

United Nations Malaysia
Conference on the Challenges of Global Migration and Forced Displacement
~ A Prelude to the High Level Dialogue on International Migration and
Development (HLD) ~

1-2 August, 2006 Kuala Lumpur

The United Nations Country Team in Malaysia, with UNHCR's lead, organized a Conference on the Challenges of Global Migration and Forced Displacement in Kuala Lumpur on 1 and 2 August 2006. Some 150 individuals from different Government agencies, NGOs, academia, the private sector, various UN agencies, IOM, the trade unions and the legal community participated in five panel discussions revolving around selected aspects of the Conference topic. Dato' Param Cumaraswamy gave the keynote address. The Conference was held not least as a prelude to the High Level Dialogue on International Migration and Development and to make a practical contribution to this Dialogue.

The following summary conclusions do not necessarily represent the individual views of participants or of the organisations represented, but reflect broadly the understandings emerging from the presentations and discussions.

Summary Conclusions

The Dimensions and Implications of People on the Move Today

1. Every State has the sovereign power to regulate the admission and stay of non-citizens within its own territory and has a valid interest in resisting irregular migration, as well as combating smuggling and trafficking. Like any other State powers, however, these must be exercised in accordance with international law, including norms that protect the rights of asylum-seekers and refugees.
2. Migration is a complex and multidimensional topic, which is linked, *inter alia*, to development, social and economic policies, as well as human rights. Recognizing the centrality of the human person to the process of migration, it is recommended that human rights cut across all aspects of international migration during the High Level Dialogue on International Migration and Development (HLD).
3. While it is important to maintain a clear distinction between forced displacement on the one hand and labour migration on the other, there is a growing realization that the two intersect. Forced displacement is part and parcel of broader migratory

movements, albeit that forced displacement does require a special protection regime for refugees and asylum-seekers.

4. There is a need for a frank and open discussion amongst all stakeholders involved in migration and refugee issues, and more efforts need to be made to give a voice to civil society within this discussion.
5. Social responsibility practices in the business community need to include labour standards applicable to migrant workers and refugees. Employers need to be accountable for their treatment of migrant workers and refugees; this accountability cannot be made contingent on the legal status of the migrant worker or refugee. Everyone, regardless of their status, is entitled to decent working conditions.
6. Concrete recommendations need to come out of the HLD concerning the types of protection that migrant workers require, and any follow-up to the HLD needs to include the effective participation of NGOs and civil society actors.
7. The root causes of migration and forced displacement need to be analysed in more detail, including the types of policy responses and mechanisms that can be implemented to deal with these root causes. Some possible solutions suggested to address these root causes are poverty reduction strategies, fulfillment of the Millennium Development Goals and appropriately regulated and managed flow of labour across borders. The primary responsibility of refugee-producing countries to remove the causes of forced displacement was also emphasised.
8. A serious dialogue with the media needs to take place about the need for balanced reporting, stressing the positive aspects of migration and forced displacement. These aspects need to be discussed on the basis of a clear moral understanding that the debate concerns human beings who *have* rights, and who have the *right* to have rights.
9. A suggestion was made to compile and analyse the different laws and policies in South East Asian countries that are in place with regard to migrants and refugees and consider how these laws and policies do or do not conform with existing international standards. The common elements in the laws and policies that could underpin an appropriate national migration and refugee protection system need to be identified.
10. Addressing the various migration and forced displacement issues from a human rights-based perspective requires, first and foremost, political will. Accession to

international migrant and refugee instruments needs to be promoted more in Asia, and particularly in South East Asia.

Human Rights, Legal Protection and Social Inclusion

11. A rights-based approach to migration and forced displacement is crucial, and human rights and refugee law and standards provide a balanced and appropriate starting point for such a rights-based approach.
12. The right of abode and asylum is firmly enshrined in Islam, both in the concepts of *Hijrah* and *Aman*.
13. Importance needs to be given to protection of the rights of refugees and migrants through the judicial system.
14. A comprehensive and holistic view of the treatment of non-citizens will acknowledge that the treatment of non-citizens can and does impact on the treatment of citizens. Thus, it is in the best interest of citizens to treat non-citizens with dignity and respect of their human rights. Moreover, it is in the best interest of Governments to acknowledge the human rights of citizens and non-citizens equally in their practice of good governance.
15. The marginalisation of non-citizens constitutes a public ill, which could be addressed through public awareness campaigns and education programmes on the plight of migrants and refugees for the purpose of creating better understanding and empathy.

Human Mobility: Health, Children and Gender Issues

16. Non-discriminatory access to health care is key and needs to cut across the various categories of migrants, refugees and asylum-seekers. Access refers to both formal access as well as practical access and needs to take into consideration the removal of such barriers to access as linguistic difficulties, affordability, logistics, and systemic obstacles (such as requiring healthcare professionals to denounce the presence of irregular migrants to immigration authorities).
17. Equal access to health care means its genuine extension to vulnerable and marginalized groups within a society, beyond citizens.
18. There is a need to balance public safety and human rights considerations. A suggestion was made to consider the possibility of training health providers in

human rights. This could create a better understanding of migrant and refugee patients and ultimately lead to the provision of better services that would be more culturally appropriate to patients' needs.

19. The Convention on the Rights of the Child is a central guide to determining care for children, which requires special measures where attention is given to best interest determination. Particular attention was drawn to Article 22 which deals with refugee children, and Article 37 which deals with the undesirability of detention of children.
20. Primary responsibility for providing health care for both migrants (documented and undocumented) and refugees lies with the State. There is, however, also a responsibility of the corporate sector to provide health insurance to migrant workers and refugees and to ensure that their health care needs are met.
21. Given the particular vulnerability of migrants and refugees to sexual and gender-based violence, it is important to adopt measures to prevent and respond to SGBV, as well as more generally to mainstream gender and age considerations into migration and refugee policies. Family planning and sexual and reproductive health are integral to public health and require special consideration in relation to migrants and refugees.
22. A call was made for a comprehensive study on access to health care for migrants and refugees.

The Socio-Economic Dimensions of Migration

23. A one-size, fits all solution to the complex issue of voluntary and involuntary migration does not exist.
24. There is a clear realization of the economic benefits and contributions migrants and refugees make to countries where they work. Migrants and refugees can be and in most cases are beneficial to the economy.
25. There is a need for coherent migration policies and regional frameworks. These need to ensure a consistent and mutually beneficial mechanism for migration, which addresses the requirements of both sending and receiving countries, while ensuring adequate protection for migrants and refugees. There is a need to move away from ad hoc approaches and towards cohesive, coherent policies at international, regional and national levels.

26. To arrive at such policies, there is a need for an open, frank and transparent dialogue involving all stakeholders to be accomplished through a spirit of partnership where the different partners meet together, discuss and come up with solutions.
27. The regularization of refugee groups present in the territory of host countries is recommended. This process needs to be inclusive and extend to all refugee groups within a country, irrespective of nationality, ethnic or religious background.
28. The ILO Declaration on Fundamental Rights and Principles at Work, entailing the principles of non-discrimination, freedom of association, and bans on forced labour and child labour, is a central guide to determining workers,' including migrant workers' fundamental rights. These standards are constituted by the ILO Conventions 29, 98, 100, 138 and 182 (among others). Appropriate and rights-respecting employment and labour standards are crucial in all circumstances where there is evidence of worker exploitation. Moreover, the promotion and protection of workers' rights needs to extend to migrant workers (both documented and undocumented) and refugees. It is important to do away with prejudices towards the various groups, and build solidarity amongst all workers, citizens and non-citizens, by downplaying differences.
29. There is a need to ensure the right to freedom of association of migrant workers, including through strengthening their unionization. The dialogue to achieve this must start between the Government, the unions and the employers to allow for effective freedom of association of migrant workers.
30. Migration policies will need to control entry and admission depending on labour needs, but this logic does not apply to refugee movements. Minimum standards of treatment need to apply with respect to labour, education and health in all cases.
31. Current policies and practices pertaining to the recruitment and placement of migrant workers need to be reviewed to ensure that they provide a transparent, effective, efficient and economic means of ensuring that the supply and demand sides of labour are met, while also adequately protecting migrants and refugees from exploitation.

Mobility, Governance, Capacity-Building & Dialogue

32. In the migration debate, there is a need for the clarification of terminology and the adoption of common rules which respect human rights.

33. There is an important regional dimension to migration management that needs to cover all aspects of people's movements (labour migration, forced displacement, trafficking, etc.). Such a regional process needs to identify a common legal framework, including the public deposit of bilateral migration agreements as well as to foster the co-responsibility of individual countries.
34. It is important to instil good governance concepts into the migration and forced displacement debate. For instance, a review of foreign labour recruitment and labour policies of countries in the region is urgently needed. Such a review should incorporate human rights considerations and counter-corruption initiatives into business practices of State and non-State actors. In general, there needs to be a zero tolerance policy as regards corruption. Capacity building initiatives need to be increased at all levels in the migration and refugee arena.
35. National human rights institutions can play an important role in migration and refugee issues, including through capacity-building initiatives and the creation of dedicated capacity to respond to migration and refugee issues. Transnational working groups on selected themes of migration and refugee issues involving the various civil society actors are encouraged.
36. Delayed payment of domestic workers, the holding of passports by employers, whipping, and lack of association opportunities need to be averted. It is important to engage and include the law enforcement agencies constructively in protection measures for migrants and refugees. Multinational and national corporations also need to be involved in the dialogue on incorporating protection measures for migrants and refugees in work and business practices. Moreover, issues of statelessness need to be addressed effectively in the migration context.