

Migrants' Human Rights: From the Margins to the Mainstream*

Human Rights are: "The rights one needs in order to enjoy a dignified life or a life worth living"¹. Imagine leaving your home, your loved ones and everything familiar behind, to go to a new country where you often don't understand the language, the laws, the culture and where you are sometimes not welcome or even "illegal" because you do not have the right papers. The migrants most vulnerable to abuse are undocumented migrants and women migrants. This is because migrants, by definition², are not citizens of the country in which they work/live and therefore may not always have access to the same rights and protections as nationals do. However, abuse of the human rights of migrants takes place throughout the migratory cycle: in the country of origin, during transit and of course, in the country of destination.

Violation of human rights as a driver for migration

The "push factors" which trigger migration may include domestic inequality, poverty, armed conflicts, racism, intolerance, gender discrimination and democratic deficits³. The usual explanations for migrating - to find work, to secure a better livelihood - tend to obscure the regular violations of civil and political rights suffered by the migrants at home, even if those fall below the persecution "threshold" imposed by destination governments to grant claim for asylum. However these violations fuel much, if not most, of global migration. In practise, it has become increasingly difficult to separate refugees from other involuntary migrants or from economic migrants, even if this distinction is a fundamental one for governments as well as the international community as regards to their asylum or immigration laws and policies.

Abused in transit

Year after year, hundreds of migrants die trying to cross the increasingly militarized borders of our world. But this is only the most well-known aspect of a dramatic phenomenon, because of the media friendly yet exploitative pictures splashed on our newspapers and screens. Less visible are the cases of abuse, trafficking, arbitrary detention, torture



Picture by John Perivolaris

and attempts on migrants' lives. Chased by poverty, often alone and disoriented, maybe without the proper documents, these migrants are particularly vulnerable to both aggressions from traffickers and a zealous approach to law enforcement from security personnel, especially in ports, airports, at borders and migration checkpoints⁴.

* Taken from the title of an article published in the Migration Information Source's Special Issue on Migration and Human Rights.

¹. Sarah Joseph, visiting academic at the Human Rights Center, University of Minnesota.

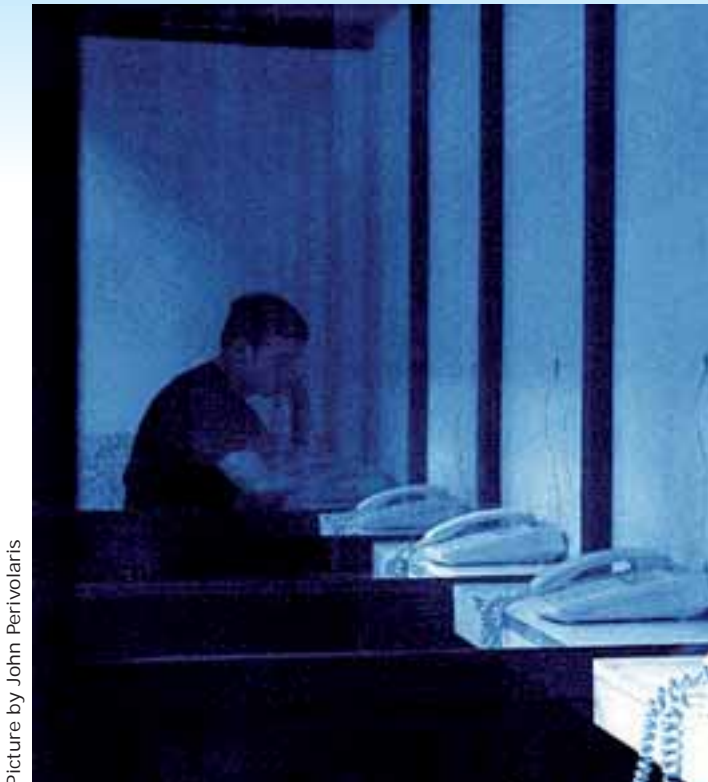
². This fact sheet does not cover the situation of internally displaced persons and other forms of internal migration.

³. "In the decade since 1994, researchers have confirmed the links between migration and human rights violations, including those committed in situations of conflict, those which arise from weak institutions, and those which are inherent in poverty", International Migration and Human Rights, Stephanie Grant.

⁴. UN Commission on human rights, Resolution 59/2002, "Protection of migrants and their families".

Life in the host community

Once in the country of destination, a migrant's vulnerability is the result of a number of factors. Alien to the local society they live in, many migrants are unaware of their rights and often unable to defend themselves against abuse. They may face discrimination, denial of the right of association and assembly, unequal treatment and opportunities at work to nationals.



Picture by John Perivolariis

A recent survey by the International Labour Organization (ILO)⁵ states that in more than a half of the destination countries, national discrimination laws do not apply to migrant workers; and in most cases, migrants are more likely to take up so-called DDD jobs (demanding, dirty, dangerous), in sectors where labour standards are not applied and where they are faced with abusive working conditions akin to slavery or forced labour. Racism and xenophobia are also particular problems. At times of political tension, migrants are often the first to bear the brunt, or used as scapegoats- and treated as security risks. The effects of the "war on terror" are a striking example.

September 11th, the impact on migrants

Whilst life for migrants has always been difficult, it seems that things have taken a turn for the worst since 11th of September 2001⁶ as security considerations fuelled the anti-immigrant and anti-foreigner climate, especially in North America and in Europe. Countless men and women migrants have been harassed, fired from their jobs, arbitrarily arrested and detained, and even deported. What has changed is that acts perpetuated by destination countries that would have been deemed to infringe human rights before September 11, are now legal as national laws were changed in many countries under the guise of "the war on terror".

HUMAN RIGHTS AT THE CORE OF MIGRATION

Despite wide abuse, migrants' rights have long remained at the margins of the international human rights agenda⁷. There now seems to be a greater recognition of migrants' rights: e.g., over the last three years, 86% of the UN Treaty Monitoring Bodies conclusions refer to migrants⁸. To make the most of this new trend, several actors such as the ILO, UNICEF and the Special Rapporteur of the Commission on Human Rights on the human rights of migrant and many NGOs have called for a "rights-based approach" to migration, or put simply, the integration of human rights principles and labour standards into migration policies. A rights-based approach to migration allows for:

• Prevention

If the absence of human rights is a push-factor for migration, any successful strategy should start by recognizing the key role human rights should play in poverty reduction programmes, in empowering women, in anti-trafficking policies etc. Strengthening the basic rights of women and girls in their home countries reduces the incentive to leave.

• Integration

Exclusion from political, social and civil rights encourages marginalization, negative attitudes towards migrants, cultural tensions and conflicts. Integration is based on equal treatment and should be a two-way process, involving "newcomers" as well as "host societies." The prohibition of discrimination is in the best interests of both migrants and the communities they live in.

⁵. Towards a fair deal for migrant workers in the global economy, International Labour Conference, 92nd Session, 2004, Geneva.

⁶. In this report to the General Assembly on her work between August 2003 and August 2004, Ms. Rodriguez Pizarro (former Special Rapporteur on the human rights of migrants) states there has been "a continuing deterioration in the human rights situation of migrants."

⁷. One central difficulty is the fact that migrants' rights are dispersed between so many different treaties; and the one treaty which brings them together comprehensively - the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families - is not yet widely accepted by States.

⁸. The UN Treaty Monitoring Bodies and Migrant Workers: a Samizdat, edition 2007 to be published, soon available on www.december18.net.

• **Accountability**

Rights cannot go without duties. A rights-based approach to migration therefore implies the elaboration and implementation of a set of rules that is in line with internationally recognized human rights standards and that is adhered to by all: citizens, migrants as well as the States themselves. Accountability and scrutiny needs to be provided for by the national system, as well as through regional bodies, such as the European Court of Human Rights⁹, or international one's such as the UN Treaty monitoring system.

• **Equity**

Human rights are a legal framework developed by states themselves to ensure that all human beings, and in particular their own nationals, are treated within a certain sets of standards wherever they find themselves. As such, they are a tool to ensure equity, and can help diffuse the tensions that arise between states around the movement of people.

• **Effective Policymaking**

Human rights provide a unique framework agreed by states through which they can mediate the conflicting interests of sending and receiving countries, communities and individuals involved in the migratory process. This framework can enhance policy-making by deepening the analysis of the causes of migration such as inequitable global trade, policies that increase poverty and weaken economic and social rights, the effects of corrupt and abusive government, war and environmental degradation.

Case studies: good practise¹⁰

Below are some interesting cases of how governments can tackle migration and provide better conditions to migrants.

• **Countries of origin: Morocco**

The Moroccan Government set up an agency in the northern region of the country to tackle local unemployment and deprivation that caused the mass emigration of young Moroccans. They created a centre for investment and job creation, and promoting training and education.

• **Countries of transit: Mexico**

In 1990 Beta Migrant Protection Groups were created by the Mexican government to protect the physical integrity and property of migrants, both nationals and foreigners, who try to cross the northern border between Mexico and the US, providing services such as first aid, warn potential migrants of the risks, social assistance, lodging and protection from criminal gangs.

• **Countries of destination: Malaysia**

Recently Malaysia took up the initiative to document and register children of migrant workers and to provide all children in the state with unrestricted access to education and health services.

Governments are indeed the primary institutions responsible for ensuring that the proper framework is in place so that labour migration takes place in conditions of dignity. However, the migrant workers themselves, together with concerned citizens and the international community need to be heard so that in the long-term migration becomes an informed choice rather than a survival strategy.

Addressing human rights can never answer all of the questions that arise with respect to migration. But it is necessary to begin "spawning a virtuous cycle, whereby the human rights of migrants are respected; migrants are integrated in host societies and can fully contribute to the development both of the host countries and of their countries of origin"¹¹.



Picture by John Perivolaris

⁹. According to the records rendered by the database of the European Court of Human Rights, condemnations related to migrants' rights (affecting the articles 4,9,14,16 and the protocols 4,6,12) represent more than 30% of the total.

¹⁰. These are just a couple of examples. For a broader list, see: the UN Treaty Monitoring Bodies and Migrant Workers: a Samizdat, edition 2007 to be published, soon available on www.december18.net.

¹¹. Statement of the High Commissioner for Human Rights Louise Arbour, 8th International Conference on National Human Rights Institutions, Santa Cruz, Bolivia, 24 October 2006.