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***A vital part of a global response to international migration:
Why the Migrant Workers Convention Matters***

Klaus Dik Nielsen

Refugee and Migrants' Rights Campaigner

Amnesty International – International Secretariat

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All migrants have human rights

Amnesty International considers that all migrants, regardless of their legal status or any other distinction, have human rights. At the heart of Amnesty International's proposed agenda for advocating and campaigning for migrants' rights, is a call to treat all migrants with full respect for their human rights and dignity.

Looking at the situation of migrants in the world today, it is clear that many governments, employers and other actors are failing to fulfil their obligations and responsibilities towards migrants, including particularly irregular migrants, on their territory. Many states focus on border controls while turning a blind eye to the exploitation of migrants taking place within their borders. Human rights abuses of migrant workers, in particular irregular migrant workers, range from having passports or other identity documents confiscated, having their salaries routinely withheld, to verbal and physical abuse at the hands of the employers or a lack of access to proper housing and health care. From Burmese agricultural workers in Thailand to Indian domestic workers in Kuwait, many migrant workers all over the world face exploitation and abuse. Ill-treated by employers and often with alarmingly little legal protection, they have scant access to justice. When irregular migrants come to the attention of the authorities, they risk being arbitrarily detained and expelled in conditions that violate their human rights.

People are the most visible element of the globalisation phenomenon, but while globalisation has facilitated transnational trade and the free movement of capital, globalisation has not opened up possibilities for the movement of people in the same way. The result is that every year, thousands of migrants die or are subjected to grave human rights violations while attempting to gain access and to work in countries of transit and destination. The important contributions made by migrants to their host societies are frequently obscured in public debates that are often overtly racist and xenophobic, encouraging a climate in which human rights abuses against migrants are overlooked and even condoned.

It is deeply regrettable that the debate on international migration continues to be framed with little or no focus on the human rights of migrants. Amnesty International maintains that until

states develop and implement credible, rights-respecting and accessible frameworks for legal migration, many migrants will effectively have no choice but to access irregular channels to enter and work in countries of employment. And thereby become highly vulnerable to human rights abuses. An important step to develop a coherent, comprehensive and global response to international migration is for states to ratify and fully implement The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (The Migrant Workers Convention).

This paper

This paper consists of three parts. The first part is a short introduction to how Amnesty International approaches the issue of human rights of migrants, including the organisation's work so far and where we think we can add value and voice to the already large amount of work that is being done on migrants' rights, including at international, regional and national levels.

In the second part, Amnesty International discusses the benefits of the Migrant Workers Convention. There is already a substantial body of international human rights law and standards which guarantees the human rights of migrants. The problem, however, is that many governments and other actors lack the political will to turn these guarantees into practical and meaningful measures to protect and promote migrants' rights. Amnesty International proposes ways of strengthening the Convention, thereby ensuring that migrants' rights do not end up on the margins of human rights, but become integrated into mainstream UN mechanisms and looks at ways to ensure that the Migrant Workers Convention assumes authority on a par with the other six human right treaties.

Finally, in the third part, Amnesty International will propose various ways forward, in partnership with NGOs and others, on the promotion of the Migrant Workers Convention and beyond. A coordinated and coherent approach is necessary to encourage governments, employers and others in authority to make the protections promised and guaranteed under international standards into a reality for all migrants. Therefore we need, together, to develop clear, well-informed and strategically planned campaigning to promote the human rights of migrants, including promotion of the Migrant Workers Convention.

Amnesty International's approach to the human rights of migrants

Amnesty International looks at the “life-cycle” of migration, from the decision to leave the country of origin, to the migratory journey itself (including stay in countries of transit), to arrival and stay in the country of destination and, finally, in many cases, the return back to the country of origin. Through this life-cycle, Amnesty International focuses on the situations and circumstances at which migrants are most vulnerable to abuse, and on those individuals or groups of individuals most at risk. In Amnesty International's view, the most at risk of abuse and human rights violations are irregular migrants, that is, those who lack legal permission to enter and stay in a country, as well as children and women, whether regular or irregular. Amnesty International takes a holistic approach to the rights of migrants – focusing on both civil and political rights as well as economic, social and cultural rights.

Amnesty International is a member of the International NGO Platform on the Migrant Workers Convention (IPMWC), which is a coalition of NGOs that aims at facilitating the promotion, implementation and monitoring of the Migrant Workers Convention. We have been involved for some years in the campaign to ratify the Convention, and following the entry into force of the Convention in July 2003, have engaged actively with the UN

Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (The Committee on Migrant Workers). In addition, we obtained observer status to the Governing Council of the International Organization for Migration (IOM) in 2002.¹

Amnesty International has addressed recommendations to IOM in several of its research reports, urging IOM to ensure respect for the rights of migrants in the design and implementation of its operations. In addition, Amnesty International has been involved in ongoing informal consultations between IOM and its member governments and observers on the future strategy of the organisation. We have also taken part in consultations with the Global Commission on International Migration (GCIM), an independent Commission, established in December 2003, with a mandate to provide the framework for the formulation of a coherent, comprehensive and global response to the issue of international migration. Amnesty International has also participated in migration management deliberations such as the Berne Initiative² and highlighted the need to make human rights central to any common framework understandings on migration.

In addition to its involvement in processes at the inter-governmental and inter-agency level on advocacy and standard setting, Amnesty International has over the last few years produced research reports on various aspects of migrants' rights around the world, including country-based reports, press releases and other publications which address the human rights of migrants. Recent reports include: *Thailand: The plight of Burmese migrant workers*, *Spain: The Southern Border - The State turns its back on the human rights of refugees and migrants* and *Greece: Out of the Spotlight - The risk of foreigners and minorities are still a grey area*.³ Upcoming reports and ongoing research include Haitian migrant workers in the Dominican Republic and migrant workers in the United Arab Emirates.

We have also produced campaigning material aimed at involving our worldwide movement and engaging a broader audience on the protection of the human rights of migrants. Campaigning activities have included appeals to the Spanish and Greek governments to promote and protect the human rights of migrants, including irregular migrants, on their territory and in particular to protect migrants against arbitrary detention and mass expulsion. Over the last few years we have marked International Migrants' Day on 18 December by issuing a series of features, press releases and actions to inform and engage the public.⁴

The Migrant Workers Convention - why it matters

Elaborates and reinforces human rights

¹ See Amnesty International, *Amnesty International statement to the 88th Session of the Governing Council of the International Organization for Migration (IOM) 30 November - 3 December 2004* (AI Index IOR 30/025/2004). In 2005 we delivered an oral statement to the Council.

² The Berne Initiative represents a states-owned consultative process, which aims at achieving a better management of migration at regional and global level through enhanced inter-state cooperation. It assists governments in identifying their different policy priorities and offers the opportunity to develop a common orientation to migration management, based on notions of cooperation, comprehensiveness, balance and predictability. For more information see <http://www.bfm.admin.ch/index.php?id=226&L=3>

³ To find any of these reports and more, please go to www.amnesty.org/refugees

⁴ A public advocacy handbook on migrants' rights will be published later this year aimed at Amnesty International members worldwide, migrants' rights activists, NGOs and other civil society organizations as well as individuals, already working or intending to work on the promotion and protection of the human rights of all migrants.

The Migrant Workers Convention provides, for the first time, an international definition of a migrant worker as well as categories of migrant workers and members of their families. This important 7th core international human rights treaty emphasises the principle that all migrants, regardless of their status, are entitled to enjoy their fundamental human rights. Amnesty International reiterates that the Convention does not create new rights for migrants but aims at guaranteeing equality of treatment and working conditions for migrants and nationals. It offers a more precise interpretation of human rights of migrants although most of the rights were formulated in earlier Conventions.

Although there is no discrete body of international migration law there is now a nascent “international migration regime” comprising international standards, mechanisms and institutions. In Amnesty International's view advocates and campaigners for the human rights of migrants should seek to ensure that the primary starting point of the international migration regime is the rights of migrants rather than the interests of states. We believe that the Migrant Workers Convention remains a crucial tool in improving migrants' rights throughout the world. It reinforces and completes a series of other provisions under the main UN human rights treaties, and it is important to acknowledge that migrants already have rights under a range of other instruments, including the:

1. 1965 International Convention on the Elimination of All Forms of Racial Discrimination (CERD)
2. 1966 International Covenant on Civil and Political Rights (ICCPR)
3. 1966 International Covenant on Economic Social and Cultural Rights (ICESCR)
4. 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
5. 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
6. 1989 Convention on the Rights of the Child (CRC)

Each of these instruments (and respective treaty monitoring bodies) can be used to protect the human rights of migrants. Most obviously, these instruments contain **non-discrimination** provisions which apply to all persons, subject to certain specified limitations, such as legitimate distinctions between citizens and non-citizens. All states are party to at least one, and usually more, of these instruments. So, even where a state is yet to ratify and implement the Migrant Workers Convention, it is possible to draw on other international legal obligations to hold states accountable for their treatment of migrants. That said, international human rights instruments such as the Migrant Workers Convention which protect the rights of particular groups, can address in more detail the particular obstacles those groups face, and the specific measures needed to ensure their equal access to the full range of human rights.

In addition to these core human rights instruments are treaties relating to slavery and servitude, on trafficking in human beings, especially women and children, smuggling in migrants, a range of International Labour Organization (ILO) instruments, and the 1951 Refugee Convention.⁵

Clarifies that human rights apply to migrants, including irregular migrants

⁵ Two major ILO Conventions specifically address the rights of migrant workers: The Migration for Employment Convention (Revised) (No. 97) of 1949 and the Migrant Workers (Supplementary Provisions) Convention (No. 143) of 1975. Other core human rights instruments include the UN Principles and Guidelines on Human Trafficking and the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

As Amnesty International focuses on protecting and promoting the human rights of the most vulnerable migrants, including particularly irregular migrants, the Migrant Workers Convention is helpful in re-asserting that rights flow to *all* persons within the territory of a State party or under its control, not only to citizens.

Even though the Migrant Workers Convention explicitly recognizes the inherent undesirability of irregular migration and the fact that the treaty is structured in favour of documented migrants or those in a regular situation (Part IV), it also outlines in Parts II and III a range of fundamental human rights that apply to all migrants, regardless of their status or whether they have documentation or not. These rights cover many rights already available under other international instruments, but their inclusion here reiterates their application to migrants generally and to irregular migrants in particular.

These rights include the right to life, the right to freedom from torture and cruel, inhuman or degrading treatment or punishment, the right to freedom from slavery and servitude, family rights, rights to security and liberty of person, and against individual or collective arbitrary arrest or detention. Moreover, the Convention provides that all migrants without any exception have the right to health, education, adequate housing, adequate food and water, and the right to work and rights at work. It also calls for equal treatment to nationals in respect of remuneration and conditions of work, the right to take part in trade union activities, and the right to migrant children to a nationality. Moreover, the Migrant Workers Convention elaborates upon rights relating to collective expulsion, to possession and protection of identity documentation, to property, and to consular or diplomatic assistance.

Amnesty International insists that as a matter of law, people do not lose their entitlement to their human rights because they have moved in an irregular manner.

Establishes the UN Committee on Migrant Workers

Like other human rights treaties, the Migrant Workers Convention establishes a supervisory mechanism - the Committee on Migrant Workers - to oversee the implementation of obligations by States through reviewing periodic State party reports. It also contains an optional mechanism for complaints to be lodged before the Committee against State parties by other States parties or by individuals. So far, however, of the 34 States parties to the Convention, none has made declarations accepting its jurisdiction to do so. Regrettably, only two countries have so far submitted reports to the Committee (Mali and Mexico).

Through formal and informal contact with the members of the UN Committee on Migrant Workers, Amnesty International and other NGOS have been attempting to bolster the knowledge base of the Committee members to the complexities and human rights dimensions of migration. Like Amnesty International's engagement with other UN Committees, we hope to submit shadow reports or briefings to the Committee on Migrant Workers. The Committee, however, has been criticized because the majority of its members are serving government employees, and few of whom have specialized knowledge on the human rights of migrant workers.

What can NGOs do to promote ratification and implementation of the Migrant Workers Convention and enhance and improve respect for migrants' rights?

Push for ratification and implementation of the Migrant Workers Convention and other human rights treaties

The Migrant Workers Convention holds the unenviable record of taking longer to enter into force than any other international human rights treaty. As we know it was passed in 1990 by the UN General Assembly, but it was only in 2003 that the necessary 20 ratifications were deposited to allow it to enter into force. Most states which are parties to the Convention are countries traditionally seen as from where migrants traditionally originate, although a growing number of such countries are now also countries in which migrant workers are employed. To date, the Convention has not been ratified by a single country in the European Union, or by other developed states including Australia, Canada or the United States. Only 34 countries have so far ratified the Convention which signals that the majority of States continue to be reluctant to recognise the human rights of migrants more broadly.

There are many reasons why most of the world's governments continue to decline to commit themselves to enhancing migrants' rights, such as lack of political will, often spurred by populist anti-immigrant attitudes and resistance to policies and practices which would recognise our common humanity. The fact is that migrants become the scapegoats in the face of unfavourable unemployment figures, terrorism, racial and religious intolerance, and the race for political office. Some states initiate short-term frameworks by entering bilateral agreements between migrant-sending and migrant-receiving countries. However, such agreements often ignore the human rights of migrants, treating human beings as commodities, "service providers" or agents of development.

The content of the Migrant Workers Convention is not necessarily well-understood by politicians and decision-makers, with many fearing that this would add to already existing obligations, or alternatively a lack of awareness that many existing human rights obligations already apply to migrants. It is these myths and misunderstandings that must be confronted by NGOs to improve ratification, implementation and acceptance of migrants' rights by States, including acceptance by current State parties of the individual complaints mechanism. .

Amnesty International has begun campaigning in a number of countries for the ratification and implementation of the Migrant Workers Convention, but believes that a more concerted and coordinated effort is needed.

Establish clear and strategic advocacy, lobbying and campaigning strategy on migrants' rights

Clear, well-informed and strategically planned advocacy, lobbying and campaigning to promote the human rights of migrants is needed to encourage governments, employers and others in authority to make the protections promised and guaranteed under international standards into a reality for migrants. This will be achieved only by building much needed awareness about the Convention with government officials, politicians, decision-makers and NGOs nationally and internationally. A broad cross-section of society, including public officials, political parties, trade unions, religious groups and women's organisations must also be targeted. There are already international NGOs in place to carry out this work, for example the International NGO Platform on the Migrant Workers Convention. (IPMWC) and their work must be strengthened and reach a wider audience.

Ensure that advocacy, lobbying and campaigning activities on migrants' rights are mainstreamed into all human rights forums at the international level

In addition to the importance for states to ratify and fully implement the Migrant Workers Convention without reservations, Amnesty International proposes advocacy and campaigning strategies in a number of other areas of international and national law and in various forums, with the overall aim of strengthening the human rights of migrants. We recommend integrating migrants' rights into existing processes within the UN, such as the other human

rights Committees, especially the Committees on Economic, Social and Cultural Rights as well as the Convention on the Elimination of All Forms of Discrimination against Women. Campaigners, advocates and activists also need to identify and bridge the existing gaps in protection in international and regional standards

Various techniques need to be employed to enforce accountability, including carefully documented reporting, publicizing failures and abuses as well as engagement with supervisory mechanisms such as UN treaty bodies and UN special mechanisms including Special Rapporteurs and Working Groups. Such engagement can include submitting information to the various committees or representing individuals before individual communications.

The UN Special Rapporteur on the human rights of migrants will be of particular interest to advocates and campaigners of migrants' rights. Other relevant Special Procedures include the Special Rapporteur on Violence against Women, the Special Rapporteur on Trafficking in Persons, and the Special Rapporteur on Adequate Housing.

The UN Human Rights Council will be an important forum where human rights abuses against migrants can be publicly condemned by the member states of the Council and where campaigners, advocates and other activists can raise awareness of and promote respect for migrants' rights.

Other international forums where migrants' rights should be raised include:

- 1 the annual Governing Council of the International Organization for Migration (IOM) held in November/December each year;
- 2 International Labour Conferences of the ILO held annually in June;
- 3 the Executive and Standing Committee meetings of the UN High Commissioner for Refugees which take place three times a year (February/March, June/July, September/October).

In September 2006, the UN General Assembly high-level dialogue on international migration and development will provide an important forum for advocates and campaigners on migrants' rights to press for the inclusion of human rights standards in the international debate on migration management and development issues related to migration.

Call for better policies and better legislation and their implementation at the national level

Migration policies rarely incorporate human rights guarantees. However, states should be called to account as to how their policies comply with international human rights standards. The use of the reporting requirements under the treaty bodies may be useful for this, but the cycle of reporting is such that there can be long periods between state reports. National human rights, criminal law or labour rights mechanisms should, therefore, also be considered as part of efforts to seek commitments from states that their policies will comply with human rights, or through providing comments on proposed legislation, lobbying local members of parliament or through the media. Litigation can also be a strategic way of enforcing migrants' rights. Litigation can touch on a whole range of human rights issues. Some of the most common can include challenging deportation procedures, unsafe and unhealthy work practices, abusive practices, or more serious physical violence cases.

Demand accountability from non-state actors

While the primary obligation to protect and promote the human rights of migrants remains with states, it is increasingly the case that the policies and actions of non-state actors impact on the lives and human dignity of migrants. Such actors could be private economic actors, including private companies (whether large multilateral corporations or small and medium sized enterprises), and international financial institutions.

Migrant workers are increasingly engaged by private recruitment companies, brokers and gang-masters. The deregulation of labour markets, the proliferation of sub-contractors and the expansion of the informal sector have meant that the demand for migrant labour has increased in many sectors and countries. Transnational companies engage sub-contractors to recruit migrant workers, and often turn a blind eye to the human rights situation in which these migrants live and work. Migrant workers often pay significant sums of money to sub-contractors and recruitment agencies for jobs and salaries that do not exist; and on arrival in the country of destination are forced to work off their debt in highly abusive conditions without legally enforceable contracts or work visas.

NGOs should work towards investigating and exposing abuses, putting pressure for improved recruitment practices and conditions of work with employers, employer associations and trade unions. NGOs should also lobby the government to ensure the appropriate legal framework and review and complaints mechanisms are in place.

Call for more research and better data

Most governments gather statistics on migration. However, in some areas there is an absence of clear statistical data on the impact of laws, policies and practices on migrants' human rights. Amnesty International recommends that states should collect and publish in a transparent manner accurate, informative, and consistent data to enable comprehensive assessments and analyses of the extent of abuse of migrants' rights.

Involve migrants

It is vital that individual migrants, migrants' associations and groups are involved in consultations about developing appropriate strategies to promote migrants' rights. Campaigns on migrants' rights must not only be credible to governments and other authorities and institutions, but also to migrants themselves if they are to be effective and bring about real and practical improvements in the protection of migrants' human rights. An important way to ensure this is to consult widely amongst migrants, including with marginalized sectors of migrant communities, and to work in partnership with migrant groups and communities to formulate and implement strategies to protect their rights. In speaking with migrant communities, it is necessary to ensure that each element of that community is able to find a voice and articulate their strategy. Rather than approaching the community as homogenous, advocates and campaigners for the human rights of migrants should listen to the different voices that will emerge based on age, gender and other characteristics such as minority status within the community, and to construct strategies of empowerment accordingly.

Increase public awareness

In a world where migrants are increasingly blamed for a whole raft of social ills both in the media and in political debate, dispelling fear and countering misinformation are vital parts of promoting migrants' rights. Campaigners, advocates and other activists need to give priority to raising awareness not only of the suffering and exploitation experienced by many migrants, but also of their contribution both to the host society and to their countries of origin. Whether low or highly skilled, migrants bring positive benefits to societies and countries in all regions of the world; benefits which are not only economic, but also social and cultural.

A media strategy that not only highlights existing human rights problems that migrants experience, but also suggests ways of overcoming them, is vital. Such a strategy should seek, among other things, to educate local, national, regional and international media on the human rights violations faced by migrants. We should also seek to encourage the media to report on government policies that are discriminatory or abusive towards migrants, and enable media professionals to utilise rights-respecting and accurate terminology when reporting on migrants' issues.

The Migrant Workers Convention should be referred to in any public messaging concerning the human rights of migrants, pushing for ratification and implementation if the state(s) in question have not already done so. It is only by committing itself to respect, protect and promote the human rights of everyone on its territory that a state can signal that it does not deny the universality of human rights. Those states that have not ratified the Migrant Workers Convention, in essence, are sending a message that, for migrant workers, human rights stop at the border.

Amnesty International welcomes any opportunity, such as the World Social Forum, to present its views, listen to others and find ways of collaborating in an effort to find ways to promote the Migrant Workers Convention and the human rights of **all** migrants.

Thank you.