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Migration, Human Rights and the Rule of Law: why the construct and how it works

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Migration today, and the contention over recognition of migrants' rights, represents a cutting edge of contention between the economic logic of globalization and the moral values embodied in human rights concepts and law.

This contention is marked by acrimonious policy debate in countries North and South and in international conferences. Contentions also reflected here. This morning, comments noted that there has been no progress in last 20-30 years for migrants, that 'those conventions' are either not signed or when signed, nothing is done to implement them, no movement is possible, hegemonic rights constructs must give way to legitimate locally constructed justice regimes, and that what is led and owned by migrants is valid.

The contention over treatment for migrant workers and their families reflects a broader clash between systems and values for governance of society at national and supra-national levels. One pole is a rights-based approach, with primacy of equality of treatment, rights and freedoms for individual and explicit concern for social welfare. In contrast, a contending approach argues for management of societies, of groups within societies. That implicitly means the arbitrary expression of authority by those with management power, emphasis on corporate welfare as the ends and obtaining security as the means.

Today, migration is a central and significant arena of dispute and redefinition between labour and capital, in distribution of benefits deriving from economic activity, in the level of protection and regulation of conditions of employment and work, and in the extent working people –foreign workers in particular-- and civil society can organize to articulate and defend their interests.

Why? Let's situate the today and tomorrow of migration. Today, migrant labour has become a key feature in meeting economic, labour market and productivity challenges in a globalized economy. Migration today serves as an instrument to adjust the skills, age and sectoral composition of national and regional labour markets. Migration provides responses to fast-changing needs for skills and personnel resulting from technological advances, changes in market conditions and industrial transformations. In countries of aging populations, migration offers a potential to replenish declining work forces as well as to inject younger workers, potentially increasing dynamism, innovation and mobility in work forces.

According to the best available UN figures, 214 million people lived outside their country of birth or citizenship in 2010. But that figure measures those who are residing outside. We simply don't have a measure of the millions more who migrate for temporary and seasonal work but return home in the course of any year. The global migration figure simply does not account for short-term temporary or seasonal migrants, such as Uzbek workers in Kazakhstan, Guatemalans in Mexico, Mozambicans in South Africa, Poles in Portugal, Jamaicans in

Canada, to cite a few examples of workers who go by the tens of thousands to usually nearby countries for a few months each year.

Foreign born workers comprise about 10% of labour forces in Western European countries and around 15% in immigration countries of Australia, Canada and the USA. Taking account of the first and second generation offspring of immigrants arrived since the 1960s gives e figures of around 20% of work forces "issue de l'immigration" in Western European countries. In Germany for example, the figure is 19.6%. In Switzerland, it is 30% of work force.

Rising global needs for labour and skills

These numbers are going to get considerably bigger in the next two to three decades. Many Western countries are reaching so called fertility rates of population –.and work force-- free fall. The Russian workforce is now loosing one million persons a year. The population of the Ukraine goes from a peak of 53 million in 1990 to 39 million in 2030 --the same population number as in 1900. The Japanese labour force will shrink 37% over the next 25 years. Qatar has indicated it will recruit an addition 1 million foreign workers from now to 2020. A recent study suggests that Switzerland will need 400,000 additional workers by 2030. And the big one: China's work force will decline by between 126 and 180 million people in less than 20 years.

It doesn't stop there. Algeria, Argentina, Azerbaijan, Brazil, Colombia, Indonesia, Iran, both Koreas, Lebanon, Mauritius, Mexico, Morocco, Peru, Qatar, Saudi Arabia, Singapore, Turkey, Vietnam, the United Arab Emirates --among others-- have reached or are reaching zero population growth rates. In fact Tunisia reached it 6 years ago. A Korean colleague cited a demographer's calculation that if current birth rates continue –without immigration, the Korean population will simply become extinct in 700 years.

What these demographics mean is that we can count on three, even two hands, the number of years before the workforces of each of these countries goes into decline and social security systems into total crisis.

And with what alternatives to migration? In the case of China, only 20% of the expected workforce reduction can be compensated for by increasing female workforce participation, raising retirement age, economic growth and enhancing productivity rates.

So without migration, who will do the work, provide skills and pay social security taxes. While it may **not** be *the* solution, migration is the single response able to provide a major portion of workers and skills required to maintain sustainable economic activity in many countries. And to sustain some equilibrium in social security systems, at least for the time being.

And without restructuring, imposing a strict control regime, how is the labour force gonna be kept in line, under control, and cheap, docile and flexible. Well, speak to that tomorrow. Today, focus on what have in place.

Protection and Governance

When labour moves as it must, it is especially at risk of abuse, exploitation and draconian repressive measures. Those who suffer most are the many persons obeying –often with little choice—the laws of supply and demand of the globalized capitalist market economy. In this situation, the basic dignity and rights of migrants as workers and human beings are undermined, especially those in irregular situations.

This has long presented massive governance issue, locally and globally. In fact, attention to protection of workers outside their countries of citizenship is enshrined in the Treaty of Versailles that ended World War I in 1919.

It has long been implicitly and explicitly acknowledged that the laws of the marketplace tend enhance rather than prevent abuse and exploitation of foreign workers. A comprehensive legal and policy framework on rights protection and migration governance has been built up since the 1920s.

How many of you know when first international conference on migration took place? You say the 1960s? The 1950s? No, it was in 1923, in Italy, where a then major origin country demanded that destination countries come to the table to discuss how Italy's and other countries' migrants were going to get decent treatment when they went abroad, to France, Germany, the UK and the USA in particular. The first Convention on protecting migrant workers was drafted in the 1930s. That was about the time that the US, for example, was putting on trial migrant union organizers for bank robbery and executing them.

Paraphrase from address of HCHR on 20th anniversary of ICRMW:
"The experiences of developed and developing countries showed that reducing exploitation and ensuring equality of treatment are essential for building prosperity, social cohesion and democratic governance. A comprehensive body of law that protects the rights of migrants has been developed over the last century which reflects not only noble principles but also practical experience. History shows that well-being and social peace in nations can only be sustained under conditions of democratic rule with the credibility and enforceability provided under the rule of law.

"The failure to protect vulnerable individuals, as well as impunity for abuses perpetrated against these people, undermines the rule of law and peaceful co-existence. When international standards of protection are deliberately violated or ignored, then almost inevitably the price for societies to pay is an escalation of prejudice and even strife predicated on ethnic or religious divides. This discrimination may create permanently disenfranchised groups whose discontent and frustration could ultimately trigger violent protest which, in turn, is met with counter-violence. Once ignited, such vicious cycle of hatred and retribution is difficult to break.

A RIGHTS-BASED APPROACH

The central notion of human rights is "the implicit assertion that certain principles are true and valid for all peoples, in all societies, under all conditions of economic, political, ethnic and cultural life." Human rights are *universal* - they apply everywhere; *indivisible* - in the sense that political and civil rights cannot be separated from social and cultural rights; and, *inalienable* - they cannot be denied to any human being. This is the basis of the concept of «human rights for all» articulated in the Universal Declaration of Human Rights (UDHR), which codified in a single instrument, norms common to major religious and historical traditions worldwide.

A corollary notion is that universal principles of human rights implemented in the rule of law provide the foundation for governance—governance of nations, of community relations, and of international migration. This notion reflects historical experience that social cohesion and social peace can only be sustained under conditions of democratic rule, which in turn requires the accountability, the credibility and the enforceability provided under rule of law.

Elaboration in normative instruments of "universal" human rights represents the evolution and legal codification of moral values common to world's major religious systems, themselves developed over thousands of years.

These values were increasingly reflected and codified in development of law as nation States emerged and were consolidated as primary political-territorial entities over last two centuries. Declarations of US independence and elaborations of constitutions in both Europe and "New World" made explicit values base foundation of emerging modern States

Reflection of values-based norms in international treaties emerged with development of Red Cross and its codes of humanitarian principles applicable to armed conflict in the mid-19th Century, codes intended to influence

behaviour and legal mechanisms of individual States.

International instruments explicitly establishing principles and defining norms for protection of human and labour rights emerged at the beginning of the 20th century. Among the most notable were principles incorporated in the Treaty of Versailles concluding World War I and establishing the International Labour Organization.

A series of complementary leaps forward occurred during and in the aftermath of World War II with the adoption of the Declaration of Philadelphia in the context of the International Labour Organization in 1944, the foundation of the United Nations System in 1945 and the immediately subsequent elaboration of the Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948.

The Declaration of Philadelphia was elaborated around the fundamental notion that "[A]ll human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity"[1]

While not a binding legal instrument in itself, the UDHR has subsequently been adopted or formally endorsed by nearly all the World's nation-States. It has acquired the legal status of customary international law—generally universally applicable as legal norm.

Two major International Covenants elaborated the principles of the Universal Declaration into binding normative standards on political and civil rights, and economic, social and cultural rights in the 1960s[2]. These Covenants, together with the UDHR, are often referred to as the "International Bill of Human Rights", and generally considered applicable to all human beings. The extension of application of these universal human rights to vulnerable groups has been a long and difficult process.

While the two Covenants were widely ratified, in practice it became evident that the norms of these instruments were not applied to a number of important groups. Despite the premise of the universality of the *International Bill of Right*, practice demonstrated that applicability to groups commonly marginalized in national political and juridical concepts needed to be articulated explicitly to ensure that indeed groups at risk of denial and violations of their rights actually were protected in national law and practice.

As a result, specific conventions explicitly extending the "universal" rights to victims of racial discrimination, women, children, and migrants were elaborated over the three decades from 1960 to 1990: Convention for the Elimination of Racism and Racial Discrimination (CERD), Convention Against Torture (CAT), Convention for the Elimination of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the 1990 Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. (CMR)[3]

These seven instruments --the two Covenants plus the five Conventions cited above-- have been characterized as the seven fundamental human rights instruments that define basic, universal human rights and ensure their explicit extension to vulnerable groups world-wide.[4]

In the field of those rights applying specifically to workers and work-places, the ILO Declaration of

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1 Op sit

2 International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights

3 Texts and status of ratifications of these conventions are available on the website of the Office of the UN High Commissioner for Human Rights, at: www.unhchr.ch

4 Noted in the Report of the (UN) Secretary General on the Status of the UN Convention on migrants rights for the 55th Session of the UN General Assembly. Doc. A/55/205. July 2000

Fundamental Principles and Rights at Work of 1998 was another step in the direction of insisting that there are certain –values-based—principles and specific norms that apply to all States, whether or not they have ratified the specific Conventions. The Declaration establishes respect –and reporting on compliance—regarding these principles and specific normative instruments as a function of membership in the organization –which counts 178 Member States, nearly the entire UN Membership.

A rights-based approach to migration is placement of universal human rights norms defined by the relevant international instruments as central premises of national migration legislation, policy and practice founded on the rule of law. Application of these norms is conditioned by historical, economic, social and cultural factors.

MIGRANT SPECIFIC INSTRUMENTS

Three fundamental notions characterize the protections in existing international law for migrant workers and members of their families.

1. Equality of treatment between regular migrant/immigrant workers and nationals in the realm of employment and work.
2. Core universal human rights apply to all migrants, regardless of status. This was established implicitly and unrestrictedly in ILO Convention 143 on Migration for Employment (supplemental provisions) of 1975 and later delineated explicitly in the 1990 International Convention on the Protection of Rights of All Migrant Workers and Members of Their Families.
3. The broad array of international standards providing protection in treatment and conditions at work – safety, health, maximum hours, minimum remuneration, non-discrimination, freedom of association, maternity, etc.—apply to all workers. This notion was upheld in an Opinion issued by the Inter-American Court on Human Right in 2003.[5]

Elaboration of specific international normative instruments on migrant workers actually dates to the 1920s. A first international treaty addressing treatment of foreign workers was established under ILO auspices in 1937. However, the economic and political turmoil that built up into World War II precluded promotion and adoption by more than a handful of States.

In 1949, the year after adoption of the Universal Declaration of Human Rights and two years before establishment of the 1951 International Convention on the Status of Refugees, the first widely implemented instrument on migrant workers was adopted by the ILO, and subsequently ratified by an important number of both host and home States of migrants in the 1950s and 1960s.

The ILO Migration for Employment Convention of 1949 (No. 97) established equal treatment between nationals and regular migrants in areas such as recruitment procedures, living and working conditions, access to justice, tax and social security regulations. The ILO Migrant Workers (Supplementary Provisions) Convention of 1975 (No. 143) took law on international migration further by establishing norms to reduce exploitation and trafficking of migrants while insuring protections for irregular migrants, and to facilitate integration of regular migrants in host societies.

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[5] Corte Interamericana de Derechos Humanos: *Condición Jurídica y Derechos de los Migrantes Indocumentados.* Opinion Consultativa OC-18/03 de 17 de Septiembre de 2003, solicitada por los Estados Unidos de Mexico. In its conclusions, "The Court decides unanimously, that…the migrant quality of a person cannot constitute justification to deprive him of the enjoyment and exercise of his human rights, among them those of labor character. A migrant, by taking up a work relation, acquires rights by being a worker, that must be recognized and guaranteed, independent of his regular or irregular situation en the State of employment. These rights are a consequence of the labor relationship."

The content of ILO Conventions 97 and 143 formed the basis for drafting the 1990 International Convention on migrant workers, which expanded and extended recognition of economic, social, cultural and civil rights of migrant workers rights.[6]

The necessary framework for national law on migration in all countries is amply laid out by these three complementary instruments. Together, the two ILO conventions on migration and the 1990 International Convention comprise an ***international charter on migration*** providing a broad normative framework covering treatment of migrants and inter-State cooperation on regulating migration.

Eight points describe the importance of these three Conventions:
1 They establish comprehensive "values-based" definitions and legal bases for national policy and practice regarding non-national migrant workers and their family members. They thus serve as tools to encourage States to establish or improve national legislation in harmony with international standards.

2 They lay out a comprehensive agenda for national policy and for consultation and cooperation among States on labour migration policy formulation, exchange of information, providing information to migrants, orderly return and reintegration, etc.

3 The 1990 International Convention further establishes that migrant workers are more than labourers or economic entities; they are social entities with families and accordingly have rights. It reinforces the principles in ILO migrant worker Conventions on equality of treatment with nationals of states of employment in a number of legal, political, economic, social and cultural areas.

4 ILO Convention 143 and the 1990 Convention include provisions intended to prevent and eliminate exploitation of migrants, thus reinforcing the 'decent work' agenda defined by International Labour Standards, nearly all of which apply explicitly or implicitly to all migrant workers.

5 ILO Convention 143 and the 1990 Convention explicitly address unauthorized or clandestine movements of migrant workers, and call for resolving irregular or undocumented situations, in particular through international cooperation.

6. These Conventions also resolve the lacuna of protection for non-national migrant workers and members of their families in irregular status and in informal work by providing norms for national legislation of receiving states and their own states of origin, including minimum protections for undocumented or unauthorized migrant workers.

7 While the three Conventions address migrant workers, implementation of their provisions would provide a significant measure of protection for other migrants in vulnerable situations, such as victims of trafficking.

8 The extensive, detailed and complementary text contained in these instruments provides specific normative language that can be incorporated directly into national legislation, reducing ambiguities in interpretation and implementation across diverse political, legal and cultural contexts.

For the record, a total of 85 different States have ratified one or more of these three complementary standards as of May 1 2006[7]; 11 member States of the European Union have ratified one or both ILO conventions.[8] With 16

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[6] Texts and related information available respectively at www.ilo.org/ilolex and www.unhchr.ch

[7] At December 2008, the ILO Migration for Employment Convention No. 97 of 1949 is ratified by 48 countries, the ILO Migrant Workers (Supplementary Provisions) Convention No. 143 of 1975 is ratified by 23 countries; and the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families ratified by 40 countries and signed by 14 others. A number of States have ratified both of the ILO Conventions; several have ratified one or both ILO Conventions plus the 1990 International Convention.

additional signatories to the UN Convention (signing is a preliminary step to ratification), it can be anticipated that some 90 States will have adopted some level of international standards as the basis of national law and policy within the next two to three years.

Entry into force in 2003 of the 1990 Convention allowed it to be cited as an authoritative standard, and thus may exercise strong persuasive power over non-party States as well, even though they have not agreed to be bound by its standards. While most States Party to this Convention are primarily countries of origin of migrants, several ratifying States have large migrant and immigrant populations on their territories, meaning substantial responsibilities for domestic implementation. Other States have utilized provisions in the 1990 Convention as a guide to elaborating national migration laws. A notable example is Italy, which based much of its comprehensive national migration law adopted in March 1998 on the provisions and standards of the 1990 Convention. A recent legal study concluded that Belgian law is almost entirely in conformity with the main provisions of the 1990 Convention, meaning few legal hurdles to ratification.[9] Indeed, Belgium, along with Italy, Spain and Portugal are among a number of countries which ratified years ago both ILO migrant worker conventions.

Nonetheless, the slow progress in ratifications of the 1990 International Convention on migrants' rights and the absence of new ratifications of the ILO Conventions in the last decade symbolize a broader political resistance to recognition of application of human rights standards to migrants, particularly undocumented migrants.

Rights and social protection carry costs, an implication which confronts the logic of globalized economic competition. Opposition to wider ratification of this Convention reflects pressures to restrict rights and corresponding labour costs of a now internationalised reserve army of labour in order to ensure that it remains cheap, docile, temporary and easily removable when not needed.

The absence of protection of human rights and the denial of social protection for a part of society carries potentially enormous costs for economic progress and social cohesion for societies as a whole- whether individual nation states or wider in the context of wider international relations today.

As the ILO put it, "A rights-based international regime for managing migration rests on a framework of principles of good governance developed and implemented by the international community that are acceptable to all and can serve as the basis for cooperative multilateral action. Existing international Conventions defining the rights of migrant workers provide many of the needed principles, but a sound framework would have to include principles on how to organize more orderly forms of migration that benefit all.[10]

7. ELEMENTS FOR A POLICY AGENDA

It has become evident that providing protection for migrants is bound up in the challenges of ensuring that migration benefits both home and host countries as well as migrants themselves.

A basic foundation of regulation is required to manage capital-labour relations in general and specific features such as labour migration. Ad hoc, market and individual State measures simply don't provide adequate, workable regulation of what is by definition a complex, international phenomenon highly subject to exploitation and conflict.

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8 Belgium, France, Germany, Italy, Netherlands, Norway, Portugal, Slovenia, Spain, Sweden, and the United Kingdom

9 M-Cl. Foblets, D. Vanheule and S. Loones: *De Internationale VN - Conventie van 1990, Rechtsevolgen van een Belgische ratificatie; een verkennende studie*. K. U. Leuven and University of Antwerp. 2003. Only in Dutch; .available online at www.december18.net/web/general/d-VNconventiestudie.PDF

10 Executive Summary: *Towards a Fair Deal for Migrant Workers in the Global Economy*. International Labour Conference 92nd Session June 2004. Report VI.

Governance, policies and administration of phenomena that affect economic performance, industrial relations and social cohesion require a foundation in the rule of law to ensure credibility, accountability and enforceability. Nonetheless, international legal standards provide only a basic grounding for policy and practical measures necessary both to protect migrants and regulate migration.

International dialogue on migration has increasingly focused in recent years in identifying common approaches among States in regulating what is by definition a phenomena requiring international cooperation. A decade ago, delegates of some 160 countries agreed upon a comprehensive common agenda in the chapter on migration of the Plan of Action adopted by the 1994 International Conference on Population and Development (ICPD) in Cairo. More recently, regional migration dialogues, the Berne Initiative's International Agenda for Migration Management (IAMM), and the Global Commission on International Migration[11] have continued discussions and elaborated common approaches.

A vital contribution was adoption of Conclusions and a **Plan of Action on migrant workers** at the 2004 International Labour Conference in Geneva.[12] Those Conclusions outline a comprehensive approach to regulating labour migration from a rights based approach in the context of labour market and employment considerations. Especially significant was their adoption unanimously by ministerial level government representatives and leadership of trade union and employer federations from the 177 ILO member countries. Equally important is that there are a normative system, institutional structure, organizational competence and constituent engagement behind this Plan of Action to see to its effective implementation. Following this Plan of Action, ILO has subsequently elaborated a comprehensive Multi-lateral policy Framework for Labour Migration from a rights' based approach that takes into account labour market concerns and sovereignty of States.[13]

Summarizing this framework and provisions of the complementary ICPD and Berne Initiative outcomes, echoed by the recent Global Commission on International Migration report, I highlight eight main components of the migration policy agenda required to ensure that migration benefits host and home countries and the migrants themselves:

1) <u>A standards-based foundation for comprehensive national migration policies and practices.</u>
Migration policy and practice can only be viable and effective when they are based on a firm foundation of legal norms, and thus operate under the rule of law.

As noted above, the three instruments comprising an ***international charter on migration*** provide the normative framework and specific model legislative language required to establish a basis for national policy. A major point of establishing legal rights and legislative policy standards is to ensure social legitimacy and accountability, only guaranteed by a policy foundation in the rule of law.

2) <u>An informed and transparent migration policy and administration</u>
Immigration practice must respond to measured, legitimate needs, taking into account domestic labour concerns as well. Such a system must rely on regular **labour market assessments** to identify and respond to current and emerging needs for workers, high and low skilled. Policy and practice will need to address such areas as awareness raising, supervision of recruitment, administration of admissions, training of public service and law enforcement officials, recognition of educational equivalencies, provision of social and health services, labour inspection, rights restoration and recovery for victims of trafficking, and other areas.

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11 See final report of the GCIM at: www.gcim.org/en/finalreport.html

12 ILO: *Resolution and Conclusions on Migrant Workers.* International Labour Conference. 92nd Session. Geneva, 2004. Available on line at: www.ilo.org/migrant/download/ilcmig_res-eng.pdf

13 Multi-lateral policy Framework for Labour Migration. ILO. Geneva. 2006. Available on line at: www.ilo.org/migrant/download/tmmflm-en.pdf

3) Institutional mechanisms for dialogue, consultation and cooperation

Migration policy can only be credible, viable and sustainable to the extent it takes into account the interests, concerns and experience of the most-directly affected stakeholders. Key stakeholders are the social partners: the employers and businesses that provide employment and the trade unions –worker organizations—representing the interests of workers, both migrants and nationals. Labour ministries need to have a key role. Of course, consultation and policy-making must also take into account the multiple concerned ministries and agencies within government as well as concerned civil society bodies and certainly migrants themselves.

4) Enforcement of minimum national employment conditions norms in all sectors of activity

Preventing exploitation of migrants, criminalizing abuse of persons that facilitates trafficking, and discouraging irregular employment requires enforcement of clear national minimum standards for protection of workers, national and migrant, in employment. ILO Conventions on occupational safety and health, against forced labour, and on discrimination provide minimum international norms for national legislation. A necessary complement is **monitoring and inspection** in such areas as agriculture, construction, domestic work, the sex industry and other sectors of 'irregular' employment, to prevent exploitation, to detect forced labour, and to ensure minimal *decent work* conditions for all.

5) Gender sensitive migration measures

The feminization of migration and the predominance of abuse of women migrants require recognizing gender equality as integral to the process of policy-making, planning and programme delivery at all levels.

6) A Plan of Action against discrimination and xenophobia

Discrimination and xenophobic hostility against migrants are serious challenges to governance and social cohesion in every region of the world. ILO research has found discrimination rates of 35% against regular immigrant workers- unlawful discrimination- across Western Europe.[14] The 2001 World Conference in Durban articulated a major component of national policy on migration by defining a comprehensive and viable model plan of action specifically to combat discrimination and xenophobia against migrants at national, regional and global levels, based on common experience from different regions.[15]

7) Linking Migration and Development in Policy and Practice

Migration has long been and continues to generate significant contributions to both development and social progress and welfare in home and host countries alike. However, such contributions will certainly be enhanced by a broad array of policy measures ranging from reducing costs and constraints on transfer of migrant remittances to providing accessible mechanisms for regular migration and recognition of employment contributions of all labour migrants.

8) International Consultation and Cooperation

Formalized mechanisms of regular dialogue and cooperation among States-- including participation of concerned stakeholders-- are essential in all regions. Of particular note are expanding legal and operational regimes for freer circulation of labour/persons across regional economic integration initiatives in several world regions, including the Andean Community, Mercosur, and the East Africa Community as well as the European Union.

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[14] See F. Bovenkerk, M. Gras and D. Ramsoedh, (1995); A. Goldberg and D. Mourinho(1996); Colectivo IOE, (1996); M. Bendick Jr (1997); B. Smeesters and A. Nayer (eds.)(1998).

[15] Main elements were established in the *Declaration and Program of Action* adopted at the World Conference Against Racism and Xenophobia (WCAR) in Durban in 2001, which included 40 paragraphs on treatment of migrant workers, refugees and other non- nationals. The full text is available at: www.unhchr.ch/pdf/Durban.pdf See also www.unhchr.ch/html/racism/00-migra.html for related documents and links.

8 CALL FOR ACTION

The salient obstacle to wider ratification of the three migrant workers Conventions remains a lack of political will by States to extend basic human and labour rights protections to foreign workers. However, efforts to promote awareness and ratification of this and the complementary ILO Conventions have also been minimal.

It is clear that, given enormous economic and political interest in inaction, change in policy will only come about when significant political and social pressure is generated for adoption of a 'rights-based approach' by governments.

The record of civil society organizations leaves still much to be desired. Most CSOs concerned with migration issues are nationally based and focused; regional formations have emerged modestly in Asia, Central America and Europe. Only in the last decade have major international human rights monitoring organizations --Human Rights Watch, Amnesty International, etc.—given substantial attention to migrants rights. With the notable exception of the concerted effort around the Durban World Conference Against Racism and Xenophobia (WCAR) and campaigning for the 1990 Convention, the center of gravity of CSO discourse remains on denunciation of conditions and government inaction on lack of protection of human rights of migrants.[16]

It is time to come together and act on promoting migrants rights and the adoption of the governance instruments that make that protection real and enforceable, on advocating for governance regimes that make for environments of equality of treatment, democratic participation and social well being, and organizing especially the unorganized to create the pressure necessary to build and sustain a rights based approach to migration in all countries.

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[16] For ample information on evolving civil society activity worldwide on migrants rights and around International Migrants Day, see December 18 network website at www.december18.net