



STATEMENT TO THE UN HUMAN RIGHTS COUNCIL IN ITS SEVENTH SESSION (MARCH 2008)

Dear Council President and distinguished delegates,

I offer these comments on behalf of Migrants Rights International (MRI), a global civil society network of migrant workers' associations, unions, labor and community based organizations, and NGOs promoting the human rights of migrants.

As in past years, the growth in global migration has continued to spiral upwards. And migrants, whether in regular or irregular situations, continue to live and work extremely vulnerable situations. MRI highlights here **five important trends** in migrants' rights, as well as **five principles** to guide the international community in this area.

Trend #1. Adoption of more laws and policies that violate the rights of migrants. Around the world, laws and policies are being adopted that discriminate against migrants; further erode their economic, social and cultural rights; permit further labor exploitation; violate the rights to due process, security of person and life; and create a climate conducive to hate crimes.

Trend #2. The intensification of militarization along national borders, and the construction of border walls in various areas of the world, including the U.S.-Mexico border, Spain, Morocco, and Malaysia.

Trend #3. Increased detention and deportation of migrants, in countries such as Malaysia, Mexico, South Korea, the U.S., and those within the European Union.

Trend #4. Further legitimization of the idea that migration policy should be determined by an economic framework, rather than a human rights one. This was advanced in the UN High Level Dialogue in 2006 on Migration and Development in New York (UNHLD), and crystallized in the 2007 Global Forum on Migration and Development (GFMD) in Brussels. It is shaping numerous bilateral agreements which are including temporary worker programs prioritizing the economic needs of national governments and treating migrant workers as disposable commodities.

Trend #5. Increased barriers to public participation of migrants. Anti-immigrant policies have increased fear and further excluded migrants from public participation. Further, the paradigm of viewing migration through an economic lens has elevated the inclusion of the business sector as relevant participants in international discussions on migration, but has restricted the involvement of migrants, migrants' rights activists, and human rights bodies, and limited media coverage and public information. The UNHLD and GFMD 2007 were examples of this.

These trends signal a deepening crisis in migrants' rights. The involvement of the international human rights community is critical because migrants, who suffer discrimination based on national origin and migration status and have less access to participation, are often the least protected by national governments.

MRI offers here some principles for the international community on its obligations on migrants' rights:

PRINCIPLE 1. Migrant rights are human rights. Thus, all policies affecting migrants must comply with the international human rights regime. Migrants are human beings, and have human rights. This simple and self-evident concept seems to be consistently forgotten by governments and even by international bodies.

It follows from human rights principles that:

- 1.1 All policies affecting migrants must respect the entire international human rights regime,** including international instruments, as well as UN programs of action including that of the World Conference Against Racism.
- 1.2 Economic development efforts must respect migrants' rights.** Development divorced from human rights is unsustainable. International discussions such as the GFMD cannot approach migration policy solely from an economic angle, which treats migrants as commodities rather than holders of rights.
- 1.3 Experts selected to be members of the Committee on the Rights of Migrant Workers must have expertise in migrants' rights and human rights.**
- 1.4 All local, national and international officials who have duties directly or indirectly affecting migrants' rights should have expertise, or training, in migrants' rights and human rights.**

PRINCIPLE 2. Human rights are migrants' rights. Thus, all human rights analysis must include consideration of migrants' rights. Migrants are part of almost all societies of the globe, but almost invariably suffer disproportionate levels of rights violations. Just as a human rights framework must give special consideration to the rights of sectors traditionally in vulnerable situations, like women, children, racial minorities, and indigenous peoples, special attention is required for migrants.

Thus,

- 2.1 All human rights bodies, officials, and deliberations officials should give special consideration to migrants' rights.**
- 2.2 In selecting all Special Rapporteurs (not just that on Migrants Rights), knowledge and commitment to migrants' rights must be considered in evaluating candidates' human rights expertise.** Virtually all Rapporteurships have mandates that are inextricably linked to migrants' rights - migrants regularly suffer violations involving arbitrary detention, trafficking, freedom of expression, violence against women, extreme poverty, rights to food, housing and health, sale of children, human rights defenders, and torture.

PRINCIPLE 3. States have the obligation to respect, protect and fulfill migrants rights. It is long established that States have the negative obligation to respect human rights, and positive obligations to protect and to fulfill human rights. States violate their obligation to respect migrants' rights when they adopt (or fail to repeal) laws or policies that adversely impact migrants' rights.

States violate their obligation to protect and fulfill migrants' rights, if they fail to take effective measures to guarantee the full enjoyment of migrants' rights.

Thus,

- 3.1 Many State detention and deportation policies violate international obligations to respect migrants' rights**, because they frequently involve arbitrary detention; physical injury (sometimes death); inhuman conditions in detention (sometimes including torture); violations of the right to due process and to protection of the family, and resulting violations of economic, social and cultural rights. Detentions and deportations also constitute a form of discrimination that often occur in the context of scapegoating of immigrants. They are also used as instruments of repression against human rights defenders, including labor activists in South Korea and immigrant rights activists in the U.S., thus violating the right to freedom of expression and right to association.
- 3.2 Policies for border militarization, construction of border walls, and externalization of the border are violations of international obligations on migrants' rights.** Such policies have led to violations including increased arbitrary detention, physical injury, deaths, separation of families and communities (some being indigenous communities), and violations of due process.
- 3.3 To comply with its obligations, States must formulate effective policies based on thoughtful analysis, using reliable data, of the multiple factors at play in migration and the situation of migrants.** For instance, policies to combat human trafficking will never be effective unless they consider the lack of enjoyment of economic and social rights in the home country, which make individuals susceptible to false claims by human traffickers who promise better conditions of life. Similarly, in addressing irregular migration, states must take into account the root causes of migration, which are often linked to the lack of human rights at home. Governments as well as international bodies also must collect reliable data on migrants in order to formulate effective policies.
- 3.4 Human rights obligations exist in countries of origin, transit and arrival.** "Sending countries" must guarantee all human rights to prevent individuals from being forced to migrate due to lack of rights at home. Transit countries also have obligations, such as combating practices like human trafficking. "Receiving countries" must also guarantee the full range of migrants' human rights.
- 3.5 Governments fail to fulfill its obligations to protect migrants' rights, if they permit abuses by private actors including employers, landlords, members of vigilante or hate groups, or multinational corporations.** States must thus put into place a system that prevents and addresses abuses like labor exploitation, hate crimes, and housing or employment discrimination.
- 3.6 States violate their obligations to respect migrants' rights if they enter into bilateral agreements that violate migrants' rights**, such as those creating temporary worker programs that lead to rights violations like labor exploitation.
- 3.7 States fail in their obligation to protect and fulfill migrants' rights if they do not create a rational, functional system for the regularization and recognition of migrants.**

PRINCIPLE 4. The international community must strengthen mechanisms for protection of migrant's rights as part of its positive obligations, including through universal ratification of the Convention on the Rights of Migrant Workers.

Thus,

4.1 We call on the Human Rights Council to push for the rapid and universal ratification of the Convention, especially for countries in the Global North, almost none of which have ratified the Convention. This geographical imbalance in ratifications has the appearance of partiality and hypocrisy, and threatens the legitimacy and effectiveness of the entire human rights regime.

PRINCIPLE 5. Migrants have the right to participation, as guaranteed in international human rights instruments. The consistent failure to guarantee the right to participation of migrants is a symptom of the general discrimination against migrants. But it is now recognized that policies made without the involvement of stakeholders, in particular, of traditionally excluded sectors like women and indigenous peoples, are devoid of legitimacy. This is the same for migrants.

Thus,

5.1 The right to participation of migrants should be respected in all policy dialogues, at the local and international level, including the upcoming GMFD in October.

5.2 International human rights instruments guarantee the right to vote to all human beings; denying this right to migrants violates human rights principles, as well as foments exclusion and a lack of democracy.

Thank you very much.

Respectfully submitted,
Migrants Rights International*

* The MRI Steering Committee is composed of Centro de Estudios Legales y Sociales (CELS) (Argentina), Comitato Antirazzista Durban Italia (CADI) (Italy), Migrant Forum in Asia (MFA)(Asia), National Network for Immigrant and Refugee Rights (NNIRR) (United States), Platform for International Cooperation on Undocumented Migrants (PICUM) (Europe), Servicio Ecuménico de Apoyo y Orientación a Migrantes y Refugiados (CAREF) (Argentina), Sindicato Nacional de Trabajadores del Hogar (Colombia), and Unlad Kabayan Migrant Services (Philippines)