



SUBMISSION TO THE UNITED NATIONS
COMMITTEE ON MIGRANT WORKERS FOR

**DAY OF GENERAL DISCUSSION ON THE
RIGHTS OF MIGRANT WORKERS IN AN IRREGULAR SITUATION AND
MEMBERS OF THEIR FAMILIES**

I. Introduction

Global Workers Justice Alliance, in conjunction with the Immigrant Justice Clinic at American University Washington College of Law, respectfully submits the following statement for consideration by the participants of the United Nations’ Day of General Discussion on Undocumented Migrant Workers. This report concerns the importance of *portable justice* for irregular migrant workers and the existing need to integrate portable justice into the United Nation’ s Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (“the Convention”). This report will focus on why migrants’ irregular status makes them particularly vulnerable when it comes to accessing justice. After demonstrating that migrants suffer serious abuse and exploitation in the employment context, this report urges that the Convention incorporate portable justice to ensure that no person should have to surrender his or her legal rights at the border.

II. Defining “Portable Justice”

Presently, there are multiple challenges related to the protection of migrant workers’ rights. Among the more pressing challenges is the lack of portable justice. Portable justice is defined as a transnational worker’ s access to justice in foreign countries, where a worker was employed, even after he or she has departed for his or her home country.¹ Every year, millions of workers travel across

¹ See Cathleen Caron, [Portable Justice, Migrant Workers, and the United States](#) , 40 *Clearinghouse Review Journal of Poverty Law and Policy* 549, January-February 2007.

international borders in search of employment.² For example, during 2010 alone, there are estimates that there were about 10.8 million undocumented migrants living and working in United States.³ These undocumented workers often face daunting challenges as strangers in a foreign land.

III. Migrants Must Gain Access to Portable Justice

Lack of knowledge, language skills, and unfamiliarity with their surrounding community makes workers vulnerable to serious forms of exploitation and abuse. As such, when these workers seek justice for wrongs committed against them in the country of their employment, there are several hurdles they must overcome, including unfamiliarity with foreign legal systems, fears about deportation, concerns about their rights to file lawsuits in the country of employment, and limited proficiency in the language spoken in the courts. These barriers include migrants' lack of knowledge of their legal rights in host countries and fear of retaliation by employers if they voice complaints about poor working conditions. Specifically, many employers exploit migrant workers by threatening to call immigration authorities if they complain; this is particularly true for undocumented migrants. This fear can overwhelm undocumented migrants, leading to their complete silence, lack of vindication of their rights, and their continued exploitation and abuse by employers.

² See *86 Million Migrant Workers Active in Global Economy, Says New ILO Report*, ILO, report [http://www.ilo.org/global/about-the-ilo/press-and-media-centre/news/WCMS_005197/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/press-and-media-centre/news/WCMS_005197/lang-en/index.htm) (last visited Sept. 13, 2011).

³ See United States Department of Homeland Security, Office of Immigration Statistics, http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2010.pdf retrieved April 19, 2011.

Another common abuse is the nonpayment of wages. A national U.S. organization conducted a nationwide study, and found that undocumented, foreign-born workers are statistically far more likely to suffer an economic employment loss than other workers.⁴ Moreover, in a dire economy such as ours, migrant workers who provide financial support to families back home often fear that if they complain, they will be fired and be unable to find other work, so instead they endure the abuse and exploitation. Faced with these fears and pressures by employers, migrant workers will rarely defend their rights or seek out assistance.

Yet when these workers return to their country of origin, they face even greater obstacles to continue pursuing their legal claims. For instance, when workers eventually return home, the high costs of transnational litigation prevent workers from bringing claims against their employers. Migrants cannot solely turn to attorneys in their country of origin because only attorneys in host countries can bring these claims; this often results in the abandonment of most valid legal claims, leaving hundreds of workers without remedies that could redress debilitating injuries and unpaid wages. Given the difficulties faced by migrant workers, particularly undocumented migrants and their families, the Convention must incorporate portable justice into its legal framework to provide transnational workers and their families with an opportunity at justice.

IV. Integrating Portable Justice into the Convention

One of the Convention's most important founding principles is to ensure that migrant workers enjoy the same treatment and rights that apply to a national in their state of employment, with respect to remuneration, and other conditions of work and terms of employment. Currently, migrant workers whose rights have been violated often go without any form of redress when they are forced to return to their home countries. While the Convention has taken many commendable steps asserting and recognizing the basic rights of migrant workers, the number of workers who are legally wronged and

⁴ See [Fact Sheet: Workplace Violations, Immigration Status, and Gender](http://www.nelp.org/page/-/Justice/2011/Fact_Sheet_Workplace_Violations_Immigration_Gender.pdf?nocdn=1), National Employment Law Project, report at http://www.nelp.org/page/-/Justice/2011/Fact_Sheet_Workplace_Violations_Immigration_Gender.pdf?nocdn=1 (last visited September 13, 2011).

lack any form of redress, simply because of their status as migrants, demonstrates the insufficiency of the current system. The Convention must address the unavailability of justice for migrant workers who return home without wages they rightfully earned during their employment abroad.

The Convention's articles imply an obligation to protect migrants who seek employment in other states. However, the current resolution fails to mention any efforts to guarantee that migrant workers have access to justice in the country where they were once employed after they have departed to their home country. Portable justice for migrant workers would, at the very least, give migrant workers the opportunity to recover those wages and/or other remedies, after they have returned home. Global Worker Justice Alliance is one of several organizations working toward setting up transnational networks of advocates to assure that migrants, especially vulnerable undocumented migrants, are able to access the court system in the country of employment. The consequences for migrant workers are far too grave for this Convention to forego integrating portable justice into its resolution. The Convention must take action that truly guarantees that migrant workers are treated equal to workers who are nationals of the state of employment.

V. Articles from the Convention that are Conducive to Integrating Portable Justice

Article 83 of the Convention requires that states offer migrant workers effective remedies where their rights are violated, and requires that competent authorities review such claims. Article 83 is the cornerstone of the Convention's due process guarantees and emphasizes migrants' access to the legal system of the host country, specifically the country of employment. Similarly, portable justice is a due process concept and concerns the rights of migrants to utilize judicial, legislative, or administrative authorities to remedy a grievance arising out of a migrant's employment or presence within the country of employment.

This memorandum posits that Article 83 does not adequately guarantee migrants' access to pursue legal remedies, because it ignores the fact that migrants may not be present in the host country of employment to seek such remedies for reasons beyond their control. Such reasons are often financial in nature, but also include other impediments resulting from their geographic displacement from the host country. Article 83 should integrate a provision ensuring the ability of migrants to pursue legal remedies regardless of whether they remain in the host country, and encouraging the role of NGOs and

other international organizations to bring claims on migrants’ behalfs. Our globalized economy has forced thousands of undocumented migrants across borders, and protections such as the Convention, must encompass the portability of rights, so migrants do not have to abandon their legal rights at the border.

Article 83 of the convention addresses migrants’ right to have their legal claims reviewed and decided by the competent authority in the same state where the violation occurred; yet there will be times, for situations beyond human control, that the migrant will not be able to be present in that state’ s jurisdiction. This provision of the Convention should integrate the premise that when feasible, especially with our advanced technology, the state should attempt to adopt rules or procedures that facilitate a transnational litigants presence even from aboard.

Article 18 establishes the Convention’ s outer limits for due process requirements. The Article ensures that the conduct of legal proceedings provides for a fair trial in which authorities treat migrants no less favorably than they treat nationals of the host country. Recently, Global Workers advised on a case where an undocumented worker had returned to his home in Mexico due to a family illness, but had been part of group litigation involving nonpayment of wages totaling \$20,000 USD. The worker was being summoned to testify to validate his identity (i.e. prove that he was who he claimed he was). The employer presumed that because the worker was in Mexico, he was undocumented and would be unable to enter the United States to present the necessary proof of identity. The case ultimately settled, and the testimony became irrelevant, but in order for that worker to have had a fair trial he should have been treated like any other U.S. worker who was currently present in the United States. The Convention must establish concrete norms that will give states guidance on how to best provide for the fair and equal treatment of all workers, regardless of their irregular status, and regardless of whether the migrant worker is back in their home country.

VI. Conclusion

Undocumented Migrants face barriers that make them particularly vulnerable and susceptible to abuse by their employers in host countries of employment. Once these migrants return to their countries of origin, they are denied the ability to bring claims against their employers in host countries for the abuses they suffered, including unpaid wages, discrimination, and even human trafficking.

Consequently, the United Nation’ s Convention on the Protection of the Rights of All Migrant Workers and Members of their Families must integrate portable justice in order to fulfill the Convention’ s



mission of ensuring migrants are treated fairly and justly. Integrating portable justice into the Convention will allow migrants to gain legal remedies for the violations of law they suffer while working in host countries. As globalization becomes the norm, millions of migrants around the world will continue to cross borders in search of employment, many of them arriving without proper documentation and suffering deplorable abuses. The Convention, along with states, must integrate portable justice to assure that justice is possible for this highly vulnerable group of migrants. Global workers deserve global justice.



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