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GLOBAL UNIONS' STATEMENT TO THE 4TH GLOBAL FORUM ON MIGRATION AND DEVELOPMENT PUERTO- VALLARTA, 8 AND 9 NOVEMBER 2010

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20th anniversary of the UN Convention on the Protection of the Rights of all Migrant Workers and Members of their Family: *Where is the GFMD's contribution?*

Labour migration is not a new phenomenon. People have been constantly on the move in search for better economic, political and social conditions throughout human history. According to the 2009 UNDP Human Development Report, there are currently 200 million international migrants half of whom are workers. About 50% are women. Recent trends have also shown that migrant workers are increasingly concentrated in a few industrialized countries that often have an aging population. According to the International Organization for Migration, in 2000, 60% of migrant workers were working in industrialized countries while they were only 44% in 1970.

Migration for the purpose of employment is linked to the global economy. The recent surge of migrants is intrinsically connected to the failure of the current model of globalization to deliver decent work for all. Unable to find employment opportunities at home, millions of workers are forced to move abroad, leaving families and friends behind. Trade unions have been consistently demanding that the root causes of migration be addressed in the global debate. It is unfortunate that this call has not been sufficiently considered.

Mexico the country hosting the 4th GFMD is a case in point: Although migration flows of Mexican workers to the US have long existed, its intensification over the last two decades is clearly related to the restructuring of the Mexican economy and US trade policies - most notably the North American Free Trade Agreement - which have benefited U.S. transnational corporations, while squeezing the Mexican working class, both in the cities and the countryside.¹ In this process, Mexican workers have lost hundreds of thousands of jobs, as domestic industries collapse, and Mexican small farmers have faced competition from U.S.-subsidized agribusiness imports. As a result, Mexican workers and farmers have seen their wages and living standards deteriorate dramatically, leaving them jobless or unable to earn a living wage in their own country. Those problems have not been solved by the creation of maquila enterprises. They have provided bad quality employment where workers, mostly women, are harassed or even murdered when they try to form or join independent unions. "Irse para el Norte" (going North) has become a matter of survival, despite the risk of arbitrary arrest, extortion, robbery, rape, kidnapping and murder.

Trade unions address and improve the social aspects of migration. Together with migrant rights' organizations, trade unions play a key role in campaigning for good international standards and national legislation that respect human rights and to ensure that migrant workers' rights are universally protected. In many countries, from Bahrain to the Philippines, Senegal, Spain or



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¹ Victoria Gavito, *The Pursuit of Justice is Without Borders: Binational Strategies for Defending Migrants' Rights*, 14 No. 3 HUM. RTS. BRIEF 5 (2007), available at <http://www.wcl.american.edu/hrbrief/14/3gavito.pdf?rd=1>



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Canada, trade unions inform migrant workers of their rights, denounce exploitation, combat trafficking and demand equal treatment between local and migrant workers. For example,

- In Mauritania and Costa Rica, unions manage a help center for migrants;
- in the US unions have organized hundreds of thousands of migrant workers;
- in Africa public service unions have run campaigns for ethical recruitment practices in the health sector;
- in the education sector, unions have been promoting ethical recruitment and protecting the rights of migrants in line with the principles of the Commonwealth Teacher Recruitment Protocol (CTRP) and other international norms and standards.

Through their many activities and the cooperation they establish between countries of origin and of destination, trade unions have facilitated integration and access to public services for migrant workers and their families; they have promoted decent work, unionization, equal treatment between local and migrant workers and work toward the elimination of all forms of discrimination. The ILO has, in several decisions, affirmed that the fundamental rights of workers to organise and bargain apply to migrant workers. Yet, trade unions still face legal barriers to recruiting migrant workers into their ranks.

Many governments are adopting inappropriate policies on migration in times of crisis.

Migrants make crucial economic contributions, contributing skills and productivity to economic capacity. Today, in the middle of an economic crisis, they feel the brunt of deteriorating job markets. Migrants are being thrown out of work at a higher rate than native-born workers and unemployment among the foreign-born labour force has soared in all OECD countries.

The response of many OECD governments has been inappropriate. By severely restricting migration and enforcing return, governments have worsened the situation. Massive influxes of returning migrants may also result in economic and global instability. In fact, increasing the job-seeking population in migrant workers' home countries increases the pressure for migration. The fall in remittances is an additional economic impact that further weakens already fragile economies and endangers poor families.

Selective migration policies that focus on highly skilled professionals undermine development goals. An intensification of the brain drain effect would be particularly detrimental to the poorest countries in the current context.

Policy should recognise that migration is a complex issue. Simply, slamming the door shut to labour migration will push more irregular migrants into the hands of smugglers and traffickers.

The crisis reflects the failure to act to make the economic, social and environmental reforms necessary to generate sustainable, employment-rich growth. However, it has become politically expedient to suggest that that the crisis is somehow caused by migrants and that if they were simply expelled, employment would re-appear. Migrant workers have not caused the crisis. Rather, they are among its many victims.

Trade unions urge governments to take the necessary measures to ensure migrants are protected from xenophobia and discrimination in employment, at the workplace and in all social spheres. Unions call for the full respect of the principle of equal treatment between national and migrant workers with regard to access to employment-related social protection schemes such as unemployment benefits, re-training opportunities, compensation schemes, pre-pension etc.



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Further, Global Unions insist that the implementation of the ILO Decent Work Agenda & the Global Jobs Pact, in both countries of origin and destination, would help to address the root causes of migration as well as providing an employment focus for national economic recovery.

In the year of the 20th anniversary of the UN Convention on Migration, Global Unions remain sceptical about the focus of the GFMD on temporary labour migration programmes rather than the rights- based approach promoted by the ILO.

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After 4 years of involvement in the GFMD, Global Unions consider that the Forum tends to turn a blind eye to the many pitfalls of temporary labour migration programmes and overestimates their advantages. Global Unions are further concerned by the aggressive promotion of these programmes by both countries of destination and origin at the GFMD as a measure for economic development.

On many occasions, trade unions have seen on the ground how these programmes violate migrant workers' fundamental rights, generate unfair competition and undue rivalries between migrant and local workers and indeed undermine the rights and welfare of local communities. In destination countries, the "beneficiaries" of these programmes are often excluded from the full protection of labour laws, including the right to join a union, access to social security, and support services for integration in host societies. They often also are deprived of the right to family reunification.

As migrants tend to be employed under less favourable conditions than local workers, temporary migration arrangements often constitute social dumping, which undermines development efforts and increases inequality. In countries of origin, current temporary labour migration programmes, are designed in such a way as to exacerbate the brain drain. The fact is that very few of these programmes actually increase workers' competences and skills. Yet skill enhancement programmes, when respectful of workers' rights, can contribute to development efforts in countries of origin.

In the ILO, the trade union movement, together with governments and employers' organisations, have agreed on a rights-based approach to migration policy. The ILO has developed several instruments in this field such as Convention 97 on Migration for Employment, Convention 143 on Migrant Workers, the Declaration on Fundamental Principles and Rights at Work and the ILO Multilateral Framework on Labour Migration. These ILO instruments complement the UN Convention on the Protection of the Rights of all Migrant Workers and Members of their Families as well as other international Conventions such as the Convention on the Elimination of All Forms of Discrimination Against Women, (CEDAW) or the Convention on the Elimination of All Forms of Racial Discrimination(CERD);

Global Unions consider that, over the last 4 years, the GFMD's contribution to a right-based governance of migration has been limited at best.

A superficial analysis of the migration development nexus

Many of the discussions that took place in the framework of the GFMD promote the ill-founded concept of remittances as a strategy for development. While recognizing the contribution remittances make to increase consumption, alleviate poverty and support families and communities left behind, Global Unions insist that remittances are no cure to the lack of development and decent employment opportunities.

Global Unions are concerned by the position of some developing countries that rely extensively on remittances as a strategy for development. The excessive focus on the short term economic benefits of migration overlooks the fact that sustainable development requires public investment to





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finance physical and social infrastructure, industrialisation strategies and quality public services. Employment creation is at the heart of any development strategy.

Global Unions underline that the focus of the international agenda on South-North flows of migration is restrictive. Today a great number of workers migrate within the developing world or increasingly from developing to emerging countries. Many of these countries do not have appropriate migration policies and the international community has a role to play in promoting a rights-based, gender-sensitive approach to migration in emerging and developing countries. In fact, the legal vacuum existing in several countries has given rise to an increase in the trafficking of human beings in the South.

Globalization, gender and migration

Globalization has opened up new opportunities for women's employment. But the growing mobility of workers affects women and men differently. In particular women with low education often end up earning wages below minimum standards, have limited access to social security, and are under huge pressure to combine paid work and family responsibilities.

The increase in the participation of women in the labour market over the last decades has not been matched by public policies adequate to respond to the care obligations of families. The lack of public and collective facilities to take care of children, the elderly or the sick has resulted in a major increase of migrants (mostly women) taking up that responsibility. In many countries, this process, which often amounts to the privatization of the care sector, has not been accompanied by adequate policies to protect migrants' rights.

Racism, xenophobia, violence and human trafficking tend to exacerbate existing gender inequalities such as occupational segregation, undervaluation of women's work or precariousness of employment.

The GFMD must acknowledge the fact that migrant women tend to be concentrated in feminized jobs such as domestic and care work, restaurant and hotel services or in the textile or agriculture sector. Such occupations are often excluded from legal definitions of work, thereby depriving those workers of a variety of legal rights and protection. Global Unions urge governments to address the legal loopholes in these sectors so as to ensure that the workers are properly covered by labour laws. The Convention on decent work for domestic workers to be adopted next June at the ILO is a step in the right direction that governments should support.

The behaviour of recruitment agencies is often abusive. This needs to be looked at from a gender perspective. In practice, too many women end up, against their will, in domestic work, in the entertainment sector, in the sex industry or even sometimes in arranged marriages. True economic empowerment and advancement of women's rights requires a human-rights and gender-specific approach to the migration and development nexus.

Protecting the rights of irregular migrant workers and enhancing development by minimising the abuses connected with irregular labour migration

This year, for the first time, the GFMD is addressing irregular migration. Irregular migration for employment is objectionable:

- Irregular migrants are often exploited while in transit, and when they arrive in the country of employment;



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- Women, men and children who enter clandestinely are highly prone to abuse by traffickers, smugglers, employment intermediaries or recruitment agents as well as employers;
- Large groups of irregular migrants in a country with no meaningful prospects of integration are marginalized;
- Social cohesion is at risk and affected countries' employment and development is impacted;
- Unscrupulous employers exploit irregular migrants with low wages and less employment protection, to the detriment of all workers;

It should be noted that not all irregular migrant workers enter the country of employment through clandestine means. Irregular migrant workers also include overstayers on tourist visas, students engaged in employment, trainees overstaying their visas, regular migrants continuing beyond the contract period, regular migrants running away from their designated employer before expiry of contract, and persons trafficked into the country.

ILO Convention 143 and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) address irregular migration and call for interstate collaborative measures considered necessary to prevent it.

The application of trade union rights and other employment rights to all migrant workers regardless of status is clear under international law. For example, the ILO's Committee on Freedom of Association and the Inter-American Court of Human Rights (IACHR) have confirmed that the legal status of workers is irrelevant, particularly when protections in the workplace are concerned. The IACHR found that:

"If undocumented workers are contracted to work, they immediately are entitled to the same rights as all workers. This is of maximum importance, since one of the major problems that come from lack of immigration status is that workers without work permits are hired in unfavorable conditions, compared to other workers."

Additionally, some States have established this right. For example, a Seoul appellate court agreed that workers can join trade unions regardless of their irregular status. In 2007, the Spanish Constitutional Court ruled as unconstitutional the article of the Law on foreign persons that prevented irregular migrant workers from exercising their right to unionisation.

Scholars have identified several obstacles that irregular migrants face in accessing their rights. Legal obstacles include: the invalidity of employment contracts involving irregular migrants; the denial of trade union rights; the imposition of formal obligations on public officials to denounce irregular migrants to the immigration authorities; measures criminalizing irregular migration, both at the national and regional level; and the unavailability of legal aid before employment tribunals. Practical obstacles include limited access of irregular migrants to the health care system in view of the absence of information about their rights as well as the onerous bureaucratic conditions imposed on such access, and difficulties in the provision of adequate schooling to the children of irregular migrants despite the existence of compulsory education requirements in most countries. Trade unions call on the GFMD to develop cohesive policies that address and remove these obstacles.



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Global unions' principles on temporary agencies

In recent decades, the use of temporary agencies has dramatically increased all over the world, spreading to all sectors and occupations included those that used to employ their workers directly. Not only do temporary agency workers typically receive lower pay and fewer benefits, they are also the first to be fired, as illustrated by the current crisis. The surge of temporary workers has contributed to a general erosion of workers' ability to exercise their rights, to join trade unions and to bargain collectively with their employers. Migrant workers are increasingly recruited by temporary agencies and face specific problems and abuses.

Global Unions have agreed a set of principles which includes the following:

- Migrant workers should receive details of their living and working conditions in a language they understand before leaving their country of origin
- Governments must take active measures to prevent human trafficking and the exploitation of migrant workers by labour intermediaries, both public and private, including temporary work agencies.
- Governments should ensure that immigration legislation governing migrant workers recruited through agencies does not conflict with labour laws by imposing restrictions on migrant workers' rights to join trade unions or bargain collectively.
- Workers should not be required to pay deposits, visa, transportation and hiring fees. In the case of agencies dispatching workers to other countries, the agencies should be required to repatriate workers in the event that their employment ends or the user company disappears.
- Workers must not be required to surrender their passports or other travel or identity documents.
- Temporary migrant workers should have full rights to legal redress in the country where they work

Global Unions call for a democratic, transparent and inclusive consultation mechanism on global governance of migration and urge governments to bring the GFMD back under the UN mandate and structure.

The UN General Assembly resolution passed in December 2003 established a UN High Level Dialogue (UNHLD) on International Migration and Development that took place in September 2006. Although at the time, the UNHLD recommended the creation of a permanent forum on migration within the UN with the hope of establishing a coherent and cohesive structure, in the end, the UNHLD process led to the creation of the GFMD, which is an informal, voluntary, non-binding, State-run process that "looks to developing a practical agenda on maximizing the gains from the migration and development."

Global Unions have been involved for 4 years in the Civil Society Days of the GFMD and have serious concerns about the slow progress made toward accountability, transparency and inclusivity of the process.

Global Unions believe the UN is the best place for governments to jointly agree on policy and process regarding the migration and development nexus. Unions call for the establishment of a permanent UN Forum on migration and development in which representative organisations would be included. This Forum under the UN mandate and structure would ensure that the nexus



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between migration and development is considered within the normative framework of the UN, something that will help to effectively protect migrants' rights.

Further, Global Unions recommend that this permanent UN Forum adopt a tripartite model of consultations between governments, employers and trade unions in partnership with migrant workers' associations on the formulation of policies and the pursuit of best practices.

Time has come for Governments to really engage in direct dialogue with those civil society organizations that have a mandate to represent migrants.

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