

**Global Workers Justice Alliance responds to the “Call for Comments” on the United Nations Secretary-General’s Report on International Migration and Development\* which will provide the framework for discussion during the Informal Interactive Hearings with NGOs, Civil Society and the Private Sector and the High-Level Dialogue.\*\***

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An important premise is established in paragraph 66 of the Secretary-General’s Report on International Migration and Development. It states: “The benefits of international migration, not only for migrants themselves, but equally for receiving societies, are contingent on the protection of migrant rights. *Labour rights are the mainstay in the prevention of exploitation and ought to be fiercely safeguarded.*” (emphasis added).

To begin to safeguard rights, mechanisms to enforce those rights must be readily accessible. Only one reference is made in the Secretary General’s Report to procedural issues of rights enforcement. In Paragraph 261 it states that “...providing no credible mechanism for the redress of grievances are all conditions that put [migrants] at an increased risk of exploitation.” Discussing mechanisms for redress only in the national context, however, misses a key aspect of the migrant reality today.

What is absent in the debate is the effect of the lack of transnational access to justice, or portable justice. Without its realization, protection of migrant labor rights, the “mainstay in the prevention of exploitation” is impeded.

As the Report notes, no statistics exist about the numbers of migrants who leave their country of employment to return to their home countries. (Paras. 247, 248). Whether obligated to depart as a temporary worker, deported, or returning of their own volition, some migrants return home either permanently or temporarily.

Migrant workers are often exploited in their employment. If they depart before resolving any legal challenges to their exploitation they are effectively forced to abandon their legal claims because their access to justice in the country of employment from their home countries is extremely limited. The inability of migrants to seek redress after leaving their country of employment is a scenario common to most, if not all, transnational migratory streams.

Both legal and practical barriers impede portable justice. Legal barriers include lack of procedural judicial rules which allow for and accommodate absentee plaintiffs. For example, some states require a litigant to be physically present at various stages of judicial proceedings, often an impossible requirement. Practical obstacles include lack of legal information and services for returned migrants in the home country. Government

officials and advocates in the sending countries have little information about country of employment laws, procedures, and availability of legal support and are correspondingly challenged to assist workers who have returned with outstanding problems. No statistics exist as to how many legal claims worldwide are abandoned because of the lack of portable justice.

The inability of redress leaves migrant workers shortchanged and additionally vulnerable to exploitation. Making justice portable, that is allowing for workers to have access to justice no matter where they go, will reduce this vulnerability and have a positive impact on development in the countries of employment. Migrants will be able to hold their employers accountable for legal violations without geographic restrictions on their physical presence. This will benefit the companies that already comply with local labor laws by leveling the playing field with the companies that seek migrant labor calculating that few labor grievances will ever prevail due to the workers mobility. These employers have an unfair advantage over their law-abiding competition because they violate labor rights, e.g. lower labor costs, without repercussion. When these norms are compromised for one group, all workers—including national laborers-- are drawn into the downward spiral of decreasing work and safety standards.

The impact of portable justice on sending countries' development is also significant. Workers' collection of their just wages or other remedies will increase and the need to re-emigrate due to immediate economic pressures will ease. The reverse is sobering. Workers who are injured on the job and then return to their home countries are an unfortunate and all too common example. Without the ability or the right to medical care or compensation, returned migrants may become economically unproductive citizens posing a substantial burden on their families and home states.

In addition to the necessary changes to the domestic legal systems, steps must be taken to remove the practical barriers to portable justice. Governments and advocates must cooperate transnationally to achieve transnational access to justice. Sending countries should inform workers of their rights in the country of employment and how to seek assistance. Upon return, sending countries should provide legal support to workers in need. Countries of employment should support the sending country governments' efforts and mirror the services through their embassies located in the sending countries. But governmental efforts alone are not enough. Advocates, lawyers, and grass roots organizers must work across borders so that workers have access to justice no matter where they go.

In light of the increasing utilization of temporary workers (para. 135) as a substitute for permanent immigrant labor, the portable justice issue is becoming even more relevant and urgent. Temporary workers are extremely vulnerable. Typically holding a visa that ties them to one employer these workers are obligated to leave the country at the end of their temporary contracts and have little if any access to information about support and services while in the country of employment. If they are not provided access to justice

from their home countries, they are deprived of any meaningful way to challenge any exploitation that may have occurred.

Finally, the report appropriately urges the ratification of the “Trafficking Protocol.” (Para. 81). Unfortunately, there is no similar call for the ratification of the International Convention on the Protection of the Rights of All Migrants and Members of their Families, the main United Nations instrument governing migrant rights. Ratification of the Convention is a necessary and important step to establish global standards and protections for migrants.

It is important that these issues above be included and discussed at the General Assembly’s High-Level Dialogue scheduled for September 2006. Workers should not have to abandon their legal rights when they cross borders. Global workers require global justice.

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\* The United Nations Secretary-General’s Report on International Migration and Development is available at [http://www.un.org/esa/population/hldmigration/Text/Report%20of%20the%20SG%28June%2006%29\\_English.pdf](http://www.un.org/esa/population/hldmigration/Text/Report%20of%20the%20SG%28June%2006%29_English.pdf)

\*\*“The High-Level Dialogue on International Migration and Development will take place on 14 and 15 September 2006 in New York at UN Headquarters. In its resolution 58/208 of 23 December 2003, the General Assembly decided to devote a high-level dialogue to international migration and development during its sixty-first session in 2006. The purpose of the high-level dialogue is to discuss the multidimensional aspects of international migration and development in order to identify appropriate ways and means to maximize its development benefits and minimize its negative impacts. Additionally, the high-level dialogue should have a strong focus on policy issues, including the challenge of achieving the internationally agreed development goals, including the Millennium Development Goals (MDGs).”

“As part of the preparatory activities leading to the High-level Dialogue on International Migration and Development, the General Assembly will hold Informal Interactive Hearings with representatives of non-governmental organizations (NGOs), civil society organizations and the private sector on 12 July 2006 at United Nations headquarters in New York. The objective of the Informal Interactive Hearings is to provide an opportunity for NGOs, civil society and the private sector to interact with Member States and offer input for the High-level Dialogue.”

*“I attach great importance to the Informal Interactive Hearings of the General Assembly with Non-Governmental Organizations, Civil Society Organizations and the Private Sector on International Migration and Development, which will take place on 12 July 2006 at United Nations Headquarters in New York. It is critical that Member States have an exchange of views with a wide range of constituencies, including migrants themselves, when they are preparing for the High-level Dialogue on International Migration and Development in September.”*

Kofi Annan  
United Nations Secretary-General