



Report

Current Challenges in Protecting the Human Rights of Migrant Workers: Irregular Flows in the Mediterranean, Migrant Workers in the Gulf Region, and Undocumented Children in the Americas

Tuesday, 08 September 2015, Palais des Nations, Geneva, Switzerland

ÖZGE ACAR

On the occasion of the 25th anniversary of the Adoption of the Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, the Committee on Migrant Workers and the Office of the UN High Commissioner for Human Rights, supported by the Friedrich-Ebert-Stiftung, held a panel in the Palais des Nations, Geneva, on 8 September 2015. The panel focused on the multiple human rights abuses faced by migrant workers and challenges for States on how to best address these issues in the context of irregular migration flows in the Mediterranean, undocumented child migrants in Mexico and the Americas, and migrant workers in the Gulf region. The common vision of the participants to respond to these current challenges was established with respect to 3 dimensions: a) more regular migration channels, b) looking at root causes, and c) international cooperation.

Convention on the Protection of the Rights of All Migrant Workers and Members of their Families

Opening the panel, United Nations High Commissioner for Human Rights Mr. Zeid Ra'ad Al Hussein highlighted the fact that the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families provided a framework for human rights-based policy making on migration, including irregular migration. However, with only 48 ratifications of this vital text, the Convention had been underperforming. Indeed, only one other convention has so far obtained a poorer score. The High Commissioner expressed the

need for an honest discussion about the obstacles to ratifying the Convention; the fact, for example, that States had a perception that the implementation of certain human rights would involve massive legislative and regulatory reforms. In contrast, he insisted, the Convention in its text did not lay down new categories of human rights while it did indeed set out in greater detail how existing human rights were to be applied to migrant workers and their families, and provided further guidance and policy advice. He expected, therefore, that all remaining States would seize this 25th anniversary to reconsider the Convention's contents and rethink its eventual ratifi-

cation. In this the High Commissioner was seconded by Hubert René Schillinger, Director of the Geneva Office of Friedrich-Ebert-Stiftung (FES), who deemed the worries that the Convention would place excessive restrictions on governments with regard to their migration and employment policies responsible for the reluctance of many states to sign the Convention, which he classified as the most comprehensive international instrument to date on migrants. Schillinger recommended that the Convention be harnessed in order to promote a human rights-based approach to migration and closed with an optimistic prospect that the Convention would, in due course, regain its policy relevance.

Rev. Msgr. Robert J. Vitillo, Head of Delegation for Caritas Internationalis and Attaché with the Permanent Observer Mission of the Holy See to the United Nations Office at Geneva, recalled the outcomes of its organization's recent General Assembly, held in May 2015, where the 165 national member organizations had committed to adopting more national policies enabling safe migration and promoting additional ratifications of the Convention. Summarizing the history, relevance and content of said Convention, he quoted a UNESCO (2005)¹ report to support his criticism of several countries' unwillingness to ratify owing to their inhibitions to accord "too many" rights to migrants. However, Msgr. Vitillo reminded of the Convention's significance in terms of promoting more regular migration channels and protecting the unity of the family.

EU and Mediterranean Migration

Michele Levoy, Director of the Platform for International Cooperation on Undocumented Migrants, recalled that although the EU has had a common migration policy for 16 years,

its policy followed a security approach which had produced the following negative effects on migration flows: 1. A lack of channels for regular migration; 2. A lack of legal channels for labour migration; 3. A lack of low-wage occupations across the EU.

Calling upon the outcomes of a survey of the Directorate-General (DG) Home of the European Commission,² Levoy argued that the lack of regular channels for migration had led to an increased risk and a higher loss of lives. The survey shows that more than 276,000 migrants entered the EU irregularly in 2014, an increase of 159% from 2013. In addition, 3,500 people died in the Mediterranean Sea in 2014 trying to reach the EU. Over all, since 2000, about 30,000 refugees and migrants have died in their attempt to reach or stay in Europe. It was thus crucial, Levoy urged, to develop wider humanitarian channels for resettlement and for migrants seeking protection.

Ms Levoy further underlined the importance of labor migration for the European Union, whose estimated workforce will probably shrink by 50 million over the next 50 years. It is understood that even if all planned policies for job creation succeeded, measures would not suffice to compensate for the shrinking European workforce without labor migration. Therefore, she pledged, migration policies should go beyond an exclusive focus on highly skilled labor migrants, and other avenues for low-skilled labor migrants needed to be developed. Recently adopted EU legislation on low-wage workers was in this respect not going far enough as it did not include sectors such as domestic work and construction where migrant workers fill essential roles on an irregular basis. Furthermore, Ms. Lovey underscored that the security focus of migration was leading to human rights violations, and

¹ UNESCO 2005, <http://unesdoc.unesco.org/images/0014/001435/143557e.pdf>

² European Migration Network, EMN Annual Report on Immigration and Asylum 2014 2015 :76, http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/annual-policy/2014/00.emn_annual_report_on_immigration_and_asylum_synthesis_report.pdf

she emphasized particularly the need to protect children. The Committee on the Rights of the Child clearly states that the detention of children for immigration purposes is always a violation of the rights of the child. Nonetheless, Levoy went on to say, 17 European countries had recently detained unaccompanied children while 19 European countries even detained families with children. Moreover, a study by the UK-based Bail for Immigration Detainees (BID)³ examined the cases of 111 parents who were separated from their 200 children by immigration detention between 2009 and 2012. The findings indicated that 85 of these children lost weight, had nightmares, or suffered from insomnia. As a consequence, she urged that the Committee on migrant workers and the Committee on the Rights of the Child develop a general comment on detention.

H.E. Peter Sorensen, Ambassador and Head of Delegation of the European Union to the United Nations Office and other international organizations in Geneva, stressed the fundamental importance that the EU attaches to protecting rights of migrants and refugees. He maintained that there was no legal gap between the content of the Convention on migrant workers and the content of the other human rights instruments which the EU has ratified. As he pointed out, UNHCR estimates that 322,000 people have set off for Europe by sea in 2015 alone.⁴ Over 99% of them, he claimed, were now safe on European territory. On these grounds, he rated the operations Triton and Poseidon as a great success, but also demanded that the EU leaders commit themselves to mobilize all efforts to prevent further loss of life at sea and to tackle the root causes of the migration crisis in cooperation with the countries of origin and transit.

Recalling the new European Agenda on Migration,⁵ Sorensen continued that managing migration should be based on shared responsibility. He presented the five pillars of the Agenda: 1. saving lives at sea; 2. creating relocation and distribution mechanisms; 3. Instigating an EU-wide resettlement scheme; 4. establishing an action plan against migrant smuggling; 5. ensuring increased support for countries hosting great numbers of refugees and asylum seekers. Moreover, he presented the next steps on the Agenda, including that, firstly, the European Commission will have a more permanent relocation scheme, secondly, that a common European list of safe countries of origin will be ratified to fast-track asylum procedures for unfounded claims, and that, lastly, measures will be taken to facilitate the safe and swift return of irregular migrants not entitled to international protection.

Children Migrants in Mexico and in the Americas

Diego Lorente Perez de Eulate, Director of the Centro de Derechos Humanos Fray Mathias de Cordova (Mexico), reminded the audience of the significant increase of the number of unaccompanied children in the US in 2014. He underlined that this was a crisis in itself, but that the situation was similar in El Salvador, Guatemala, Honduras and Mexico, and that systematic and widespread violation of the rights of children occurred in the whole region.

The situation of children in the northern triangle of Central America (El Salvador, Guatemala, and Honduras) as well as in Mexico, was marked, he insisted, by considerable shortcomings in the policies intended to provide for child protection. According to Perez de Eulate,

³ Bail for Immigration Detainee's submission to the APPG on Refugees and APPG on Migration's parliamentary inquiry into the use of immigration detention in the UK 2014, http://www.biduk.org/sites/default/files/media/docs/BID%20submission%20to%20detention%20inquiry_separated%20families%20Sept%202014.pdf

⁴ Source?

⁵ http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/index_en.htm

El Salvador, Guatemala, and Honduras systematically failed to carry out essential duties required of them as States parties to the Convention on the Rights of the Child. Major shortcomings included the lack of laws and regulations, institutional weaknesses, inadequate implementation of public policies, but also arbitrary practices contrary to a rights-based approach and the fact that widespread corruption permitted these failures to occur and aggravate.

These failures underscore a most worrisome denial of the basic rights of the child revealed by the statistical data regarding poverty, illiteracy, school drop-out rates, lack of opportunity, and unemployment among adolescents and youths, growing forms of violence impunity for these acts of violence; obstacles for access to justice; widespread corruption; gender inequality and inequality based on ethnic origin and human trafficking.

For instance, the homicide rate in Central America has almost doubled as a result of drug-related violence perpetrated by cartels and gangs in collusion with public entities and officials.⁶ This has not only contributed to the increased migration of children and adolescents, but also caused the high percentage of irregular migration. Furthermore, he pointed out the lack of programs for obtaining regular immigration status in the United States which have made it impossible for thousands of children and adolescents to migrate regularly to reunite with their parents.

The risks of life in Central America make all children potential applicants for international protection due to the vulnerable living conditions during the transit. The current Mexican government's response to this need for protection is detention although the Migration law prohibits the detention during the asylum application. Moreover, Mr. Perez de Eulate

highlighted human rights deficiencies of reception and reintegration of children from Central America as these countries do not have return policies. Finally, as another example of human rights crisis, he mentioned the reality of migrant children in southern Mexico. Many children from Central America cross the border to live and work in southern Mexico every day. However, the government of Mexico does not consider the reality of Chiapas, where thousands of migrants have been living for several years. Migrant workers coming from Central America often bring their children with them when relocating to Southern Mexico. Due to costs of official documentation these children frequently do not have a legal residence status and therefore no access to fundamental rights such as health or education. Perez de Eulate called for the rights of children to take priority instead of the immigration control approach, and launch integrations programs, adequate reintegration policies, and lastly effective access to protection.

In his remarks from the floor Ambassador Raul Heredia, Permanent Representative of Mexico, joined this call by underlining that family unity, and the interests of children and adolescents should be a priority in guiding migration policies since unaccompanied child migrants were among the most vulnerable. Not only were they victims of exploitation, abuse, discrimination, rejection, and social exclusion, but lack of access to services, violence, labor exploitation and other violations of their rights were particularly exacerbating their dire situation. The protection of human rights of children and adolescents therefore required a multidisciplinary approach, rooted in the interests of the children, regardless of their immigration status.

⁶ OHCHR, Special Rapporteur on Violence against Women Finalizes Country Mission to Honduras and Calls for Urgent Action to Address the Culture of Impunity for Crimes against Women and Girls 2014, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14833&LangID=E%20URL>.

Rights of Migrant Workers in the Gulf region

During the discussion, High Commissioner Mr. Zeid Ra'ad Al Hussein stressed that migrant workers in the Gulf region faced many challenges to enjoy their human rights during their journeys and in workplaces. He specified that their rights were violated while they had to work in dangerous conditions with high incidences of death and sickness; receive wages far under the minimum baseline, and are subjected excessive working hours as well as sexual harassment and threat.

Mustafa Qadri, Gulf Migrant Rights Researcher with Amnesty International, presented data indicating that between 2010 and 2014 20-25 million migrant workers had been working across the Gulf States.⁷ Nevertheless, none of the six Gulf Cooperation Council (GCC) members had signed the Convention. In contrast, he advanced, migrant workers remained inadequately protected under local labor laws, and millions were subjected to daily exploitation and abuse. Across the Gulf States, he continued, workers were often tied to one employer through their work and residence permit (known as the Kafala system), which could be seen as an equivalent to forced labor due to the inherent threat of arrest and deportation from abusive employers. The ratification and implementation of the Convention would thus have a great significance for the workforce of GCC States. Although they seemingly issued a public statement promising to implement mandatory requirements regarding to right to leave, daily working hours and overtime, and accommodation in November 2014, these promises were quickly recalled.

These statements were supported by William Gois, Regional Coordinator of Migrant forum in Asia. He underscored that Gulf country governments must urgently address the gaps in rights for all migrant workers and the specific

needs of migrant domestic workers. These rights and protection would be promoted by the Migrant Workers Convention and ILO Convention 189, which were fundamental documents that set out their rights. As he pointed out, domestic work was one of the most dangerous sectors for migrant workers in the Gulf States as in this sector, migrant workers were often discriminated against and in most cases excluded from domestic labor legislation, a situation which left them without legal rights to a minimum wage, freedom of movement, or overtime pay. As Mr. Qadri mentioned before, she reminded of the significant gap between the entitlement of labor rights protections on paper and the ability to see those rights realized in daily life. Therefore, she deemed meaningless the protections enshrined in bilateral agreements of Gulf States which are supposed to guarantee minimum standards. She also voiced many migrant organizations and associations' fear of being held suspect for their activities. A large number of organizations had in fact already ceased to meet as in some states their reunions had been interpreted as a plot against the government, and thus a potential threat to national security, or as actions allegedly interfering with economic, social, and political stability.

H.E Cecilia Rebong, Ambassador and Permanent Representative of the Philippines to the United Nations Office at Geneva, gave voice to her frustration with the slow progress of ratification of the Convention. She presented initiatives of the Philippine government which were not only based on the provisions of the Convention, but also geared towards a tangible promotion and protection of human rights of migrants, particularly of overseas Filipino workers (OFWs), many of which are working in the Gulf region. Initiatives included, first, pre-deployment and skills-matching preparations for each individual worker. Second,

⁷ GCC: Total population and percentage of nationals and non-nationals in GCC countries (latest national statistics, 2010-2014)", Gulf Labour Markets and Migration, <http://gulfmigration.eu/gcc-total-population-and-percentage-of-nationals-and-non-nationals-in-gcc-countries-latest-national-statistics-2010-2014/>

mandatory pre-departure orientation seminars where migrants learn about their basic human rights. Third, local recruitment agencies to secure medical insurance for newly hired OWFs. Fourth, the establishment of a fund to assist Filipino nationals in distress abroad, and legal assistance fund; 5. Safety net throughout the migration. Sixth, holding bilateral negotiations and sign labor agreements. Seventh, engage partners on the regional level, such as the Colombo Process. Eighth, engage in the international discourse on migration, development, and human rights in arenas such as the Global Forum on Migration and Development. In addition to responses of her government for challenging current trends in migration, she concluded that the promotion and protection of the rights of migrant workers was a shared responsibility of both countries of origin and those of destination, which is why she considered crucial the fact that more countries should ratify this important Convention.

International Labour Regulations

As the last speaker, Manuela Tomei, Director of Conditions of Work and Equality Department at the ILO, identified the main barriers to ratification and implementation of the Convention, based on the results of the global general survey of the ILO,⁸ to be the following: 1. the Convention's incompatibility with national legislation, such as the exclusion of certain categories of migrant workers from labor legislation (e.g. domestic and agricultural workers); 2. its limited administrative capacity relating to the functioning of labor market institutions, such as labor inspection, minimum wages, health and safety; 3. political concerns about legislating on a sensitive issue in times of high unemployment or high informal employment; 4. the lack of clear guidance on how

to give practical effect to the Conventions' provisions in a variety of cultures and contexts where labor mobility is rapidly growing. Ms. Tomei moreover expressed the need for more durable solutions to the socio-economic problems causing migration flows. Durable solutions, she emphasized, required a comprehensive approach to governance based on fair labor migration focused on three pillars. The first one is creating decent work at home through cooperation on development specifically targeting migration. The second important pillar is the multilateral responses grounded on international standards and a common set of values. The third one deals with fair, safe and regular channels of migration that meet real labor market needs at all skill levels, and which incorporate the actors and institutions of the world of work.

Conclusion

During the panel, participants discussed the current challenges in protecting the human rights of migrant workers, irregular migrant flows in the Mediterranean, migrant workers in the Gulf region and undocumented child migrants in Mexico and the Americas. Here it became apparent that a human rights perspective is required in dealing with migration. In order to respond to these current trends, more attention must be paid to increasing regular channels of migratory movement, specifically in terms of labour migration, family reunification and refugee resettlement. Safety nets should be promoted in accordance with human rights standards, reducing the attraction of smugglers and their promises which often turn into violence, exploitation and death. Secondly, it is essential to tackle the root causes of irregular migration since the drivers of poverty and conflict pushing

⁸ Report form for the General Survey concerning the Migration for Employment Convention (Revised), 1949 (No. 97), the Migration for Employment Recommendation (Revised), 1949 (No. 86), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) and the Migrant Workers Recommendation, 1975 (No. 151) 2014, http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/questionnaire/wcms_250259.pdf

people into migration, and reverting to extreme measures by crossing deserts and seas in search of decent work, peace and better livelihoods, are not going to disappear without concerted action by States, including investments in infrastructure, education, job creation, and the resolution of conflicts. Finally, the actions above mentioned require the international cooperation of governments in States of origin, transit and destination as well as by the various international and national organizations and agencies involved.

On the author

Özge Acar is an intern with the Friedrich-Ebert-Stiftung Geneva Office. She studies international relations and development policy at the University of Duisburg-Essen

Weak institutional arrangements make international cooperation in governing international migration all the more difficult to achieve. Therefore, as a first step, the Convention needs to be ratified by the States as it provides a framework for human rights-based policy making on migration and lays out the most effective strategies for preventing abuses, while simultaneously bringing assistance to policy makers who face the challenges associated with the governance of migration.

The views expressed in this publication are not necessarily the ones of the Friedrich-Ebert-Stiftung.

Friedrich-Ebert-Stiftung. Geneva Office
6bis, Chemin du Point-du-Jour, 1202 Geneva, Switzerland
T: +41 (0) 22 733 34 50; F: +41 (0) 22 733 35 45