

UNITAR/UNFPA/IOM
Key Migration Issues Workshop Series: Migration and Human Rights
*Panel I: From state control to shared responsibility:
international migration and human rights*

‘Realizing the Rights of Migrants’
Remarks by Mary Robinson

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I would like to thank UNITAR, UNFPA and the IOM for inviting me to participate in this workshop. My colleagues and I are pleased to share our thoughts on migration and human rights with distinguished colleagues from many missions and organizations. The High Level Dialogue taking place here at the UN is such an important one, and my hope is that no longer will we ever speak about migration alone after September – we will always link it with development, and with promoting human rights.

My aim is to bring the perspective of the field I know best – international human rights – to your discussions today. My organization Realizing Rights: The Ethical Globalization Initiative believes that without a common set of principles to inform more effective and coherent policy on migration related issues, and without greater international commitment to protecting the fundamental rights of migrants, the contentious debates around migration we see in so many countries today, including here in the US, will not be resolved. Without a common framework, the chances are that the future will bring only more barriers between nations and peoples rather than more bridges of shared responsibility and understanding.

I will first discuss the importance of a human rights framework, then highlight the idea of co-development with specific reference to health worker migration, and finally make some suggestions as to institutional arrangements for policy-making for international migration and development.

Globalization, migration and human rights

We all know that barriers to cross-border movement of people are still firmly in place, and that globalization of markets has not been matched by globalization of the work force and labor markets. Yet as we have realized in my organization Realizing Rights, migration is the human face of globalization. National sovereignty in immigration matters remains the rule. We continue to see sharp discordance between the number of individuals who wish to migrate and the legal opportunities for them to do so. This fact has fueled irregular migration and the increasing smuggling of human beings across borders in life threatening conditions.

As population and poverty trends continue to further divide the world, migratory pressures will only intensify, making the need for a coordinated and principles-based

policy framework to guide this phenomenon ever more urgent. That is where I believe greater attention to human rights can make a difference.

Human rights concerns can be seen at every stage in the migratory cycle: beginning in the country of origin, during transit, and in the country of destination. While some migrants, usually skilled workers who leave their home countries to take up professional jobs elsewhere, may encounter relatively few human rights problems, unskilled workers, who form the majority of today's migrants, are vulnerable to a wide range of rights violations. Indeed, in many instances, they have made the decision to migrate precisely because of the human rights situation in their own countries.

I saw for myself during five years as UN High Commissioner for Human Rights how, at the first stage in the migration cycle, "push factors" which triggered migration often included violations of economic and social rights to a decent standard of living, to adequate health care, education, and housing among others. At the same time, violations of civil and political rights, including during civil conflict that fall below the persecution "threshold" needed for a successful asylum claim, are also fuelling much of today's migration.

We should also note that common explanations of migration — to find work, to secure a better livelihood — tend to obscure the degree to which different flows of economic migration are, in fact, less than voluntary. For example, research concerning why some women, who make up a growing percentage of migrants today, are at greater risk of trafficking has shown that illiteracy, gender discrimination enshrined in national law and practice, violence against women and girls, and low economic status of women and girls all result in heightened vulnerability to trafficking or migration in less than voluntary circumstances.

Human rights concerns are also evident once the migrant has arrived in the receiving country. It is clear that as strangers to a society, migrants are often unfamiliar with the national language, laws, and practice, and so less able to know and claim their rights. They are more likely to face discrimination, unequal treatment, and unequal opportunities in the workplace and more likely to work in sectors where labor standards are not applied or not applicable.

Equally important, illegal migrants face deportation if they come to the attention of the national authorities, so it is understandable that they often do not seek protection under the law of the society in which they live. They fear that contact with the police, reporting abusive working conditions, or even taking part in civil formalities such as property ownership, marriage, registration of the birth of a child or using schools and hospitals could result in deportation. This creates marginalised communities, which are not in the interests of the host country — particularly at a time when challenges such as preventing the spread of diseases like HIV/AIDS requires public information, public education and public health measures which make no distinction between citizen, legal immigrant and undocumented migrant.

Racism and xenophobia are also particular problems, not only in response to the perceived threat of migrants to the economic security of citizens, but also to national security concerns. We have seen how at times of political tension, migrants may be the first to be suspected as security risks. By linking anti-terrorism measures and immigration control in the context of the so called "war on terror," many governments have encouraged — however unintentionally — xenophobia against migrants and refugees.

And yet, misconceptions between migrants and their receiving communities often mean that these issues are overlooked. Here I would like to share with you comments from participants at a conference in Philadelphia co-convened by Realizing Rights and The Welcoming Center for new Pennsylvanians, that brought together migrants and members of receiving communities to discuss challenges, solutions and shared responsibilities for overcoming tensions caused by migration.

One young woman said, "We as co-minority inhabitants don't take the time to understand each other's cultures. There are a lot of misconceptions... [As an African American] I still feel like an immigrant because I'm treated differently even though I was born here." Another woman, a Ugandan lawyer, shared that, "There are problems with people being too simplistic about what you're supposed to be like as an immigrant. Some of us speak English and two or three other languages and could be a resource." A third participant who had emigrated from Africa shared that he felt there was a responsibility on both sides of the immigrant experience to educate one another. "When somebody is ignorant about you and you get angry, you are as ignorant as them. You have to educate them," he said.¹

It is important to stress that a human rights approach to migration recognizes the place for law enforcement, but also recognizes its limitations, particularly in recognizing nuances in migration such as those just mentioned. A human rights perspective would ensure that undocumented migrants are not seen as one undifferentiated group, but instead make clear, for example, that asylum seekers and refugees who might move without documents have a right to do so under international law. Equally, it would ensure that persons who have been trafficked are seen as victims and not as offenders.

I believe we must give greater attention to protecting the human rights of migrants as a starting point for better policy in a range of areas – from security to labor to health, to name only a few. We should keep in mind that historically there has been what is sometimes called a "protection gap" for migrants, falling as they do between the two stools of citizens' rights and those of internationally protected individuals, such as refugees, the stateless and – even - diplomats. Despite their inherent vulnerability, migrants have never enjoyed a special status under international human rights law, except in the special case of refugees.

¹ Creating Collaboration through Community. International House. Philadelphia, PA. Saturday, June 3, 2006

Seeking to fill this gap, UN member states agreed in 1990 to adopt a new law. The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families codifies provisions found in different human rights treaties, and protects undocumented as well as legal migrant workers. It constitutes the standard which we should apply to protect both regular and undocumented migrants. The Convention affirms the fundamental human rights of all migrant workers and members of their families. It offers a set of standards: protection against arbitrary arrest, rights to due process, privacy, and trade union membership and activity and requires treatment which is 'not less favorable' than that which applies to nationals in respect of pay and conditions of work. The Convention also defines the economic, social and cultural rights of migrants, for example, that urgent medical care must be provided as it would to a national, and that children of migrant workers have the basic right to access to education, irrespective of legal status.

It is important to note that although the migrant workers convention has not yet achieved wide ratification, this does not mean that migrants are without protection under international human rights law. Clear and relevant principles exist, for example, in the UN Convention on the Rights of the Child, which has been ratified by almost all countries. A quick review of that Convention's principles shows that they provide the framework for good policy from the standpoint of states, as well as essential protection for the children of migrants.

And while I think there is much that could be done to promote such standards further, the reality is that no international migration institution or mechanism frames or manages the rights of people who move between countries. At the national level, policies tend to focus overwhelmingly on the legal exclusion of unauthorized migrants.

So human rights are important not only as ends in themselves, but as a framework which can guide policy making in the years ahead. This can be summed up as follows:

1. First, that respect for migrants' rights actually contributes to economic and social development in sending and receiving countries. Migrants who have opportunities for decent and legal work contribute more to development than those who are exploited.
2. Second, that these rights are not a matter of choice, to be selected and enforced *a la carte*, but are legal obligations under international law, which bind all governments.
3. Third, that under international law, the fundamental rights of all migrants are protected, regardless of their migration status.
4. And finally, that the human rights framework can contribute a great deal to the harmonization of attitudes and approaches to policy making in today's world through the acceptance of common basic principles.

I believe all of these are important foundations for the management of international migration in the 21st century.

Now I want to turn to the work of the Global Commission on International Migration and the notion of co-development.

I was pleased to serve during 2005 as a member of the Global Commission on International Migration which sought to address these challenges. Our aim was to reframe in a more positive way the migration debate around the world and offer principles which could guide future national and international policy making.

The central message of the Commission's final report is that the international community has failed to realize the full potential of international migration and has not risen to the many opportunities and challenges it presents. Greater coherence, cooperation and capacity are required for a more effective governance of migration, at national, regional and global levels.

One of the key issues we addressed during the work of the GCIM was how today's migratory process has created multidimensional links between countries of origin and destination. The Commission stressed in its recommendations that co-operative approaches to policy and planning are urgently needed between and within governments for situations where – as in the recruitment of health workers from the global South to North - skilled migration impacts asymmetrically on sending and receiving countries.

Essentially, such policies should recognize migrants as participants in economic and social development, and encourage this participation through enabling frameworks in both countries of origin and destination, and through greater integration. Policy making must also become more coherent, and reflect the interests of different parts of government. For example, for too long migration has not been considered a part of the development agenda, nor have development objectives been integrated in national migration policies. This situation, which is sometimes characterized as institutional 'incoherence', is increasingly seen as unrealistic and even counter productive. The reality is that migration cuts across every department of government – labor, agriculture, budget, housing, health, social security - in addition to interior ministries. A deliberate link needs to be made by policy makers between migration and development.

In this regard, the term "co-development" - borrowed from the term coined by the French government but used now in a more expansive sense – is useful. A great deal of learning and sharing of experiences between countries and regions still needs to happen. As the UN General Assembly takes up the issue of migration and development through the High Level Dialogue, my hope is that the GA dialogue will build on GCIM recommendations, for example, that diasporas should be more involved as participants and agents in development, working directly with states and development agencies to improve conditions in sending and receiving countries. Institutional arrangements – official and unofficial - to strengthen connections between diasporas and their countries of origin, for example, India's High Level Committee on the Indian Diaspora, and Mexico's Presidential Office for Mexicans Abroad, or independent bodies with representatives from government, private sector, professional organizations, voluntary agencies and migrants are all examples which should be studied by others.

Similarly, economic arrangements such as lowering the costs, and facilitating the means, of remittance transfer as is the case in Mexico's POFECO project which monitors the remittance market, giving Mexicans in the US information about prices and consumer rights; and enabling migrants to channel remittances into public projects, and then matching individual and community migrant remittances with public money – as France has done to develop schools, health centers and infrastructure building in Senegal and Mali - are all good practices demonstrating what can be done through greater cooperation.

Because of our focus on bringing the experience and voices of Africa to globalization issues, we at Realizing Rights will be highlighting the issue of health worker migration during the UN dialogue on migration and development. A recent visit we made to Ghana provides an illustrative example of the migration pressures that many African countries feel in a rapidly globalizing world. Between 1995 and 2002, Ghanaian medical schools trained 702 doctors, and 487 of them emigrated. In 2002 alone, 94 were trained, and all but 4 left. The outflow in Ghana means that its people are not benefiting from their own investment in health professionals. Currently, Ghana has only one-third of the doctors it needs to fulfill its own citizens' right to health, and even fewer nurses. In contrast, 23% of the doctors here in New York City are Ghanaian.

The 'push factors' underlying health worker emigration are not hard to see. They include difficult working conditions and low pay in the health sector in many countries, as well as wider aspects of poor governance, corruption and development deficits. Until these are reversed, health workers in many developing countries will continue to leave.

Countries of health worker emigration and of recruitment have common interests and shared responsibilities. In some cases, where there is a pattern of health worker recruitment between two countries – as the example of Ghana and the US shows - it is possible to speak in terms of a single health market in which both participate.

I am not advocating that the rights of those who are willing and able to migrate for professional reasons should be restricted. But it is clear that the development gains to recruiting states must be recognized in some way through reimbursement, compensation or contribution to sending countries. Responsible and effective policies must coherently reflect the views of all 'stake-holders' in this equation – sending and receiving governments, their health services, budgetary and educational authorities and diaspora communities. In a globalized world, the emigration of skilled workers is not necessarily wrong in itself, provided the negative effects on the sending country are addressed.

My hope is that the High Level Dialogue in September will not only help to highlight such concerns, but will also identify ways in which the international community can begin to address such issues in an ongoing and more structured way. Despite all its shortcomings and the continuing difficulties of achieving reform, I believe the United Nations must play a central role in providing a space for greater international cooperation on migration and development issues in the years ahead.

I was interested to see the recent proposal by the Mexican Congress which called for a new ‘migration framework’ which would address the ‘complex effects’ of migration on economic and social life. This framework would be based on the principle of shared responsibility, acknowledging that both sending and receiving countries must ‘do their share’ in order to obtain the best results from the bilateral management of migration.ⁱ This proposal takes as its starting point that well managed migration is a development resource for receiving countries as well as, generally, for countries of origin.

Finally I want to say a few words about institutional arrangements. It is too soon to be able to identify a broad consensus emerging from civil society on what these should be. But my organization would like to put forward three concrete suggestions.

First, we recognize that it was necessary for the UN to take the broad topic of international migration and development and break it down into components, one of which is human rights, but we would hope that human rights content – such as civil rights and the right to education - and human rights principles – such as non-discrimination and accountability - would be mainstreamed throughout the work of key institutions such as the IOM.

Second, we would like to see migration become a core area of the newly-formed UN Human Rights Council, currently having its first two-week session. For example, the Human Rights Council, in addition to renewing the mandate of the Special Rapporteur on the Human Rights of Migrants, might also incorporate migration as a cross-cutting issue for other thematic mandates, so that the rights of migrants are examined as part of wider work on issues such as poverty, torture, and religious tolerance.

Third, we believe that there is a critical role for creative policy-making to be done by new combinations of players, an approach that will bring in the experience of the UN system, the realism of government and private sector representatives, and the vision of greater justice of civil society actors. Migration is surely an area where success can only come from a multi-stakeholder approach. To this end we are holding an action-oriented roundtable in September to take forward specific ideas on bilateral agreements, and ways to more effectively mobilize African diasporas to promote the right to health in their home countries.

Thank you once again for the opportunity to speak with you this morning. I look forward to your reactions and to further discussion.

ⁱ ‘Mexico and the Migration Phenomenon’, resolution adopted 16 February 2006.