

Amnesty International's contribution to the Global Forum on Migration and Development, Brussels 10 – 11 July 2007

Amnesty International (AI) welcomes the first Global Forum on Migration and Development, being held in Brussels on 10-11 July, as well as the Civil Society Day that precedes this event. AI has actively worked on international migration and development for some years,¹ and welcomes the opportunity to further contribute to this important international dialogue.

However AI notes with disappointment the absence of human rights principles and standards on the agenda of the Global Forum.

AI holds that, by virtue of their humanity, migrants are entitled to protection of their human rights. Human rights are not temporal or dependent on where a person finds themselves: they exist inherently and all individuals must be able to exercise and enjoy their human rights. This includes protection of human rights for migrants during the entire cycle of migration; in countries of origin, transit and destination.

The omission of human rights principles and standards from on-going discussions on international migration and development has, in the view of AI, created a climate in which human rights violations by governments and other actors can be overlooked, or even tolerated. The framework of international human rights principles and standards, as embodied by the UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (the Migrant Workers Convention) and other core international human rights instruments, should be the starting point for any international dialogue and cooperation on migration. These standards provide a benchmark, a normative framework, and a set of guidelines for policy-makers who, in making migration policy, must ensure that this policy adheres to the international human rights obligations voluntarily assumed by states.

AI thus calls on all States engaged in this discussion to commit to ratifying and effectively implementing the Migrant Workers Convention.

Reframe the debate on international migration and development

The relationship between migration and development has increasingly become an issue of debate in the international sphere. However, governments and other relevant actors have focussed on conceptualising the links between migration and the *economic* growth of countries of origin, transit and destination. Development, as understood as a comprehensive process of enlarging peoples' choices with the human person as its central subject,² appears often to be missing from this discourse. The debate, then, has taken a cost-benefit approach to

¹ UN Committee on Migrant Workers, Written submission to the CMW day of general discussion on protecting the rights of all migrant workers as a tool to enhance development (AI Index IOR 40/028/2005, 31 October 2005)

² 1986 UN Declaration on the Right to Development as well as the UNDP Human Development Report, 2000.

the issue of migration, placing at the forefront the economic imperative of states, often at the expense of the human rights imperatives of migrants.

AI recalls that the International Conference on Population and Development identified "international economic imbalances, poverty and environmental degradation, combined with the absence of peace and security, human rights violations and the varying degree of development of judicial and democratic institutions" as key motivating factors for migration.³ People who migrate due to necessity rather than as the result of a voluntary, free and informed choice are at greater risk of human rights violations throughout the life cycle of their migration, are less likely to be able to make choices or formulate exit strategies, and therefore are more likely to migrate in conditions which do not uphold the dignity of the human being. As a consequence, they are usually unable to contribute to or benefit from processes of development. The example below helps to illustrate this very important point.

Burmese migrant workers in Thailand

In the last decade hundreds of thousands of workers from Myanmar have migrated to neighbouring Thailand in search of jobs and other economic opportunities.⁴ Migrants interviewed by AI had left their homes in Myanmar for a variety of reasons, many of which were born out of necessity rather than choice, including confiscation of their houses and land by the military; and fear that if they remained they would be subjected to human rights violations, including forced labour. Many of the young people who were interviewed had come to work in Thailand in order to send money back to their families. However some of them could not save enough to send any money home, but were working in Thailand so as not to be a burden to their parents. Those who had fled from militarized areas in Myanmar were much more likely to have had direct experience of human rights violations at the hands of the Myanmar military.

Unpaid forced labour, forced relocation, house destruction or eviction, confiscation of land, food and other personal possessions by the army deprives Burmese civilians of their right to an adequate standard of living. Professor Paulo Sergio Pinheiro, the former UN Special Rapporteur for Myanmar expressed his concern that "... Civilians have reportedly witnessed widespread violations of economic, social and cultural rights, including the deprivation of means of livelihood through land and crop confiscation, the destruction of houses, excessive taxation and extortion."⁵ In some areas the vast majority of young people have left their villages in order to work in Thailand. One Mon man from Hpa'an township, Kayin State, told Amnesty International about the situation in his village: "Many people have been in Thailand

³ Cairo Conference Programme of Action, 1994.

⁴ Amnesty International, Myanmar – Leaving Home, AI Index ASA 16/023/2005, 8 September 2005

⁵ Commission on Human Rights, Sixty-first session, Item 9 of the provisional agenda, E/CN.4/2005/36, Question of the violations of human rights and fundamental freedoms in any part of the world, Situation of human rights in Myanmar, Report of the Special Rapporteur, Paulo Sergio Pinheiro.

for the last 15 years, and many more are leaving now. Prices are going up, the population is growing, people are having a hard time feeding themselves and have decided to leave."

Migrants should not be seen or used as "agents of development" with disregard for their human rights. Individuals' human rights should never be sacrificed in order to attain other goals, however laudable they may be. A development agenda that either pushes or encourages people to migrate without assuring them protection of their basic human rights or inviting states to see private remittances as a substitute for public development aid is not a sustainable development agenda. A development agenda that intends to offer genuine development benefits cannot allow human beings to be treated as commodities or units of labour.

Countries of origin should therefore refrain from policies and practices that seek to "export" migrants *en masse* in order to generate remittance flows or profit from fees paid to state-sponsored recruitment agents, without ensuring adequate protection of their human rights. Sustainable development in countries of origin should *inter alia* be premised on job creation and economic opportunities in the home country, not on compelling people to migrate abroad. AI urges countries of origin to make all efforts to provide food security, adequate housing and decent work for their population in a non-discriminatory manner, so that they are not forced to migrate as a survival strategy to escape extreme poverty and associated violations of their rights.

The migration-development debate should also focus on the rights-based approach to development, particularly through the emphasis on the right to participation and to information, accountability, non-discrimination, empowerment, and the promotion of universal human rights norms and standards. The human rights framework allows all development actors to more clearly define the objectives of development as a means to enable individuals to enjoy their fundamental human rights. AI thus urges all stakeholders in the migration-development discussion to ensure that the situation of migrants, their families and their communities are integrated into national development and poverty-reduction strategies in countries of origin and destination. Importantly, this will involve ensuring the right of these individuals to active, free and meaningful participation in the plans, policies and processes of development.

Question the policy framework on temporary and circular labour migration

Much of the debate on migrant workers currently focuses on the phenomenon of temporary or circular labour migration. Such forms of migration are often attractive to governments as they are provided with cheap and flexible labour without having to invest long-term resources, such as for the integration of migrant workers, or the provision of social services for their families. Temporary migration programmes often place migrants in vulnerable, often

irregular, situations. These programmes can often result in abusive practices and do not reflect the real demands of the receiving society and/or labour market. They are often a response to hostile or even xenophobic political discourse within the receiving country. Many temporary migration programmes do not allow freedom of movement to and from the country of employment, do not provide the migrant worker with a secure legal status for the entire duration of their employment contract, and do not ensure sufficient protection of the rights of the migrant, including protection from discrimination and abuse.

In many regions of the world, rigid and inflexible entry regimes have impeded traditional circular migration patterns, and in some cases have increased the vulnerability of these migrants to trafficking. Once in the country of employment, migrant workers in temporary migration programmes find that their permission to stay and work is tied to one employer, leading in many cases to serious human rights violations. Restrictions on fundamental labour rights, such as the right to freedom of association and to collective bargaining, further increase the vulnerability of migrant workers to abuse. The example below highlights this vulnerability:

Migrant workers in South Korea

Many migrant workers accumulate huge debts in order to pay high recruitment fees for jobs in South Korea.⁶ However, once in Korea, many find that the jobs are very different from those they were promised and are more dangerous or more poorly paid than they had expected. With few rights to protect them from abusive recruitment practices and to negotiate a change of job, many end up giving up their legal employment and going to work as irregular migrant workers elsewhere in the country. Most feel compelled to stay in the country to try to earn enough money to pay their debts and support their families back in their home countries.

AI's research has shown that migrant workers in South Korea in practice have very limited scope for changing their workplace. This can seriously hamper their ability to lodge complaints about abuses because they fear antagonizing their employers or because they fear losing their jobs and thereby losing their legal right to work in South Korea. There are also reports that employers have seized official documents, including passports and work permits, preventing migrant workers from looking for jobs elsewhere.

One important human right that needs protecting in the context of temporary migration is the right to family unity. Temporary migration programmes typically do not allow the migrant worker to bring their family with them to the country of employment. Yet, a family's right to live together is protected by international human rights law. There is universal consensus that, as the fundamental unit (however defined) of society, the family is entitled to

⁶ Amnesty International, Republic of Korea (South Korea): Migrant workers are also human beings, ASA 25/007/2006

respect, protection, assistance, and support. The right to family unity is derived *inter alia* from Article 16 of the UDHR, Articles 17 and 23 of the ICCPR and Article 10 of the ICESCR. Respect for the right to family unity requires not only that states refrain from actions which might result in family separation, but also that they take positive measures to maintain the unity of the family and reunite family members who have been separated.

The European Union (EU) has recently devoted some attention to “mobility partnerships” with countries outside Europe, linking this to the concept of circular migration. While welcoming the potential creation of new legal channels for labour migration to the EU, AI is concerned that such partnerships will focus instead and solely on the conclusion of readmission agreements with countries of origin. The experience of many such agreements in the past has not been positive; with concerns having been raised about the protection of individual human rights in the course of implementing such agreements, as well as the impact of returning large groups of individuals (some who lack nationality of the country to which they are being returned) to developing countries.

AI calls on all EU member states to ensure that any circular or temporary migration schemes negotiated within the EU are firmly rooted in international human rights principles and standards. Any such programme should as a minimum effectively guarantee the fundamental human rights of migrant workers, including the right to family unity, and ensure a secure legal status for the duration of their contract.

In the context of returns of migrants, AI urges governments to carefully examine the protection needs of migrants who lack the legal right to remain in the country of destination, but who are unable to be returned to their countries of origin, because they will face torture or other serious human rights violations there. Prolonged or indefinite detention of such migrants is a violation of human rights. Migrants are entitled to protection against mass or collective expulsions under international law, and where deportation has been permitted following an individual determination, are entitled to essential procedural safeguards such as the ability to challenge individually the decision to deport.

Protect the human rights of irregular migrants

In every region of the world, states are engaged in bilateral or multilateral efforts to “combat” irregular migration; from joint border patrols to the conclusion of readmission agreements to returning irregular migrants. Experience has shown that these measures to “combat” irregular migration often result in rendering migrants vulnerable to abuse. AI calls on States and other actors to ensure the protection of human rights of all migrants – including those deemed to be irregular by the government – when developing policies to deal with irregular migration.

In industrialized countries, including in societies which have ageing, wealthier populations, the demand for migrant workers to fill sectors such as construction, agriculture, care work, domestic work, catering and the hospitality industry is rising. On previous

occasions, AI has highlighted the existence of a “common hypocrisy” on the part of such governments, who covertly encourage the labour of irregular migrants, yet condemn their presence in their societies. Fair and equitable immigration policies would recognise the reality that there is an increasing demand for the labour of irregular migrants, and seek to remove many so-called irregular migrants from the limbo of illegality to which they have been condemned by policies that do not respect the humanity of all human beings on their soil, regardless of legal status. Unbalanced attention to “combating” irregular migration, and treating all irregular migrants as criminals will only deepen patterns of abuse and heighten the vulnerability of migrants to human rights violations. The example below highlights this danger.

Haitian migrant workers in the Dominican Republic

The majority of Haitian migrant workers in the Dominican Republic are believed to be in an irregular situation; that is, they do not have legal permission to remain in the country. Some may have entered the country legally, but have become irregular migrants because their status has changed over time. The dire economic conditions that prevail in Haiti and the political turmoil that has characterized the country have contributed to continued emigration to the Dominican Republic.⁷

There are a number of ways in which a Haitian migrant’s status can change. For example, Amnesty International delegates interviewed several people working in the agricultural sector who were given valid work permits by the General Directorate for Migration when they first entered the Dominican Republic years ago. Over the years, these permits expired and were not renewed or extended and as a result these individuals became irregular migrants even though they continue to live and work in the same place. Other cases show that migrant workers have had valid work permits confiscated or destroyed by government officials. Without documents these workers are no longer able to prove their regular status and so are at risk of being deported.

Migrant workers who entered the country without legal authorization and those that did enter legally but became irregular over time face similar risks. These are compounded by the fact that they belong to an ethnic, national, and linguistic minority that has frequently been targeted during migration round-ups. Haitian migrants have also been vilified by nationalist political groups which have sought to exploit popular fears and use migrants as scapegoats for social, economic or security problems. Measures and practices implemented by the Dominican authorities – such as mass expulsion without access to any judicial review – have trampled on the human rights of Haitian migrant workers, including the right to liberty and security of the person. Such measures have also contributed to the rising tide of discrimination, racism and xenophobia which they face.

⁷ See *Dominican Republic: A life in transit – The plight of Haitian migrants and Dominicans of Haitian descent*, AI Index: AMR 27/001/2007

AI calls on states to develop and administer rights-respecting, transparent and non-discriminatory legal channels for migration, which respond to the real needs of their economies and not merely to the populist demands of anti-immigrant rhetoric. Such legal channels should be opened for all sectors of the economy, including for low or unskilled jobs in sectors such as construction and agriculture. A participatory approach to ensuring that these legal channels are adequate and sufficient requires effective consultations with all stakeholders, including migrant groups and their advocates, employers and agents.

In this context, AI cautions EU member states against a policy that focuses too narrowly on the creation of new legal channels for the migration of highly skilled workers. The reality in Europe today is one of ageing, wealthy societies with a high demand for low and semi-skilled migrant labour. Ignoring this economic reality will result in the continuing inflow of irregular migrant workers who are vulnerable to abuse and exploitation.

Participation of migrants and civil society in the debate on international migration and development

AI considers that it is unfeasible to have a comprehensive and well-informed debate on international migration without the involvement of key stakeholders. Migrants themselves, non-governmental organizations and other civil society actors such as trade unions are and should be a vital part of this debate. Excluding them results in decisions and conclusions that are at best partial and distorted and at worst, discredited and ineffective or even abusive. Yet, bilateral and regional fora on migration issues routinely exclude civil society from participation. Unfortunately, we see this trend continuing in the Global Forum, where civil society has been effectively excluded from the governmental discussion.

In the search for “best practices” governments have yet to draw upon the expert pronouncements of the human rights supervisory mechanisms and expert bodies of the United Nations. AI notes that important progress has been made in elaborating on the human rights of migrants by the Committee on Migrant Workers, and other treaty bodies such as the Committee on the Elimination of Racial Discrimination.⁸ AI thus urges governments to include such key stakeholders in any discussion and debate about migration.

In conclusion, as the international community continues to debate the issue of international migration in the context of development, AI remains concerned that the current focus on the economic determinants of development, as well as the effective exclusion of key voices, is resulting in policy formulation where the rights, needs and vulnerabilities of migrants themselves are increasingly being obscured. We call on governments and all other stakeholders in this debate to commit themselves at the Global Forum to take immediate steps to implement the recommendations set out in this document.

⁸ See in particular General Recommendation No. 30 of The Committee on the Elimination of Racial Discrimination on discrimination against non-citizens.

Summary of Amnesty International recommendations:

- AI calls on all States engaged in the migration-development discussion to commit to ratifying and effectively implementing the Migrant Workers Convention;
- AI urges countries of origin to make all efforts to provide food security, adequate housing and decent work for their population in a non-discriminatory manner, so that they are not forced to migrate as a survival strategy to escape extreme poverty and associated violations of their rights;
- AI urges all stakeholders in the migration-development discussion to ensure that the situation of migrants, their families and their communities are integrated into national development and poverty-reduction strategies in countries of origin and destination;
- AI calls on states to develop and administer rights-respecting, transparent and non-discriminatory legal channels for migration, which respond to the real needs of their economies and not merely to the populist demands of anti-immigrant rhetoric;
- AI calls on States and other actors to ensure the protection of human rights of all migrants – including those deemed to be irregular by the government – when developing policies to deal with irregular migration;
- AI calls on all EU member states to ensure that any circular or temporary migration schemes negotiated within the EU are firmly rooted in international human rights principles and standards;
- In the context of returns of migrants, AI urges governments to carefully examine the protection needs of migrants who lack the legal right to remain in the country of destination, but who are unable to be returned to their countries of origin, because they will face torture or other serious human rights violations there;
- AI urges governments to include key stakeholders in any discussion and debate about migration.