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TRANSNATIONAL NGO INVOLVEMENT IN THE NEW AGE OF MIGRATION: BUILDING A FRAMEWORK FOR THE PROTECTION OF THE HUMAN RIGHTS OF UNDOCUMENTED ECONOMIC MIGRANTS

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This paper explores ways for transnational non-governmental organizations (TNGOs) to deepen their involvement in international, multilateral debates on undocumented international labor migration. It also addresses how TNGOs can promote policies that uphold migrants' human rights in this new age of migration. The first section presents an analysis of the scope of international migration and recent changes in global migration patterns. It then outlines state-level responses to undocumented labor migrants and the inadequacy of national regulatory mechanisms. The second section addresses regional forums in which migration policies are devised, before focusing on United Nations' international treaties and protocols that attempt to safeguard the rights of undocumented international migrants. This section concludes that policies created in these multilateral forums do not sufficiently protect the rights of migrants. The final section presents an alternative approach, one that requires a concerted effort among global TNGOs, to collaborate in launching a campaign for the human rights of undocumented migrants. As a starting point, the International Convention on all Migrant Workers and their Families (ICMW) provides an excellent opportunity for advocacy.

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I. INTRODUCTION

Whether or not one believes that globalization is a new phenomenon in international relations, the changes wrought by its current phases over the past three decades cannot be discounted. Labor migration is not a new facet of the international economy, and since the 1960s, growth in international migration has remained slight relative to the population. However, there has been a transformation in the patterns and policies of international migration. These changes have been accompanied by the widespread perception that national governments or international bodies cannot cope with the rapid growth of international migrants or “a person who voluntarily and for personal reasons, moves from his or her place of origin with the intention to establish residence without being compelled to do so” (IOM 2003, 9). As the proportion of migrants who are undocumented, or those “without legal status in transit or host country owing to illegal entry or the expiry of his or her visa” grows, host governments and their citizens increasingly view the issue of migration with urgency (IOM 2003, 10). Receiving and sending nations are reluctant to afford rights to this burgeoning group of migrants, resulting in the heightened marginalization of undocumented migrants in host countries. Therefore, new debates are emerging among scholars, policy-makers, and human rights groups that question the suitability of traditional migration regulation policies and their effectiveness in protecting undocumented labor migrants’ human rights.

Not only have state-level policies proven inadequate in securing rights, multi-lateral approaches to migration policy have also failed to draw attention to human rights issues. For example, regional consultative processes on migration (RCPMs), a particularly popular means of creating supranational migration policies, tend to favor the policy preferences of wealthy receiving countries while avoiding discussions of rights. The United Nations (UN) has

approached the issue directly, but as yet has been largely unsuccessful in compelling states to reform their migration policies. Given the persistent absence of protections for undocumented labor migrants in state, regional and UN policy forums, this paper addresses the need for rights-based transnational non-governmental organizations (TNGOs) to deepen their involvement in international, multilateral debates that advocate for a human rights approach to irregular labor migration policy. TNGOs are chosen here as the main actor in promoting a progressive campaign because they often operate from outside of the state system. Thus, these organizations can more effectively advocate for change by launching campaigns that expose the plight of migrants while obliging nations to address consequent public opinion. Although to date, TNGOs have been slow to coalesce on this issue, the International Convention on all Migrant Workers and their Families (ICMW) that recently came into force provides an ideal opportunity for TNGOs to advocate for a rights-based approach. TNGOs have a long and rich history of working towards the endorsement of human rights legislation and the ratification of UN treaties. Thus, they are particularly well-placed to avail themselves of the opportunity that the ICMW affords.

The first section of the paper explores the scope of international migration and recent changes in global migration patterns. It then addresses some of the challenges irregular international labor migrants presumably impose on receiving and sending nations, the state-level responses to these challenges, and the underlying interests and objectives behind current regulatory mechanisms at the national level. This analysis demonstrates that states have not incorporated a human rights perspective in migration policies and, in fact, that state policies tend to intensify the vulnerability of undocumented migrants.

Although states are often the traditional venue for migration policies due to the current character of global migration patterns and the inability of states to account for these trends, multi-lateral responses to migration have become more imperative. Therefore, the second section examines the necessity of regional and international cooperative efforts, the current mechanisms that exist for such collaboration, and the outcomes of multi-lateral efforts to date. While these forums are an important step towards more appropriate responses to migration, the resultant policies have yet to sufficiently encourage states to advance human rights concerns.

The final section offers an alternative approach for incorporating human rights concerns into the migration policies of states. It promotes the involvement of TNGOs in altering perceptions of undocumented international migrants and in disrupting dominant paradigms in search of more appropriate regulatory mechanisms. This section reviews TNGOs' involvement in calling for a human rights approach to migration and offers recommendations on how these groups could better challenge the status quo through the framework provided by the ICMW.

II. SECTION I: UNDOCUMENTED INTERNATIONAL MIGRANTS AND STATE POLICY

Current Trends in Migration

Before appraising state-level migration policies, one must first comprehend the current nature of international migration. Analyzing the scope of global movement is daunting. The IOM notes that there are 175 million international migrants, accounting for about three percent of the world population. Although this rate has remained relatively stable since 1965, governance institutions feel that they are unable to manage the current numbers of migrants (Appleyard 2001). Changes in the dynamics of migration compound this sense of unwieldiness. The distinction between sending and receiving nations has become blurred, as many countries are

now known for both designations (IOM 2003). Furthermore, a single route no longer dominates migration. Whereas previous migration patterns were long-term and unidirectional, from the global south to the north, more than half of international migrants now travel between southern nations in a circulatory fashion and for short periods of time (ILO 2004; Widgren and Martin 2002). Another trend is the growing number of female labor migrants; women now constitute about half of all international migrants (ILO 2004). Finally, concurrent with the global rise in undocumented labor migration, trafficking and smuggling networks are increasingly dominating avenues for migration (von Koppenfels 2001; UN Secretariat 1997 in Appleyard 2001; ILO 2004; Papademetriou 2003).

The primary reasons that people migrate today include “economic development and its disparities, population trends, the existence of migratory networks, access to information, the ease of travel today, armed conflicts, environmental deterioration and human rights violations” (IOM 2003, 4). Although there are many non-economic reasons that factor into one’s decision to migrate, this paper focuses on undocumented labor migrants whose motivations are primarily driven by economic concerns. A focus on undocumented labor migrants is chosen due to their heightened exposure to human rights infringements and thus their dire need for protections. In order to understand the motivations of their migrations, the subsequent placement of migrants in host societies, and the vulnerabilities they face, the next section briefly outlines the economic conditions that encourage the undocumented migration of “low-skilled” laborers from nations of the global south.

Economic Factors Compelling Migration

There are numerous economic push factors that compel people to migrate for low-wage employment. Many argue that migration has become an increasingly important means of survival in the face of “a neoliberal form of globalization that intensifies competition between localities, weakens social safety nets, and generally increases socioeconomic instability” (Nevins 2001, 140). Since the 1970s, globalization and the attendant focus on economic liberalization have engendered greater levels of poverty among certain segments of the population. For one, structural adjustment programs (SAPs) often require nations to liberalize their economies, devalue their currency, and reduce government expenditures on social services, such as healthcare and food subsidies. The consequences of these policies place a greater burden on families to find alternative approaches to meeting economic needs. The results are particularly disastrous for those already marginalized, specifically women and children (Ehrenreich and Hochschild 2003).

As countries liberalize their economies and southern nations move towards export-oriented means of growth, many poorer nations are unable to protect and create opportunities for their domestic workforce (Pettman 1996). Protectionism in agriculture, textiles, and garments in the north may undermine industrial and agricultural production in the south (Widgren & Martin 2002). Some nations that have implemented SAPs have found that job creation does not meet the job losses associated with these policies (ILO 2004). Moreover, technological innovation in industries around the globe has led to mechanization and computerization, precipitating unemployment and the creation of “obsolete” labor (Taran 2001). Technology also facilitates migration by providing information and reducing travel costs (Annan 2003; ILO 2004).

At the same time, although foreign direct investment (FDI) is increasing, ninety-eight percent is concentrated in middle and upper income countries, and a significant proportion is

incorporated in capital intensive, as opposed to labor intensive, industries (Taran 2001). This shift results in greater wealth for middle and upper income countries and relative stagnation and surplus labor in poor nations.

Swelling demographic pressures also have detrimental effects on economies in the south. The annual population growth rate in countries of the global south is about six times that of the global north, respectively at rates of 1.5 and 0.25 percent. A staggering 97 percent of global births are located in developing countries (ILO 2004). Unfortunately, there are few indicators that this discrepancy in birth rates is likely to significantly diminish in the near future. Population density in the global south is another potential concern. Currently, there are approximately 51 individuals per square kilometer in low- and middle-income countries, whereas in higher income nations the rate remains at about 29 individuals per square kilometer (ILO 2004). These trends, along with other aspects of economic liberalization, have accelerated the division of labor at all scales and widened income differentials between nations (ILO 2004). As a result, people from low-growth regions are pressured to move where opportunities lie.

Finally, the European Commission notes that the marginalization of women in source countries is one of the greatest contributing factors of international migration (in Demir 2003). Women and their minor dependents constitute about 70 percent of the 1.3 billion of the world's absolute poor (European Women's Lobby in Demir 2003). Cultural and societal trends have generally regarded women as responsible for producing alternative sources of income when overall standards of living decline. Additionally, some industries favor hiring women because of perceptions of their tolerance of lower pay and more exploitative conditions, submissiveness, acquiescence to flexible labor schemes, and willingness to relinquish particular human rights in exchange for a job (Nagar, et. al. 2002). For these reasons, women constitute a growing

percentage of international migrants; a trend labeled the “feminization of international labor migration” (Ball and Piper 2002).

Regulations and Policies at the National Level

The conditions that compel people to migrate irregularly raise questions about the international division of wealth and labor, and consequent infringements of human rights. Clearly, the current global economic system fails to create just divisions of wealth across gender, race, ethnicity, and nationality, and fails to provide a sufficient standard of living for all individuals. Unfortunately, when undocumented migrants attempt to utilize the best options they have for sustaining their livelihoods by migrating internationally for low-wage employment, they can face even greater exploitation. Without adequate human rights protections, the process of migration and immigration can exacerbate the vulnerability that is inherent in being at the losing end of global economic trends. Since the 1950s, immigration policies in traditional host countries have favored highly-skilled, relatively wealthy migrants (Appleyard 2001), and from the 1980s and 1990s, national immigration policy in OECD states tends to focus on the control, management, and cessation of migration and refugee flows. Consequently, receiving nations have adopted tough sanctions and regulations to discourage undocumented immigration, resulting in the treatment of illegal labor migrants as criminals and social deviants devoid of important human rights (Bhagwati 2003). After 9/11, migration policies in the U.S. and Europe have accelerated this trend by narrowly focusing on security, illegal immigration, and law enforcement (Ghosh 2003; Spencer 2003).

However, due to the significant economic pressures to migrate, these policies are largely ineffective at stemming migration flows. In fact, Kofi Annan stated that such policies are likely

to result in violations of human rights (2003 in ILO 2004). In light of this information, what are the benefits of these regulations? According to Sharry, “despite the hardship these policies cause in immigrant communities, the damage they inflict on democratic institutions, and their utter failure to reduce unauthorized migration, these hard line tactics are at least effective in managing domestic public opinion” (2000, 125).

Since the 1990s, populist, right wing politicians in the United States and Western Europe have been successful at galvanizing anti-immigrant sentiments. Although some believe this trend is changing (Nevins 2001), others believe that, with the initiation of the post-9/11 war on terror, the xenophobic and intolerable sentiments resulting in and stemming from anti-immigration rhetoric have become a greater threat to the security of migrants (IOM 2003; Papademetrio 2003). The rationale provided to support anti-immigrant rhetoric directed at undocumented migrants is manifest in four central assumptions, all of which reflect inaccuracies.

First, the implicit notion that their status as ‘illegals’ reflects social deviance is highly misleading. There is no evidence that irregular migrants involve themselves in more criminal activities than citizens (Schloenhard 2001). In fact, studies have shown that immigrants are less likely to commit crimes, but are more likely to be victims of crime than their citizen counterparts (Taran 2001).

A second fallacy is that immigrants are a burden on the welfare system in receiving countries. Yet there is no evidence that this is the case in the long term. In fact, undocumented migrants might contribute more to the state than they receive because, while they are often reluctant to claim welfare benefits for fear of being deported, they are often simultaneously subject to taxation (ILO 2004).

Similarly, a third misconception is that the economy of the receiving country suffers as a result of immigrants “stealing” jobs or depressing the wages. However, studies show a weak relationship between the numbers of migrants and reductions in domestic wages and employment opportunities (Kleinman 2003; ILO 2004). According to many economists, migration has a slight, but positive affect on the economies of receiving countries in the long-term because “at the most basic level, immigrants increase the supply of labor and help produce these new goods and services...since they are paid less than the total value of these new goods and services, domestic workers as a group must gain” (Smith and Edmonston in Kleinman 2003, 61). Labor migrants can also alleviate the troubling demographic deficit that currently exists in the global north. Workers in many developed nations are facing a considerable predicament as their growing post-retirement populations seek support from a declining domestic workforce. Permitting immigration can be one small measure alongside many others that can help provide for aging populations without resulting in unreasonable tax burdens on younger workers (Kleinman 2003; Papademetriou 2003).

Finally, there is a growing dearth of particular types of unskilled labor in the global north (Annan 2003). Despite unemployment, many in the north reject “unskilled” and service industry jobs due to the low status such positions confer. Many citizens also consider these low-wage occupations unattractive due to “geographical mismatch...barriers to employment (such as transportation and childcare costs), and some aspects of the benefit system” (Kleinman 2003, 67). Among migrants, these concerns seem to be outweighed by the potential benefits offered by employment in the north. Therefore, migrants can subsidize the economy by offering to take employment in these less desirable occupations. Of course, this trend has disadvantages. Certainly, host countries should not welcome migrants solely to support industries that secure

competitive advantages through hiring very low wage immigrant workers on a temporary basis in lieu of pay increases. Such a focus on migrants' roles in the economy can also obscure the significant social and cultural benefits that migrants can bring to a country. Regardless, it is important to acknowledge that the contention among anti-immigration advocates that migrants steal domestic jobs is highly inflated.

Many states do acknowledge the need for international migrant laborers and, in fact, some states actively seek to attract such workers to fill low-wage, low-status jobs. Regrettably, these same states often refuse to legalize migrant workers' status. Such policies enable governments to avoid obligations that confer rights, affording them more control over migrants. Therefore, irregular migrants and their children are frequently unable to fully exercise their social and political rights -- particularly in terms of procuring adequate healthcare, education, and employment opportunities (Ghosh 2003). Further, when the national economy faces a downturn, migrants can easily become scapegoats, subject to arrest and deportation (Taran 2001).

Concurrently, sending countries rely upon migrant remittances to ease the domestic pressures of unemployment and poverty. Despite the potentially negative impacts of remittances on economies, governments tend to view them positively (ILO 2004), and depend on them substantially. In 1999, official and unofficial remittances were valued at U.S. \$100 billion a year globally (IOM 2003), constituting the second largest source of external funding for southern nations (ILO 2004). States frequently facilitate migration and remittance-return programs to harness this resource (ILO 2004). Despite their economic importance, countries do not always strive to provide migrants with basic protections; "poor state dependence on remittances compounds domestic workers' vulnerability through lack of protection from their embassies,

whose responsibility to safeguard their citizens' interests is compromised by concern to maintain the wider trade and aid from these richer states" (Pettman 1996, 191).

One should now be reaching a rather worrying conclusion about the current face of immigration. While international economic trends are escalating pressures to migrate, wealthy states are enacting stricter policies that criminalize a great number of irregular migrants. If discovered in the destination country, irregular migrants are frequently threatened with deportation. This fear leaves irregular migrants silent and vulnerable with few means of recourse in the case of abuse. Impoverished individuals who lack legal means to migrate legitimately may also rely upon criminal networks of smugglers to make their way across borders. As migrants are often unable to pay for these services, they can become debt-bound and susceptible to exploitation and abuse. Further, "the gap between strict immigration policies and the need for migrant labor provides a perfect environment for trafficking" (Jordan 2002, 29). It is estimated that anywhere from 700,000 to four million individuals are trafficked internationally each year (Demir 2003). Unfortunately, smuggling and trafficking networks are surprisingly prevalent and criminal groups organize an estimated ten to fifty percent of all illegal migration (Schloenhardt 2001).

Women are the most disadvantaged in this arrangement. Often hit the hardest by the onset of economic troubles, women depend on access to wage-labor. When migrating internationally to meet this need, they are more reliant on trafficking and smuggling networks than men because they are less likely to afford more legitimate routes (ILO 1998). Further, cultural stereotypes, physical attributes, and traditionally lower levels of education among women often result in women's heightened vulnerability to exploitation and abuse. This is an especially precarious position when women are migrating or employed illegally abroad.

Government officials, policy makers, and scholars often agree that migration is a positive development for both sending and receiving countries. Yet severe restrictions on immigration persist, and consequently the human rights of migrants are rarely protected; in fact, state policies often jeopardize the ability of undocumented migrants to exercise these rights. Receiving countries' perception that irregular migration is becoming out of control and their resulting application of increasingly harsh regulatory measures is partly a response to the consequences of their own policies (Nevins 2001). In criminalizing the status of these workers without actually hindering migration flows, countries have merely pushed workers into the informal economy, thus compounding the problem. Due to state intransigence to incorporate rights for undocumented economic migrants, and arguably their complicity in infringing upon them, one must consider alternative policy arenas, outside of the state, that offer additional opportunities for change.

III. SECTION II: REGIONAL AND INTERNATIONAL RESPONSES TO INTERNATIONAL MIGRATION

Since the 1990s, there has been considerable governmental cooperation with regard to international migration policy, as multilateral efforts replace bi-lateral approaches (IOM 2003). These cooperative processes are a positive development for a number of reasons. Perhaps most obvious, international migration is less of a bilateral issue today as it increasingly involves more than two countries and the majority of migrants tend to travel intra-regionally (von Koppenfels 2001). Whereas in previous periods, considerable migrant flows originated from a limited number of countries and were destined for a limited number of host nations, "immigration streams now originate from virtually all states, making the flows truly global" (Papademetriou 2003, 43). Moreover, multilateral processes have become vital as transnational smuggling and

trafficking networks with global scope become more prevalent. Finally, countries are finding it more difficult to tackle the problems of migration and therefore realize that going it alone is not the best option in today's world.

Regional Consultative Processes on Migration (RCPMs)

Over the past ten years, regional consultative processes on migration (RCPMs) have become popular forums for developing multi-national migration policies (IOM 2001; von Koppenfels 2001). Currently, they exist in most regions of the world. Well-known RCPMs include the Commonwealth of Independent States (CIS), the Puebla Regional Consultations on Migration, the Asia-Pacific Consultation on Migration, the Dakar Process, the Migration Dialogue for Southern Africa (MIDSA), the Conference on Migration Policy in Central Asia, the Caucuses and Neighboring States, and the Lima Process.

RCPMs are characterized by a number of positive features. The meetings are relatively informal and the non-binding nature of agreements accords states the freedom to more candidly discuss migration issues while also fostering relationships that might not develop in more official processes. Further, the informality of the process enables states to be flexible in responding to shifting patterns of migration. Finally, RCPMs enable governments to share migration information with one another, thereby creating the grounds for more appropriate policy (IOM 2001; IOM 2003; von Koppenfels 2001).

Unfortunately, there are also problematic features to these processes. The lack of official commitment means that nations are not compelled to implement policies that they perceive to conflict with their interests. As RCPMs are often devised among nations with unequal balances of power, agreements are sometimes conditional on the satisfaction of wealthier, receiving

nations that tend to promote more stringent migration restrictions (Ugur 2004). Therefore, regional efforts often focus on issues already incorporated into national immigration policies of wealthier nations, including those of national sovereignty and anti-terrorism, at the expense of human rights concerns (IOM 2003). In this manner, RCPMs have the potential to exacerbate the perceived dilemmas faced by migrants since their policy prescriptions apply to more individuals and regions than before.

Even when RCPMs draft human rights policies, few mechanisms exist to implement and monitor them adequately (Thouez 2004). Problems with policy development and implementation are compounded by the frequent reluctance among RCPMs to incorporate civil society organizations, such as TNGOs, into their discussions (IOM 2003; Taran 2002; Thouez 2004). Rights-based TNGOs are crucial in the process of international policy-making as these organizations often comprise individuals who are excluded from political power. Creating a forum for TNGO involvement will give voice to underrepresented perspectives that are likely to oppose regulatory regimes while offering suggestions for an alternative framework. TNGOs are also well-situated to monitor state compliance, and thus can enhance the implementation success of policies in their favor. Therefore, their lack of incorporation constitutes a serious problem, highlighting the need for an international forum to move the debate beyond security needs and towards the rights and obligations of states to protect irregular migrants. As Ugur notes, “in the absence of a multilateral framework, a regional approach to the management of international migration is highly likely to perpetuate the existing levels of restrictions or to generate a drive towards further restrictions” (2004, 20). He suggests that nations come together to approach the cooperative management of migration through a multi-lateral framework founded upon principles of non-discrimination. Non-discrimination here refers to both equal status among

those involved in cooperation, and equal status within nations and between nationals and immigrants (Ugur 2004).

As an alternative organization that aims to create international policies, the United Nations system can create a human rights framework to manage international migration. Though not perfect, the United Nations is a strong system with experience in the international sphere and often the perception of moral legitimacy in its favor. Further, the UN has historically acted as a champion of individual human rights, especially for the most marginal populations, and is thus the most promising starting point for a TNGO framework on the human rights of migrants. In contrast to regional processes, including those of the European Union, the UN's geographic scope and wide membership base offers it the opportunity to devise more comprehensive global policies that can account for the incredibly diverse set of actors and needs that should be accounted for in undocumented migration policies.

UN Efforts to Reframe the Debate

The UN has consistently acted as a forum that states and civil society rely upon when formulating and referencing norms on human rights. However, its role in this regard has not always been clear; the UN has long embodied a tension between protecting all global citizens and upholding the sovereignty of nations. Although the UN seems to prioritize individual rights, as reflected in the number of its treaties in place to protect human rights, the scope of individual rights often appears to preclude those of irregular migrants. For instance, the International Covenant on Civil and Political Rights (ICCPR) is intended to safeguard the human rights of all individuals. Despite states' receptivity to this treaty (67 signatories and 154 parties), a lack of political will prevents its domestication into law in the manner intended – a problem with many

international treaties. As the ICCPR is rather broad, it allows for wide interpretation. Existing ambiguities, particularly those over the treatment of foreigners, the lack of a definition of citizenship, and silence on the specific conditions faced by migrants have enabled many governments to exclude the protection of irregular, labor migrants. The International Convention on the Elimination of all Forms of Racial Discrimination (ICERD) is similarly ambiguous on the political status of irregular migrants (Ghosh 2003).

The 1990 International Convention on all Migrant Workers and their Families (ICMW) (in force in December 2003) was drafted to address concerns more specific to migrants. Unfortunately, this document is widely perceived as a failure. First, it falls into the trap of previous documents by allowing some degree of ambiguity. Some migrant groups are excluded from the treaty, and there are gaps in the stipulations guaranteeing the rights of migrants (Ghosh 2003), providing loopholes for parties who wish to disregard their obligations. Furthermore, the ICMW is not widely recognized. Although it came into force over a year ago and was opened for ratification fourteen years ago, there are still only twenty-four signatories, all considered sending countries, and only twenty-seven parties. There also seems to have been little commitment among those at the UN and in TNGOs to advocate significantly enough for its ratification (Taran 2001), a neglect that has weakened the Convention's symbolic value. Finally, the status of undocumented migrants in particular is still vague with regards to their guaranteed rights. They are presumed to have the rights that are afforded all individuals under previous treaties, yet the issue remains one of contention as states argue that ensuring such liberties will erode their sovereignty (Pécoud & de Guchteneire 2004). Fortunately, this treaty does seem to be attracting more attention in recent years since it presents a unique opportunity to safeguard the rights of undocumented migrants. Therefore, the ICMW is the focus of the following section.

Another convention that is specifically related to issues of migration is the International Convention Against Transnational Organized Crime. This convention has an impressive 147 signatories and 94 parties. Of its three protocols, two are relevant to the management of international, irregular labor migrants: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (117 signatories and 76 parties) and the Protocol Against the Smuggling of Migrants by Land, Sea and Air (112 signatories and 64 parties). This is a valuable document that provides policy prescriptions with the potential to curb the trafficking and smuggling of people. However, there is the danger that this convention remains popular precisely because it is amenable to the status of undocumented migrants as “illegals”. Thus it enables nations to sign on to, and enforce a treaty that acts in support of current regulatory mechanisms that focus on tough measures for security and control while neglecting many human rights issues (Taran 2001).

The ILO has faced similar problems in creating human rights standards by which countries abide with regard to international, undocumented labor migrants. The two relevant conventions forwarded by the ILO include the 1949 ILO Migration for Employment Convention (No. 97) and the Migrant Workers Convention of 1975 (No.143). Both have relatively low rates of ratification and only a nominal impact in encouraging conformity in national policies. According to an ILO survey, countries were most reluctant to accept five different conditions: “equality of treatment between foreign workers and national workers,” “maintenance of residence rights in the event of incapacity for work,” “protection in the event of loss of employment,” “equality of opportunity and treatment,” and the “right of migrant workers to occupational mobility” (Taran 2001, 20). This exemplifies the consistent aversion among states

to sign international treaties that advance the rights of undocumented migrants, without the presence of significant incentives.

Though the discussion thus far paints a dreary picture for the prospects of creating a human rights framework within multilateral agreements regarding migration, the reality is not so glum. Receiving states must be convinced that migration is in their best interest; TNGOs that lobby popular opinion in support of migrants' rights may possess the means to do so.

IV. SECTION III: TNGO PROMOTION OF A HUMAN RIGHTS FRAMEWORK

There appears to have been no comprehensive activism on the issue of migrants' rights until the late 1990s (Pécoud & de Guchteneire 2004). This trend can partially be attributed to states' reluctance to cooperate with TNGOs on migration issues, particularly those regarding irregular migration. Although numerous TNGOs work on migration issues, most focus on offering services to migrants in need, and relatively few work on policy formation, implementation, monitoring, and advocacy. Those whose missions concentrate on policy tend to promote very specific issues and therefore have a narrow range of expertise. Additionally, coordination between migration TNGOs is problematically low (Thouez 2004). For these reasons, a TNGO-driven framework presents some challenges. Fortunately, the issue has been gaining saliency among TNGOs and other international organizations (IOs), such as the U.N. and the European Union. A number of recent initiatives highlight the role of TNGO involvement in debates on UN frameworks that incorporate a human rights approach. Though none of the following initiatives are concerned specifically with the rights of irregular migrants -- they focus on migrants in general -- these developments provide vital political opportunities for gathering momentum among TNGOs.

TNGO Involvement in UN Forums Addressing Migrant's Rights

In 1997, the UN convened a working group on migrants' rights. A Special Rapporteur was appointed two years later, tasked with investigating breeches of migrants' human rights. While these developments were occurring, migrants' rights NGOs were pressuring the UN to establish an International Migrants Day. With the eventual support of other TNGOs and IOs, this proposal was adopted on December 18th 2000. This ongoing event has since constituted an important opportunity for TNGOs to draw attention to migrants' rights (MRI 2004; Taran 2001).

In 1998 a Global Campaign was established to promote implementation of the ICMW. It involved a wide spectrum of IOs and TNGOs involved in issues such as human rights, labor, migration, and humanitarian work. During this campaign, ratifications more than doubled, enabling the treaty to come into force in December 2003. In 2002, the General Assembly of the Organization of American States publicly offered support for the treaty, as did the European Parliament a year later. Most recently, in 2004, the UN Secretary-General launched the Global Commission on Migration to put the issues of all migrants on the international agenda. This process includes a coordinating role with international civil society groups.

International conferences have also provided a forum where TNGOs can work closely with IOs. The rights of migrants, including undocumented migrants, were incorporated into the Plan of Action of the International Conference on Population and Development (ICPD) in 1994. This conference included a number of diverse actors from civil society who worked directly with IOs and governments. The ICPD also resulted in the founding of Migrants Rights International (MRI), a TNGO established to promote and monitor the human rights of migrants by bringing together numerous experts and organizations in the field. Four years after the ICPD, the

Technical Symposium on International Migration and Development was held at The Hague. This conference examined and evaluated the implementation of the ICPD's suggestions relating to migration and included individual experts, government representatives, IOs, and NGOs. The summary of the event called for more involvement by IOs and NGOs in coordinating comprehensive migration policies. Other international events that incorporated TNGO involvement on frameworks for the human rights of migrants included the World Summit on Social Development, the Fourth World Conference on Women, and the 2001 World Conference against Racism and Discrimination (MRI 2004).

A study conducted during the ICPD conference revealed that in almost all regions of the world, NGOs were heavily involved in different aspects of migration policy. This includes work in legal aid, training programs, information dissemination, humanitarian aid, advocacy, and integration. Yet, as of 2000, there were only two small TNGOs, including MRI, which dealt with the human rights of migrants on a global scale. At the time, a few other TNGOs, such as Human Rights Watch and Amnesty International, were broadening their scope to include these issues (Taran 2001). Certainly more needs to be done to attract attention to the issue and to coordinate the organizations that currently exist. The international conferences discussed above provide an important forum for networks to strengthen and coalesce around a single campaign.

Advocating for the Implementation of the ICMW

Once a more coordinated effort begins to gain salience, the most valuable opportunity to create a TNGO agenda for the human rights of migrants appears to lie in the promotion of the ICMW. This document specifically addresses the needs of irregular economic migrants and has the potential to be a transformative force on the protection of migrants' rights if more fully

adopted. However, the ICMW remains unpopular for a number of reasons. First, some see it as too elaborate as its domestication into national law would require significant restructuring among government agencies currently tasked with migration management. Second, its implementation would be expensive by any standard, and in the case of some of the poorest nations, would require affording migrants amenities that are not currently provided to their own citizens. Third, policy makers and constituents know relatively little about the treaty and need more education on its provisions and more generally, on the need for a human rights approach to migration. Finally, the greatest source of reticence stems from a lack of political will. If states were compelled to politically support the implementation of the ICMW, concerns such as administrative reforms, costs, and constituent popularity would remain secondary factors, as they have been in many other international treaties (Pécoud & de Guchteneire 2004).

For the ICMW to serve as a realistic instrument, TNGOs must render the international policy arena more amenable to the treaty's provisions. Their primary goal must be to lobby receiving governments; for without them, the prospects of persuading other nations to sign onto the treaty are slim and its widespread acceptance infeasible. To create a constructive campaign, a TNGO framework must employ a number of techniques for influencing state agendas. Thouez has outlined five useful areas of action: "(i) defining the international agenda; (ii) information provision; (iii) using 'soft power' to impose 'moral authority'; (iv) monitoring and implementation; and (v) solidifying a 'coalition of interests'"(2004, 14). Together, these five elements constitute a comprehensive advocacy campaign that, if conducted with enough initiative and support, promises to change the status quo in international migration policy.

(i) International Agenda Setting

The first step in agenda setting is defining international migration as a public goods challenge. This has been a rather sensitive topic, as many actors tend to frame the debate as one over the management of migrants. Framing policies in this manner denies agency to migrants and implies that they need to be controlled (Thouez 2004). To shift the debate away from a discussion regarding migrant management, the TNGO community must strive to end the use of the term “illegal” to describe the status of undocumented migrants. This label creates the impression of their criminality, turning attention from human rights to concerns of crime and national security (Taran 2001). Therefore, a more widely accepted definition of undocumented migrants must replace the term “illegal” so that this category of migrants can be designated a specific place in law (IOM 2001).

To refocus the debate around human rights protection, TNGOs must also reveal the false distinctions often drawn between refugees, asylum seekers, and undocumented labor migrants (Appleyard 2001; Bhawgwati 2003; Spencer 2003). Although these distinctions may have been useful in the past, they are increasingly becoming blurred. Many asylum seekers and undocumented economic migrants now choose to place themselves either in one or the other of these categories based on their perceived chances of gaining and maintaining entry into the host country (Appleyard 2001; Bhawgwati 2003).

Furthermore, the distinction between those fleeing economic and social discrimination and those fleeing political conflict can be difficult to discern. States that premise migration policies on control must be reminded that disorderly and irregular migration largely stems from the denial of one’s rights in their country of origin. Individuals who migrate in response to economic and social marginalization in their home country are also more likely to be subject to the violation of their rights in transit or when they reach their destination. Denying these

individuals a legal and safe means of migrating could in turn create regional instability or strain inter-state relations (Ghosh 2003). Moreover, states that have signed the Geneva Convention are bound by the concept of non-refoulment, meaning that international migrants cannot be returned to their home countries if there is evidence they could face persecution (Widgren & Martin 2002). TNGOs should consistently emphasize this obligation while expanding “persecution” to include economic and social forms of violence. Taking all of these considerations into account, a forum should be provided whereby TNGOs, IOs, and governments fashion a new definition of irregular migration that gains currency in the international community. Only once these preconditions are met can the TNGO community develop a more comprehensive campaign that includes a thorough account of the rights denied to undocumented labor migrants and a policy framework that guarantees their inclusion by means of ICMW endorsements.

(ii) Information Provision

There is a large body of academic research developing around the dynamics that drive migration and its economic consequences. Yet there is a relative lack of popular scholarship on the human rights violations that are endemic to the circumstances that compel migration, the processes of passage, and the results of immigration for undocumented labor migrants. To campaign for a human rights approach to migration policy, TNGOs must develop greater research capacities to document concerns specific to irregular migration. At the same time, they must expose existing research in order to discredit myths about irregular migrants, including those concerning the harmful economic effects of undocumented migrants on destination countries, perceptions of the criminality of migrants, and the notion that heavy-handed, strict policies against immigration among receiving countries are appropriate, necessary, and fair. In this vein, TNGO public education campaigns should emphasize that strict controls on migration

tend to increase human rights abuses and enhance the role of traffickers and smugglers, deepening criminal networks and constituting a security concern for receiving countries (Appleyard 2001; Schloenhardt 2001). Conversely, providing rights to all migrants is likely to increase domestic security by encouraging migrants to work in the formal labor market, while also enabling them to seek police assistance if they are subject to, or aware of, criminal activity (Taran 2001). Further, TNGOs should reveal and address the human rights abuses that arise from the impunity of officers and the nature of the system itself (Pizzaro 2002).

Many of these misconceptions are related to the global increase in xenophobia and racism that are infusing government rhetoric and popular sentiment (MRI 2004; UNGA 1998; Sharry 2000). Part of the reason for the rise in anti-immigrant movements is that non-migrant populations are reacting to the stressful nature of global economic changes, and immigrants become “the most visible symbols of these changes while the real causes are invisible, complex, and difficult to influence” (Castles 1997 in Banzon Bautista 2002, 5). Thus, in addition to discrediting the misconceptions outlined above, TNGO public education campaigns must also challenge the racism that fuels these misconceptions while drawing attention to the positive benefits that immigrants can make economically, socially, and culturally to receiving societies.

(iii) Persuasion through Moral Authority

In their roles as agenda-setters and public educators, TNGOs should cultivate an image as a voice of moral authority. They should remind states of their obligations to the United Nations Charter and other treaties that protect human rights, and emphasize that these treaties’ ambiguity with regard to migrants is not intended to justify exclusion; human rights are applicable to all individuals, regardless of their citizenship (Ghosh 2003). Moreover, as the boundaries between sending and receiving states becomes more imprecise, TNGOs must emphasize that it is in the

interests of many states to protect immigrants so that their own citizens can expect to receive the same rights when abroad (Ghosh 2003). Finally, the tenets upon which democracy rests are built on the promise of freedoms that cannot be denied by virtue of citizenship. Therefore, any nation that establishes its legitimacy on principles of democratic governance should be compelled to uphold human rights standards (Sharry 2000) as provided by international law.

(iv) Monitoring and Implementation

Monitoring the implementation of the ICMW on a large scale is premature because the treaty has only a small number of signatories, all of which are considered sending countries. Regardless, even if a non-signatory violates the treaty's provisions, the abuses in question could be monitored and addressed with reference to the Convention's framework. In this way, TNGOs can help to promote the ICMW's provisions as international standards and norms. TNGOs can also assist in advocating for policies that the treaty upholds by calling for their inclusion in RCPMs while networking with local organizations that can in turn lobby individual states.

Establishing legal channels for migration requires creative policy solutions. As noted above, there is a great demand for immigrant labor in many nations of the global north and a growing population in need of employment that largely stems from the global south. Finding ways to meet this need through a policy approach that legalizes temporary labor, while still affording migrants human rights protections and addressing security concerns, is an urgent requirement. A multifaceted approach is necessary, for "managing migration is not simply about achieving labor market objectives, protecting national security, minimizing public expenditures, promoting social cohesion, honoring human rights obligations, or promoting international development and cooperation -- but all of these; and to further acknowledge that these goals can conflict" (Spencer 2003, 4). A TNGO coalition should incorporate all of these concerns into a

larger, multi-lateral policy framework that stresses the opportunities the ICMW offers. This campaign will require capacity building for local NGOs, politicians, bureaucrats, and citizens. Policy-makers and civil society groups will need to be informed on how the ICMW operates, what policy guidelines it offers, and how abiding by these guidelines can offer a more efficient and humane approach to migration policy.

(v) Solidifying a Coalition of Interests

A multi-faceted approach should also incorporate a wide variety of actors who are mobilized around the ICMW framework. In order to raise awareness for this purpose, a more concerted effort to plan and carry out an international UN conference on the human rights of migrants must occur. Currently, the UN and its member states ignore proposals for an international conference on migration (Thouez 2004). This not only demonstrates a lack of political will to address these issues; it also reflects the need for a stronger collaborative effort among international civil society. There is a history of regional conferences on a wide-range of migration issues, and bringing them together under the framework of a human rights approach can be an invaluable stimulus for future cooperation.

V. CONCLUSION

This new age of migration presents a significant challenge to governments, TNGOs, IOs, and individuals around the world. While the underside of economic globalization has created indigence for many, economic growth in other regions of the world affords important opportunities that aren't being appropriately developed. In restricting the movements of people from regions of poverty to regions where their labor is needed, wealthy states not only turn their backs on the negative effects of global economic policy, but on the possibility to create mutually

beneficial solutions. Human rights violations can be inherent in the very process of global economic integration. Yet the restrictions and abuses faced by undocumented economic migrants in their attempt to exercise one of the only options they might have for a better life, constitutes an even deeper violation with regards to international law. What is now required is a concerted and consistent challenge to previous migration policies in favor of a human rights framework for addressing migrants, undocumented and otherwise. Fortunately, as the rights of irregular international labor migrants gain saliency and TNGO activism intensifies and becomes incorporated into more mainstream processes for the management of migration, we can expect positive changes. The new attention to the ICMW treaty and the momentum of recent events creates opportunities for placing a human rights framework to migration on the agenda. It is in these efforts that one finds opportunities to draw on existing standards to advocate for change.

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