

**PANEL STATEMENT for  
UNCMW DAY OF GENERAL DISCUSSION  
on PROTECTION OF MIGRANT WORKERS RIGHTS AT WORK  
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Palais Wilson, Geneva**

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I follow on the excellent and detailed presentation of the previous speakers today, many with rich, detailed data and perspective and the abuse and violations of rights to which migrant workers are routinely subject. I step back to consider what this situation means for the defense of migrants human rights and for this committee, and to suggest ideas of what needs to be done.

We are facing a huge challenge.

What we hear today amply illustrates the extent and seriousness of routine and widespread violations of rights at work for migrant workers; rights spelled out in this Convention and in all International Labour Standards.

In my reading of news, of case reports, of research as well as testimony here today, MOST abuse and violations of migrants –migrant workers-- take place in contexts of travelling to work, in seeking access to employment, or at work, in the workplace.

Most of this abuse can be construed as violations of provisions in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW).

But what is worrisome is that we have so little documentation, little research, and no longitudinal studies with adequate evidence on what are horrifying patterns and practice worldwide. We don't yet have indicators required for compiling valid, reliable and comparable data, the documentation we need for analysis and determining solutions.

In contrast, there is a question that this Committee can answer with some evidence: To what extent is performance of countries that have ratified this convention improved over what it was before? My reading of States Parties reports and of Committee observations suggests there has been substantial improvement in most countries whose reports have been examined.

However, I sincerely doubt that is the case for many countries that have not ratified this instruments. Considerable evidence suggests otherwise. Reports of migrant workers being shot down on worksites in European countries, herded into concentration camp facilities in countries elsewhere, and in one situation these very days, being violently attacked, killed and run out of the country in ‘ethnic cleansing’ show that realization of migrants rights is, if anything, diminishing. This despite the increase in public pronouncements on human rights of migrants in international forums.

In any case, the evidence will show across the board that migrants on average, suffer far higher occupational safety and health injuries and deaths on the jobs than national cohorts. What I saw in my previous employment is that labour inspection rarely reaches the sectors and workplaces where migrant workers are concentrated and facing the most dangerous, abusive and deregulated working conditions. And worse, the trend of combining labour inspection with immigration control operations ensures that migrant victims of abuse are either intimidated from exposing violations of standards or they are removed before they can provide witness and testimony.

Despite a manifest imperative for improving protection and reducing horrible rights abuse of migrant workers, the Convention is being dismissed. Discredited. Buried.

There is currently no vigorous promotion. Neither by States concerned nor by international institutions. If the rythm of one ratification per year over the last four is sustained, it'll take another half century or more before the Convention is widely ratified.

Now there is not only non-promotion, but vigorous anti-promotion. We now see direct,

unprecedented political attacks on the validity and legitimacy of this instrument –and the rights it upholds. More governments have declared they are not considering or will not consider ratifying this Convention, recognized as one of the 9 fundamental instruments on human rights. Last year, for the first time in memory, a regional association of states took the unprecedented stand of denouncing this instrument, one of the fundamental UN human rights instruments, in their contribution to a United Nations General Assembly session.

Why?

*Its the economy, stupid.*

It's all about work. About rights at work. Versus huge pressures for labour exploitation in an extremely competitive globalized economy.

This means a huge underlying challenge for this Committee for your mandate and for your work.

90% of all migrants are related to work, either economically active or dependent on those who are.

Migrants, migrant workers, are increasingly important to economic viability of labour markets. 10-20% of labour forces of most industrialized economies foreign born. 30% in our host country. The proportions are significantly higher when we add in the first generation offspring 'issue de l'immigration.' Migrant workers are often prevalent in agriculture, construction, hotel and restaurant, cleaning and maintenance, domestic work, healthcare -- critical sectors of economies; sectors that cannot be exported. But these are sectors that cannot remain viable and competitive without cheap, flexible –and unprotected- - labour. Other sectors ICT, banking and finance, manufacturing, are also remaining competitive without offshoring in post industrial countries when their labour costs and protections lowered.

With work force demographic decline and aging, who does the work in many countries today? The net reduction in the Russian work force has been 10 million since 2000. There

will be 5 million less in Germany in next 15 years. The number of native born workers in many European, North America, Australasian and other countries is in decline or set to be soon.

Declines are predictable in the work forces of the 124 of 210 countries or recognized territories worldwide that have or are reaching zero population growth fertility rates. Many are at population decline rates, meaning progressive fewer youth entering work forces in coming years and more and more workers reach retirement age.

Two fundamental questions? How to maintain work forces and competences without migration, immigration –meaning migrant workers? And how to maintain competitive economies without significant numbers of workers available at low cost?

But the Convention –and the labour standards it alludes to-- represent costs and constraints. First and foremost, equal treatment represents a cost. When all workers have to be paid at the same level for the same work, or when prevailing or union negotiated wages in a sector or industry, what happens? Well, stats show that it makes, for example, women workers more expensive –20 to 25% in industrialized countries in my reading of current statistics on gender wage gaps. Paying everyone at least minimum wage –or prevailing or union wages in respective jobs and industries-- does raise labour costs, certainly over what they would be when minimum or prevailing wages and decent work conditions don't apply to some workers who are exempted, unprotected or less protected.

It is no mere coincidence that the widely discussed 'rights versus numbers' paradigm has become a main argument explaining and justifying the reluctance to ratify this convention. Let me be clear. Applying measures of balancing rights and numbers for foreign worker access to labour markets is a reasonable management and governance approach. Just as long as the premise of universality, inalienability and indivisibility of human rights is not a determinant consideration.

This rights versus numbers construct is also valid when the preeminent valuation of migrant

workers is their contribution to development and their characterization as actors of development. This is the references I read now in UN, ILO, and civil society literature, as well as at the GFMD.

Certainly, migrants utilitarian value is highlighted by legal and administrative constructs that emphasize how economic –and social-- development gains are expanded by access to more jobs and more opportunities – on condition of some juridical limits to certain ‘rights.’

However, as with all other human beings, and with other groups at risk of restrictions on their rights, our perspective is that all migrants are first and foremost human beings.

Therefore –with no exceptions, they are rights holders of all basic human rights defined in the Universal Bill of Rights and explicitly applied to specific groups in subsequent human rights instruments.

Migrant workers who have no rights, or inferior rights, or who are routinely and publicly harrassed, intimidated and attacked, are obviously less able to protect themselves, to organize into unions or associations, or to obtain solidarity and support from those around them.

The symbol of public discourse and official positions that state migrants have fewer rights – or none at all, or that migrants and their identities are illegitimate, or that migrants should be neither seen nor heard, have pernicious effects on expression and realization of rights.

Other minority groups have long known this. A little bit of direct action with impunity, shoot or lynch or burn property of migrants can even better keep migrants in their place.

Indirect action helps too, by making it illegal for any citizen or organization to provide shelter, social assistance or health care for certain migrants, migrant workers, and/or making it illegal or impermissible for migrant workers to join or form unions. For historical reference, in my country, it was illegal –and dangerous-- to assist a runaway slave.

What to do?

1) Vigorous promotion of the convention: with the substantial involvement, support and

coordination by concerned governments and the UN system and especially its concerned specialized normative agencies, including OHCHR, ILO, UNICEF, UNESCO and WHO. Along with civil society and migrant organizations. But this cannot solely be outsourced, or abandoned, to CSOs who have no resources nor funding nor often the political clout to push States to act.

2) Restore an assertive rights-based discourse and analysis in the «system» across international institutions, civil society and governments: one that recognizes that migrants are people and rights-holders first and foremost, regardless of status and above utilitarian consequentialist roles or assigned identities, and that upholds that human rights is about implementing and enforcing rights under rule of law, not just rhetoric and redrawing institutional architecture.

3) Enhance rigorous enforcement of migrants rights at work –by extending and providing capacity for labour inspection to reach workplaces where migrants are, and firewalling labour law enforcement from immigration control.

4) Put resources into developing the evidence base: with indicators that focus on the multiple areas of violations of rights of migrants at work and in relation to employment.

5) Ensure this Committee’s supervision gives particular attention to reviewing States Parties’ implementation and practice regarding the relevant treaty provisions

6) Enhance cooperation with ILO on supervision of application of International Conventions including International Labour Standards to protection of migrant workers.

7) Consider the elaboration of a General Comment on the application of International Conventions to the Protection of Migrant Workers at Work. Such a comment could be developed jointly with the ILO in view of the shared responsibilities and the exchange and cooperation with the ILO anticipated in ICRMW Article 74.

Speaking text by Patrick Taran 6-4-14