

Protecting Rights, Building Cooperation

**Celebrating the twentieth anniversary of the International
Convention on the Protection of the Rights of All Migrant Workers
and Members of Their Families**

Committee on Migrant Workers

Migration, Development and the Convention

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Introduction

It is both a pleasure and an honor to be here today on behalf of the International Organization for Migration to celebrate the 20th anniversary of the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families. Today's commemoration provides a useful opportunity to reflect on key issues in protecting the rights of migrants and in building cooperation on migration matters. At the outset, I would like to underline that all persons, irrespective of their nationality and immigration status, are entitled to enjoy protection of their human and labour rights.

For IOM, as the principal inter-governmental organization on migration -- which today during its annual governing body meeting welcomes five new States as Members, bringing the total to 132 Member States worldwide -- protection of the rights of migrants has been a critical element in the constituent documents of the Organization and in its programmes since its establishment in 1951. IOM fully shares the view that respect for international migration law and the human rights of all migrants is an essential component of good migration management and development strategies. IOM, therefore, works to enhance dissemination and understanding of the body of international instruments and norms relevant to migration, as well as the rights and duties of both States and migrants.

To this end, IOM conducts International Migration Law training and capacity building activities for governments, partner inter- and non-governmental organizations regularly both at the San Remo Institute on International Humanitarian Law and in New York together with our partners UNITAR and UNFPA. In addition, national and regional level training and capacity development is undertaken on these subjects for a wide range of governments and other partners, as requested. As just one example, IOM Tirana helped the Albanian Government develop a National Migration Strategy, starting with an assessment of compliance of its national migration legislation with international standards. IOM Tirana has been instrumental in assisting Albania to understand how to go about ratifying the Convention once Albania expressed interest in doing so.

We believe that ratification of the 1990 Convention is an important step towards the establishment of institutional mechanisms to ensure protection of the rights of migrant workers. IOM, therefore, is an active member of the Steering Committee for the Global Campaign for Ratification of the Convention, launched in 1998, bringing together inter-governmental and non-governmental organizations to promote ratification and implementation of the Convention.

This year, on 17 December, on the occasion of the 10th International Migrants Day and in commemoration of the 20th anniversary of the Convention, IOM, UNITAR, UNFPA, the UN-NGO Committee on Migration and the Steering Committee, with the support of the MacArthur Foundation, are convening a discussion on the Convention at the UN in New York, open to all Member States of the United Nations and partner civil society organizations.

Today, my brief remarks will focus on two principal points: (1) First, the relationship between migrant's rights and development, including examples of how to make this a reality in practice, and (2) second, the contributions of the International Convention on the Rights of All Migrant Workers and Members of their Families to realizing the positive development potential of migration.

I. THE RELATIONSHIP BETWEEN MIGRANTS' RIGHTS AND DEVELOPMENT

As highlighted in the recently launched Global Migration Group Handbook on Mainstreaming Migration into Development Planning, "international migration is related to development on a number of different levels – the development of the migrants themselves, the development of their households, and the development of the communities and countries they leave and the communities and countries they join". The 2009 UNDP Human Development Report, **Overcoming barriers: Human mobility and development**, stressed that large gains to human development can be achieved by lowering the barriers to movement and improving the treatment of movers. At the same time, migration stimulates cultural and economic exchanges among nations, which in turn can help promote peace and a broad range of goals of the United Nations and of the international community at large.

On the 15th of December 2005, the Committee on Migrant Workers held a Day of General Discussion on the theme "Protecting the rights of all migrant workers as a tool to enhance development". The discussion highlighted that migrants are human beings and not just economic units or labourers. They are right holders. It also stressed that a human rights-based approach has advantages for all those involved in migration, be they migrants, countries of origin or countries of employment.

Following this day of general discussion, the Committee prepared a contribution on migrant workers to the General Assembly's High Level Dialogue on International Migration and Development in 2006. This contribution recalls in particular that the **human being is the central subject of development** and the beneficiary of the right to development set forth in the Declaration on the Right to Development, adopted by the General Assembly on 4 December 1986.

At the same time, the Committee underlined that **migrants are active agents of development** and that respect of the rights of migrant workers would strengthen the beneficial effects that migration has on development. In this context, the right to equal treatment and non discrimination is particularly important in order to enhance the integration of migrants in the country of destination.

As stressed in the GMG Handbook, enjoyment of human rights enhances the capacity of migrants to contribute to the development of their home and host society. For example, a migrant whose rights are respected is better able to be economically productive in the country of employment, as well as to make a positive social and cultural contribution to the host society. A migrant whose rights are respected – for example with appropriate working conditions and wages -- is also better able to send financial remittances back to his or her family and home community, providing greater opportunities for realization of their rights, including to education, housing and health care. The social remittances protected migrants provide -- their knowledge, skills and networks – can provide help bring whole families and communities out of poverty.

Protection of human rights can also reduce pressure to emigrate, as the violation of rights can create situations of poverty, poor governance and conflict, all of which can provoke movement, including irregular migration. At the same time, enforcement of labour standards in destination countries can curb the demand for irregular migrant workers, persons who are at particular risk of human rights violations.

II. CONTRIBUTIONS OF THE ICRMW

The International Convention on the Rights of all Migrants Workers and Members of their Families contains provisions that can facilitate contributions to the development of both countries of employment as well as countries of origin.

For example, provisions of the ICRMW that contribute to the development of the **country of employment** include:

- a) Those that protect the rights of both documented and undocumented migrant workers and members of their families, thereby enhancing their integration and thus their contribution to the host community. The following applications of the right to **non discrimination and equal treatment** are particularly relevant.

Provisions which are applicable regardless of legal status:

- equal access to courts and tribunals (art. 18);
- the right to be afforded equal treatment in respect of remuneration, other conditions of work and other terms of employment (art. 25);
- equal treatment in access to social security (art. 27);
- equal treatment in access to emergency medical care (art. 28);
- equal treatment in access to education (art. 30);
- and the right *to join* a trade union (art. 26(1)(b)).

Provisions which are applicable only to documented migrants:

- art. 43(1)(d) equal access to housing;
- art. 43(1)(e) equal access to social and health services;
- art. 54 equal treatment with nationals in respect of protection against dismissal and unemployment benefits;
- art. 49(1) the right *to form* a trade union.

- b) Moreover, provisions that **protect the rights of irregular migrant workers and members of their families** reduce the negative effects of irregular migration in the country of employment:

- art. 68(1) obliges State Parties to collaborate to prevent illegal and clandestine movements of migrants workers and thereby *reduces the risk of exploitation of migrants by criminal organisations* and the consequent development of these types of organisations in the country of employment;
- the presence of large groups of irregular migrants in a country with no prospect of integration seriously risks their *marginalisation* in

the host society and this may lead to *social tensions* negatively affecting the development of the country of employment;

- the presence of irregular migrants can *undermine the wages and working conditions of the domestic labour force* by lowering the standards of the country on these two elements.

With respect to development of the country of origin, several provisions of the Convention are directly relevant by promoting the following rights and obligations:

- the obligation for States parties to promote the maintaining of *migrants' contacts with the country of origin* (art. 31);
- the right of migrant workers to the *protection or assistance of diplomatic or consular authorities of their country of origin* (art. 23);
- the *right to be temporarily absent*, taking into account the special needs and obligations of migrant workers and members of their families in the country of origin (art. 38);
- the *right to transfer earnings and savings upon termination of the stay* in the State of employment (art. 32).

Additional provisions are relevant for documented migrants only, such as:

- the *right to transfer their earnings and savings at any time* (art. 47) and the right not to be subject to double taxation (art. 48, par. 2); and
- the *right to participate in the public affairs* of the State of origin, to vote and to be elected (art. 41).

Finally, inter-State cooperation is crucial to enhancing the sustainable development of both the country of origin and the country of employment.

- Art. 64(1) requires States parties **to consult and cooperate with a view to promoting sound, equitable and human conditions in migration**. Paragraph 2 also requires “due regard...[to] be paid not only to labour needs and resources, but also to the social, economic, cultural and other needs of migrant workers and members of their families involved, as well as to the consequences of such migration for the communities concerned”.

Cooperation is particularly important in the following areas:

- *exchange of information* and cooperation between the competent authorities of States parties (art. 65(1)(b));
- cooperation in the adoption of *measures regarding the orderly return of migrant workers* and members of their families to the State of origin, voluntarily or upon the expiry of their authorisation of residence (art. 67(1));
- cooperation with a view to promoting *adequate economic conditions for the resettlement of regular migrant workers* and to facilitating their durable social and *cultural reintegration* in the State of origin (art. 67(2)).

Among the rights protected by the Convention, and as just one example, IOM works to give effect to the right of migrant workers to be informed of rights arising from the

Convention as well as of rights and obligations under the law and practice of States of origin, transit and employment. With a view to fostering this right, IOM conducts information dissemination campaigns and awareness raising activities to empower migrants and help ensure that respect for their rights is promoted and that practical steps against discriminatory practices can be initiated. In addition, as has been stressed by the Committee, the dissemination of reliable information and carrying out awareness raising initiatives can also have the effect of preventing or curbing the smuggling and trafficking of migrants, especially women and children. As a concrete example, nine African migrants who benefitted from IOM's legal counselling following a spate of anti-foreigner violence in Rosarno, Italy this year have now been issued temporary residence permits for reasons of social protection under Article 18 of the Italian Immigration Act. The migrants were part of a group of several hundred mostly sub-Saharan farm workers who were exploited, working up to 12 hours a day with little or no pay and living in inhumane conditions in makeshift huts and abandoned factories. The Italian police arrested 31 persons on charges of organized crime and violation of labour laws in connection with the migrants' exploitation. Farms and other property valued at 10 million Euros were seized as well.

Lastly, it is important to stress that even for those States which are not party to the Convention, many of the rights protected therein are also ensured by other international migration law instruments, in particular human rights treaties, which have been more widely ratified and which, in some cases, guarantee an even broader protection. This is particularly true with respect to the following rights: trade union rights (see, for example, art. 8 ICESCR), the right to health (see, for example, art. 12 ICESCR) and the right to adequate housing (see, for example, art. 11 ICESCR). This should be taken into account by the Committee in interpreting the standards set forth in the Convention.

In wrapping up, allow me to underscore that it is now well-understood that protection of the rights of migrants is critical to their human development, and can positively affect the development of communities and countries of both origin and destination. Wider ratification and more effective implementation of the International Convention on the Rights of All Migrant Workers and Members of Their Families can help maximize the development potential of migration for migrants, for their families and for their host and home countries.

Thank you.