda. It also appears that some States are not willing to let international agreements to interfere with their domestic migration policy, viewing these policies as strictly national issues.

It is also becoming apparent that the present political climate is not very conducive to granting of rights to migrant workers. Public opinion in many receiving countries has turned against migrants who are perceived as competing in and thus a danger to local job markets. Prejudices against migrants are also aggravated by a trend to view foreigners as potential security risks. Moreover, family reunions recommended in the Convention may run counter to policy of some receiving States to restrict number of migrants and encourage only productive migrants. In these circumstances, some States may feel that the ratification of the Convention and thus recognition of rights of migrant workers, in particular irregular migrant workers within their borders would meet with opposition of society at large, and exacerbate social tensions. Some States may also perceive that the State would be subject to an examination by an international body leading to an embarrassing situation of human rights violations highlighted at international level.

All these fears in my view lack credibility. In my view, it is a matter of political will and not resource constraints that is holding back States on this account. This Convention is not an instrument for a more liberal immigration policy. The Convention only seeks to ensure that all human rights are accorded to migrant workers too, in recognition that they are also part of our large human family.

The economic benefits of migration for both sending and receiving countries are increasingly becoming apparent. It has now been widely recognised that migrant workers are actively contributing to the growth and economic prosperity in receiving countries. In addition, sustained levels of

migration have been recorded as offsetting natural reduction of the working age population in many receiving countries.

On the other hand, many countries of origin in the developing world are benefiting immensely from inward remittances by migrant workers. For many developing countries such remittances have become main stays in financial inflows, even surpassing ODA and revenue from traditional exports. It has also been observed that sending countries could benefit from the eventual return of some, who has acquired new skills, new money and therefore could help transform economies and institutions in their countries of origin.

Taking into account all aspects relating to migrant workers, it is becoming increasingly apparent that protecting human rights of migrant workers is a win-win situation, both in economic terms as well as for giving effect to globally accepted human rights standards and values. However, it is clear that more work and follow-up are required to evolve a global consensus on this crucial issue. And the convention need the support of all of you who believe in the rights based approach to migration.

The Convention is a comprehensive, progressive and forward looking instrument and has taken into account ongoing trends in the world, both in terms of ever increasing mobility of people as well as the continuing emphasis on human dignity and the human rights of the individual.

In a world that is inter-dependent and that values freedom, rights and dignity of the individual, it is essential that we, together with the international community, make the International Convention on Migrant Workers, a universal instrument, so that all migrant workers are treated as human beings with equal rights, wherever they live and wherever they come from.

Thank You.
