



FES GENEVA REPORTS

ADDRESSING IRREGULAR MIGRATION
THROUGH A HUMAN RIGHTS BASED
APPROACH

1 DECEMBER 2011

HANNAH PETERS

700 representatives from 162 UN Member States met on 1-2 December in Geneva for the Concluding Debate of the Global Forum on Migration and Development (GFMD) 2011. As a Side Event to this GFMD, the Office of the UN High Commissioner for Human Rights (OHCHR) and the Geneva office of the Friedrich-Ebert-Stiftung (FES) organized a discussion on the nexus between irregular migrants and human rights. The meeting aimed to highlight the human rights dimension of irregular migration and to promote an understanding of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

Panelists

Mr. Bacre Ndiaye, Director, Human Rights Council and Special Procedures Division, OHCHR

Mr. Abdelhamid El Jamri, Chairperson of the UN Committee on Migrant Workers

Mr. François Crépeau, UN Special Rapporteur on the Human Rights of Migrants

Ms. Michele LeVoy, Director, Platform for International Cooperation on Undocumented Migrants

Moderator

Mr. Matthes Buhbe, Director, Geneva Office, Friedrich-Ebert-Stiftung

Institutionalization of irregular migrant labour

In their opening statements, panelists Abdelhamid El Jamri and François Crépeau both highlighted the institutionalization of irregular migrant labor and called for a demystification of the issue of irregular migrants. Crépeau emphasized that states tend to refuse acknowledging the rights of migrants while in reality they benefit on a big

scale from migrants, and in particular migrant workers. Economic competitiveness, for instance, is to a large extent made possible by paying exploitative wages to irregular migrants. In fact, migration should be seen as a contribution to development. Both El Jamri and Crépeau argued that the crucial role of irregular migrants in the economic sector of home countries and general economic development needs to be reflected in Inter-

national Conventions. For instance, the UN Convention on Migrant Workers should include protection for undocumented migrants from collective expulsion from a country.

Human Rights based Approach

Following this description of an institutionalization of irregular labor, Bacre Ndiaye gave a brief outline of the human rights approach to the issue of irregular migrants. He emphasized that there exists no hierarchy between different sets of human rights and that a human rights approach does not allow for any discrimination among the rights holders. In fact, the accountability of duty bearers towards rights holders is consistently enshrined in international human rights law. Thus, the obligation of states is the protection and fulfillment of human rights of all, while simultaneously promoting participation and empowerment. This includes, for instance, public housing access for migrants. Indeed, ensuring basic social services and fundamental rights should not be a matter of charity. Furthermore, the state is under an obligation to take action against private actors abusing irregular migrants' vulnerability. Equally, human rights holders are entitled to challenge abuse and demand assistance in case of maltreatment. Thus, information and education on protection of rights and access to judicial system, in particular with regards to

hate crimes and racism towards migrant workers, is of crucial importance. This in turn will also allow state actors to identify the most vulnerable groups within society, enabling them to address their needs sufficiently.

EU level legislation

The discussion subsequently turned to existing international human rights legislation covering the protection of migrant rights. On the basis of a number of initiatives on EU level concerned with the protection of the fundamental rights of migrant workers, Michele LeVoy drew attention to the progress that had been made in international law in this respect. Firstly, the European Social Charter¹ now includes the fundamental rights on undocumented migrants. Secondly, the Polish National Contact Point to the European Migration Network organized a conference on 'Combating irregular migration: practical responses' in October 2011 which dealt with the firewall between the two concepts of human rights and fundamental rights for migrant workers². Thirdly, the European Agency for Fundamental Rights recently published a report on Fundamental Rights of migrants in an irregular situation in the

¹ For full text of the European Social Charter, please see: <http://conventions.coe.int/Treaty/en/Treaties/Html/163.htm>.

² For further information on the initiative and issues covered at the conference in Warsaw, please visit: http://emn.gov.pl/portal/ese/751/8888/EMN_Conference.html.

European Union as well as another report on health care access of irregular migrants in the EU³.

LeVoy emphasized that the international precedent for comprehensive protection of migrant workers thus exists. What is often lacking, is putting the principles into practice. Trade unions can potentially play a crucial role in this process. However, such a process needs to be further cultivated since the national trade unions are not yet as involved in protecting labour rights of migrant workers as is for example the International Trade Union Confederation. An important role, which in the process of implementing principles is all too often overlooked, play the consumers. Addressing the demand for an irregular work force is at the core of improving the situation of undocumented workers worldwide.

In response to the question which EU mechanism should be used as a platform to lobby for migrant workers' rights by civil society, LeVoy suggested making use of the anti-discrimination directive of the EU. Furthermore, she argued that labour inspectors could be a crucial role in assessing the application of labour standards to irregular workers at the work place. To this end, the work of labour inspectors needs to be clearly

separated from immigration authorities. With regards to making use of existing legislation, Philippe Texier of the UN Committee on Economic, Social and Cultural Rights highlighted the work done by the Committee regarding the protection of rights of migrant workers. He suggested making better use of this work on part of NGOs concerned with the issue. Texier moreover called on states to ratify the International Covenant on Economic, Social and Cultural Rights, which covers the fundamental labour standards indiscriminately and regardless of the status of the workers.

Need for enforcement

There was general agreement amongst panelists and participants that high levels of progress had been made, and an international human rights framework was built to protect migrants. However, issues of enforceability and opportunities to report mistreatment against irregular migrants remain. The enforcement of all labour standards for all workers regardless of their status is required if protection of their rights is to be guaranteed. Crépeau argued that enforcing of all labor standards would dramatically increase the price of employing irregular migrants, thus contributing to the eventual elimination of the irregular labour work force. Participants agreed that the UN Convention on Migrant Workers plays a crucial role in overcoming the firewall separating the status of irregular

³ For copies of the full reports, please visit:
http://fra.europa.eu/fraWebsite/home/home_en.htm

migrants from the enforcement of labour standards. To this end, procedural opportunities need to be created for regular and

irregular migrants to claim their rights. A worker is a worker and should benefit from all labour standards.

On the Author:

Hannah Peters holds a Masters Degree in Human Rights from the University of Sussex where she focused her research on refugee issues and humanitarian questions and is currently an intern at FES Geneva.