

Workshop 4

Migration and Human Rights

Directors

Professor Khadija Elmadmad
University Hassan II Ain Chock
Casablanca, Morocco
and
UNESCO/UNITWIN Forced Migration Network
chaire.unesco@migration.ma

Dr. Ryszard Cholewinski
Centre for European Law and Integration
Faculty of Law
University of Leicester
United Kingdom
ric1@leicester.ac.uk

Updated: 10 February 2004

Workshop Abstract

This workshop is set against the background of the increasing attention devoted to human rights discourse in the migration processes between MENA countries and Europe as well as within the MENA region itself: the treatment of migrants in countries of emigration; the human rights abuses suffered in the migration process; the violation of civil, political, economic and social rights as a root cause of migration; and the human rights concerns raised in the context of the recent pressures exerted by the European Union on MENA countries to draw up harsh migration and border regimes. Research in the human rights field lends itself to a multidisciplinary approach and the workshop seeks therefore to attract papers from a human rights perspective that encompass a wide range of academic disciplines. Moreover, the themes of the workshop, which are described below, are well geared towards a diverse range of methodological approaches: theoretical, comparative, and empirical.

The purpose of the workshop is to investigate the nexus between migration and human rights in the context of the diverse migration movements taking place between MENA and European countries, including movements grounded in both political and economic motivations as well as other reasons. The importance of human rights as a discourse explaining these different migration experiences is encapsulated in the various interdisciplinary themes of the workshop: theoretical perspectives on migration and human rights; the non-respect of human rights as a cause of migration; migration and conflict of laws issues; the rights of refugees and displaced persons; the rights of migrant workers; women migrants and human rights; protection of the environment and migration; the link between migration and discrimination; return migration and readmission; and the role of IGOs and NGOs in protecting and promoting migrants' rights. The workshop aims to discuss these themes in a clear and coherent manner, from legal as well other disciplinary perspectives, with a view to identifying and

clarifying important new intellectual approaches that can serve as a rich research base for further work in this field. The workshop wishes to attract papers from both established and young scholars, which are grounded in a variety of research methodologies thus recognizing the breadth of the topic under discussion. Moreover, by bringing together participants from both MENA and European countries, a further aim of the workshop is to provide a forum for debating the different and valuable perspectives on migration and human rights held by scholars on both sides of the Mediterranean.

Workshop Description

It is expected that the workshop will cover the following human rights' topics, which are of particular concern when considering migration movements between MENA and European countries. However, this list of topics should not be considered as exhaustive.

Migration and Human Rights: Introduction

- As described below, the proposed topics to be covered by this workshop are numerous and the purpose of this session would be to introduce the principal themes by discussing them coherently in context. Discussions would be based on a concept paper written by one of the Directors.

Migration and Human Rights: Theoretical Perspectives

- Studies in economics and political science have developed a number of related migration theories, but a consideration of migration questions from the standpoint of human rights does not figure prominently in any of these theoretical approaches. Clearly, there is also a vital need to examine the specific nexus between migration and human rights from a theoretical perspective. The right of persons to move and to leave their own countries clashes with the sovereign interest of nation states to manage the admission of migrants into their territories. Is it possible to reconcile this inherent tension within the framework of a coherent and workable theory?

Non-respect of Human Rights as a Cause of Migration

- The link between human rights abuses and migration flows from the MENA region to Europe requires further examination. What kinds of human rights' violations are likely to result in particular migration movements? Concerned international organizations, receiving country governments, NGOs and scholars working in the migration and human rights field often focus on violations of fundamental rights associated with the traditional civil and political rights, while too little attention is devoted to other human rights infringements particularly in the economic and social spheres, which also lead to considerable migration movements.

Migration and Conflict of Laws' Issues

- What are the conflict of laws' issues connected with migration between MENA and European countries? Is this an area where lines are drawn primarily on the basis of religious differences?

Rights of Refugees and Displaced Persons

- What are the rights of refugees and displaced persons in the region, both nationals of MENA states as well as those forced migrants from third countries who transit the MENA region on their way to European countries?

Migrant Workers' Rights

- The Mediterranean region is characterized by extensive labour migration of the regular and irregular variety. How can the rights of both migrant worker groups be protected? Is the phenomenon of irregular labour migration an inevitable consequence of the significant economic disparities existing in the region or can some means be found to divert this labour force into legal labour migration channels by opening up lawful work opportunities in destination countries, for example through bilateral labour migration agreements between destination countries and countries of origin. A relevant and topical consideration in this regard concerns the entry into force on 1 July 2003 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, which extends safeguards to irregular migrants.

Women Migrants and Human Rights

- Women predominate in most categories of migrants. What is the significance of the role of gender in the migration process? How can human rights protection be augmented to counteract gender inequalities, such as the inferior treatment of women asylum seekers in refugee determination procedures in both MENA and European countries and certain categories of migrant workers, such as domestic workers, who are almost exclusively women?

Protection of the Environment and Migration

- A distinctive and growing feature of migration concerns the movement of persons for reasons connected with environmental degradation. While clearly a perennial phenomenon itself, this type of migration has frequently been overlooked from the perspective of human rights. For example, degradation to one's environment is normally insufficient to ground a successful refugee claim in many destination countries and yet it results in considerable hardship for individuals who migrate for this reason.

Migration and Discrimination

- Migration and discrimination are inextricably connected. The very movement of migrants between MENA and European countries is characterized by the creation of distinctions in the

form of visa entry requirements and is also accompanied by discriminatory treatment of migrants on their arrival in destination countries.

Return Migration and Readmission

- The return of migrants to their countries of origin and the conditions under which such return takes place is an important topic deserving of study from a human rights perspective. In particular, the adoption of readmission agreements between European countries and MENA states, entered into by the countries concerned on a bilateral basis and increasingly by the European Union with non-member states, raises a number of serious human rights concerns in both countries of destination and origin.

IGOs and NGOs and the Human Rights of Migrants

- What role should be played by IGOs with migration at the heart of their mandates (e.g. UNHCR, IOM) or where migration constitutes an increasingly significant part of their activities (e.g. ILO, UNESCO, Council of Europe and Arab Organisation of Trade) and those NGOs concerned with the protection and promotion of the rights of all migrants to ensure that migration between MENA and European countries takes place under the most dignified and human conditions possible?

Selected General References

T.A, Aleinikoff and V. Chetail, (eds), *Migration and International Legal Norms* (The Hague: T.M.C. Asser Press, 2003).

R. Cholewinski, *Migrant Workers in International Human Rights Law: Their Protection in Countries of Employment* (Oxford: Clarendon Press, 1997).

K. Elmadmad, *L'asile et les réfugiés dans les pays afro-arabe* (Casablanca: Eddif 2002).

P. Taran, "Human Rights of Migrants: Challenges of the New Decade" (2000) 38 *International Migration* No. 6, 7.

Special Issue on the Human Rights of Migrants (2000) 38 *International Migration* No. 6.

United Nations, Economic and Social Council, Commission on Human Rights, 59th Session, *Migrant Workers*, Report of the Special Rapporteur, Ms. Gabriela Rodríguez Pizarro, submitted pursuant to Commission on Human Rights resolution 2002/62, UN Doc. E/CN.4/2003/85 (30 December 2002).