

## **HUMAN RIGHTS COUNCIL**

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### **The Human Right to Peace and Migration**

**Joint written statement submitted by** The International Alliance of Women (IAW), the Commission of the Churches on International Affairs of the World Council of Churches (CCIA/WCC), Brahma Kumaris World Spiritual University (BKWSU), the International Association of Soldiers for Peace, Zonta International, International the Federation of Settlements and Neighbourhood Centres (IFS), the International Council Of Women (ICW-CIF), the International Women's Tribune Centre, the International Federation of Business and Professional Women (BPWI), the International Youth and Student Movement for the United Nations (ISMUN), the International Association for Religious Freedom (IARF), Soroptimist International (SI), the World Movement of Mothers, the Asian Legal Resource Centre (ALRC), the Women's Federation for World Peace International (WFWPI), CIVICUS: World Alliance for Citizen Participation, World Vision International (WVI), Buddha's Light International Association, the International Council on Social Welfare (ICSW), the World Young Women's Christian Association (World YWCA), the Association for Progressive Communications (APC), non-governmental organizations with general consultative status

Conscience and Peace Tax International (CPTI), Dominicans for Justice and Peace (Order of Preachers), the Federación de Asociaciones de Defensa y Promoción de los Derechos Humanos (España), Interfaith International, Pax Romana (International the Catholic Movement for Intellectual and Cultural Affairs and the International Movement of Catholic Students), Temple of Understanding (TOU), the Women's International League for Peace and Freedom (WILPF), the Women's World Summit Foundation (WWSF), The international Society for Human Rights (ISHR), the International Federation of University Women (IFUW), Femmes Africa Solidarité (FAS), the Lutheran World Federation (LWF), the Worldwide Organization for Women (WOW), the Anglican Consultative Council (ACC), the Union of Arab Jurists, Rencontre Africaine pour la Defense des Droits de l'Homme (RADDHO), the Foundation for the Refugee Education Trust (RET), International Bridges to Justice (IBJ), the Inter-African Committee on Traditional Practices Affecting the Health of Women and Children (IAC), the American Association of Jurists (AAJ), the Lassalle-Institut, the UNESCO Centre of Catalonia, the Anti-Racism Information Service (ARIS), the Colombian Commission of Jurists (CCJ), the Pan Pacific and South East Asia Women's Association (PPSEAWA), the Ius Primi Viri International Association (IPV), the Permanent Assembly for Human Rights (APDH), the International Movement for Fraternal Union Among Races and Peoples (UFER), the Women's International Zionist Organization (WIZO), the International Federation of Women Lawyers (FIDA), the International Federation of Women in Legal Careers (FIFCJ), the Canadian Federation of University Women (CFUW), the International Association for Women's Mental Health (IAWMH), the European Union of Women (EUW), the European Women's Lobby, the International Women's Year Liaison Group (IWYLG), the African Services Committee, Inc., the International Federation of Family Associations of Missing Persons from Armed

Conflict (IFFAMPAC), the Institute of International Social Development, African Action on AIDS, the International Society for Traumatic Stress Studies (ISTSS), the Lama Gangchen World Peace Foundation (LGWPF), the Pax Christi International, International Catholic Peace Movement, the Tandem Project, the Al-Hakim Foundation, Canadian Voice of Women for Peace (VOW), the Organization for Defending Victims of Violence (ODVV), Solar Cookers International (SCI), the Medical Women's International Association (MWIA), the World Federation for Mental Health (WFMH), the United States Federation for Middle East Peace, the Susila Dharma International Association, Network Women in Development Europe, the Nord -Sud XXI, General Arab Women Federation, the United Towns Agency for North-South Cooperation, the World Association for the School as an Instrument of Peace, the International Organization for the Elimination of All Forms of Racial Discrimination (EAFORD), the Latin American Committee for the Defense of Women's Rights (CLADEM), the African Women's Association (AWA), the United Nations Association of Spain (ANUE), Maryknoll Fathers and Brothers, Maryknoll Sisters of St. Dominic, the International Forum for Child Welfare, the BADIL Resource Center for Palestinian Residence and Refugee Rights, the Virginia Gildersleeve International Fund, the African Commission on Health and Human Rights Promoters, the Arab Lawyers Union, the General Federation of Iraqi Women, the Wittenberg Center for Alternative Resources, the International Federation of Social Workers (IFSW), the International Association of Peace Messenger Cities (IAPMC), the Interreligious and International Federation for World Peace (IIFWP), the Committee for Hispanic Children and Families, Peace Boat, Prison Fellowship International (PFI), MYOCHIKAI (Arigatou Foundation), the International Association of Charities (AIC), the National Council of Women of Great Britain (NCWGB), the Indian Movement Tupaj Amaru (MITA), the Peter Hesse Stiftung Foundation, The Salvation Army, Action Internationale pour la Paix et Developpement dans la Region des Grands Lacs (AIPD), the Federation for Peace and Conciliation (FPC), the National Council of Women of the United States of America, the Cairo Institute for Human Rights Studies (CIHRS), the Comite International pour le Respect et l'Application de la Charte Africaine des Droits de l'Homme et des Peuples (CIRAC), the World for the World Organisation (WFWO), Education International (EI), the Universal Esperanto Association, the National Council of German Women's Organisations, Associated Country Women of the World (ACWW), International Grail, the Council of American Overseas Research Centres, ICVolunteers (ICV), the International Association for the Defence of Religious Liberty (AIDLR), Zenab for Women in Development, The Grail, non-governmental organizations with special consultative status.

The Institute for Planetary Synthesis (IPS), the International Peace Bureau (IPB), the UNESCO Centre for the Basque Country (UNESCO ETXEA), the 3HO Foundation (Healthy, Happy, Holy Organization), the Dzeno Association, the Country Women Association of Nigeria (COWAN), the International Movement against all Forms of Discrimination and Racism (IMADR), the Association Nigérienne des Scouts de l'Environnement (ANSEN), the International Peace Research Association (IPRA), the International Association of Gerontology and Geriatrics (IAGG), the Asia Pacific Forum on Women, Law and Development (APWLD), the International Progress Organization (IPO), non-governmental organizations on the Roster

**Title:**

**The Human Right to Peace and Migration**

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**Text:**

**I**

*The Spanish Society for International Human Rights Law* (SSIHRL) welcomed on 30 October 2006 the adoption of the *Luarca Declaration on the Human Right to Peace*. It was drafted by a Committee of independent experts and it was the culmination of a process of extensive consultations with Spanish civil society, with the support of the Catalanian Agency for Cooperation to Development.

Following the adoption of the Luarca Declaration, the SSIHRL has continued in all regions of the world the process of consultations with civil society through the organization of conferences and expert meetings on the human right to peace<sup>[1]</sup>. In 2010 the SSIHRL will call for a World NGO Conference to analyze and incorporate inputs received from international civil society and to adopt the final text of the *Universal Declaration on the Human Right to Peace* which will be submitted to the HR Council, urging its Member States to initiate the official codification of the human right to peace.

On 15 March 2007 the *Luarca Declaration on the Human Right to Peace* was presented to the fourth session of the Human Rights Council in an oral statement delivered by UNESCO Etxea on behalf of SSIHRL. Since then several parallel meetings have taken place at the *Palais des Nations* in Geneva during the following sessions of the Human Rights Council<sup>[2]</sup>.

**II**

According to the International Organization for Migration (IOM), there are currently more than 200 million migrant workers in the world. A third part live in Europe, being slightly below the figure of those living in Asia and North America. Both migration North-South and South-South are very frequent.

The present global crisis has increased the victims of famine and extreme poverty which has caused a parallel increase in population displacement and mass migration to safer regions, either within their own

country (IDPs) or outside (mass exodus, international migration, refugees). These massive population movements affect social peace of the country in which they occur, or may endanger international peace and security (international migration).

Migration and peace are thus closely linked. The international community affirmed in 1994 that “poverty and environmental degradation, combined with the absence of peace and security, human rights violations and the varying degrees of development of judicial and democratic institutions are all factors affecting international migration”<sup>[3]</sup>. Moreover, it also indicated in 1995 that social development is also clearly linked to the development of peace, freedom, stability and security, both nationally and internationally<sup>[4]</sup>.

Displaced persons are a vulnerable group that suffers from massive violations of their human rights. In situations of extreme poverty and social exclusion, they live in slums around the urban areas of developing countries without access to their most basic needs, such as food, drinking water, sanitation, education, health and work. Many people who decide to undertake a migration die in the effort, or are rejected by the immigration and security policies of host countries. If, in the best case, they settle in developed countries, often suffer social marginalization, discrimination and sexual or labour exploitation, particularly if they are women or children. This structural violence is incompatible with peace.

The emerging international migration law should be built on two principles recognized to all human beings: the right to emigrate and the principle of non discrimination.

Article 8 of the *Luarca Declaration on the Human Right to Peace* addresses the right to migrate in these terms:

- 1. Everyone has the right to emigrate and to settle peaceably, and also to return to his/her country of origin. No foreigner may be expelled without the proper guarantees provided for in International law and in accordance with the principle of non refoulement.*
- 2. In particular, everyone has the right to emigrate if his right to security of person or his right to live in a secure and healthy environment (...)*
- 3. Everyone has the right to participate, individually or in a group, in the public affairs of the country in which he/she has his/her habitual residence.*
- 4. Every person or group has the right to the establishment of specific mechanisms and institutions for participation which ensure the free and public expression of his/their individual and collective concerns and claims.*

**Equality before the law** and **non discrimination** in the enjoyment of human rights are structural principles of international human rights law which reaffirm the principle of dignity of human beings and build

the international human rights law system<sup>[5]</sup>. The Inter American Court of Human Rights stated that the latter principles are norms of “ius cogens on which are based the whole legal national and international order and that permeate the entire law”<sup>[6]</sup>.

The **International Convention on the Protection of the Rights of All Migrant Workers and Member of Their Families** of 1990 reiterates the principle of non discrimination and respect of all rights to migrant workers and their families (Art. 7). Part III of the Convention recognizes the rights to be granted to all migrant regardless of that they have a regular or irregular status in the host country. The Convention grants them a broad range of civil, political, economic, social and cultural rights<sup>[7]</sup>.

The **principle of non-discrimination against immigrants** should be enforced by those State Parties that have ratified the **International Covenant on Civil and Political Rights** of 1966<sup>[8]</sup>. Although arts. 2.1 and 26 of this latter international treaty does not expressly prohibit discriminatory measures against a person who may be a migrant worker (with or without papers), the clause contained *in fine* of article 26 (the prohibition of discrimination on "other status") is so wide and open that certainly includes the status of "immigrant worker"<sup>[9]</sup>.

Moreover, although article 1.2 of the **International Convention on the Elimination of All Forms of Racial Discrimination** of 1965<sup>[10]</sup> does not make distinctions between “citizens and non citizens”, its committee has clarified that the difference in treatment based on citizenship or immigration status will constitute discrimination only if the “criteria for such differentiation, judged in light of the objectives and purposes of the Convention, does not achieve a legitimate objective and is not proportional”<sup>[11]</sup>. The Inter American Court of Human Rights added that "the migratory status of a person cannot constitute a justification for depriving him/her of the enjoyment and exercise of their human rights, including those related to labour"<sup>[12]</sup>.

**Women and children** constitute two groups particularly vulnerable to human rights violations when they become migrants. The **Fourth World Conference on Women** of 1995 examined the situation of migrant women and called upon States to recognize their vulnerability as a consequence of violence and other forms of abuses<sup>[13]</sup>. The Commission on Human Rights indicated that both origin and destination countries should take appropriate legal measures against intermediaries that deliberately promote the clandestine movement of workers. According to this human rights body, intermediaries not only exploit women migrant workers but also violate their human dignity<sup>[14]</sup>. The General Assembly recalled that States should promote and safeguard human rights and fundamental freedoms of all migrants in accordance with international human rights law, whatever their immigration status, especially those of women and children<sup>[15]</sup>.

The former Special Rapporteur on the human rights of migrants stressed the problem of **violence against women migrant workers** due to their double marginalization as women and as migrants<sup>[16]</sup>. There exist a high number of women that are obliged to cross the border and travel long distances to engage in poorly paid work at home. It follows that they have a high risk of suffering situations of isolation and subordination, including physical or psychological violence. The kinds of abuse and violence suffered by women migrant workers include the withholding of their wages, acts of physical and sexual violence, undernourishment, the seizure of their passports, and the lack of medical and health care, among other abuses<sup>[17]</sup>.

The Statistical Office of the International Labour Organisation noted in 2004 that there were 218 million children in situations of child labour, of which 126 million performed hazardous work<sup>[18]</sup>. Many of them had left school as a result of emigration. The main factor behind the migration of child labour is poverty and family destitution. Because of their inexperience and age, children are taken on for badly paid and menial jobs, jobs where they are particularly vulnerable to exploitation in the workplace, manual jobs and work in factories, and even sexual exploitation<sup>[19]</sup>.

To combat trafficking in persons, especially women and children, the current Special Rapporteur on the human rights of migrants<sup>[20]</sup> appealed States to ratify and implement the **Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children**<sup>[21]</sup>.

According to the **Convention on the Rights of the Child**, States are obliged not only to suppress and punish any act that violates the dignity of children, but also to prepare the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples<sup>[22]</sup>.

The **outcome document of the Durban Review Conference**, adopted on 24 April 2009, urged States to adopt a comprehensive and balanced approach to migration, “through the international dialogue on migration, by developing real partnerships between countries of origin, transit and destination, and by exploring all possible synergies between the management of migration and the promotion of development, while fully taking into account the human rights of migrants” (paragraph 77)

## RECOMMENDATIONS

The **Human Rights Council** should promote the right to migrate as part of the human right to peace, which includes four rights, all of them essential to the effective implementation of the human right to peace:

the right not to migrate if conditions in the country of origin provide a sufficient degree of development; the right to emigrate if, despite everything, the person chooses freely to emigrate; the right to settle peacefully in the territory of another State; and the right to return to the State of origin.

**Migrants and their families** are human beings who are entitled to inalienable rights that should be protected from the perspective of social justice and equity, non-discrimination and gender equality, respect for cultural diversity, linguistic rights, solidarity, **peace** and friendly relations among all nations, races, ethnicities or religions.

All States should urgently ratify the **International Convention on the Protection of the Rights of All Migrant Workers and Member of Their Families** as a means to eliminate the illegal movement and transit of migrant workers and to ensure the protection of their minimum human rights.

Member States should be aware of the existing links between efforts **to combat racism**, racial discrimination and xenophobia to which migrants are subjected, and the construction of democratic, interactive and egalitarian **multiculturalism**, as well as the promotion of **dialogue among cultures**, civilizations and religions, as a means to achieve **the human right to peace** and to combat racial and religious intolerance.

States should respect the **principle of non discrimination** against migrants, as stated in the two International Covenants on Human Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Conventions No. 143 and 151 of the ILO on migrant workers, ILO Convention concerning Migration for Employment, the United Nations Convention against Transnational Organized Crime and the outcome of the Durban Review Conference. These treaties oblige States parties to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in these treaties, reaffirming in this way the principle of equality and non discrimination.

States should pay particular attention to those forms of **discrimination** against **women migrant workers**, according to the Beijing Declaration and Platform for Action of the Fourth World Conference on Women in 1995; to promote **women participation** at all levels of decision-making on **peace and security** issues (resolution 1325 of the Security Council); and to foster the role of the state in the promotion and protection of human rights and fundamental freedoms of all migrant women.

Finally, States should assume their obligations regarding to the suppression and punishment of trafficking of women and children migrants, as well as labour and sexual exploitation of women and child migrants.

[1] Conferences and expert meetings have already taken place in the following places: Bilbao and Geneva (November 2006); Mexico (December 2006); Bogotá, Barcelona and Addis Ababa (March 2007); Caracas and Santo Domingo (April 2007); Morelia (Mexico, 12 May 2007), Bogotá (12 May 2007), Oviedo and Santa Fe (New Mexico, USA, 16-17 May 2007); Washington (14 June 2007), Nairobi (15 June 2007), Geneva (28 June 2007); Feldkirch (Austria, 31 August 2007); Geneva (11, 12 and 21 September 2007), Luarca (28 September 2007); Madrid (23 October 2007); Monterrey (1st November 2007), Mexico DF, Geneva, Las Palmas de Gran Canaria, Zaragoza and Navía, Asturias (December 2007); on the occasion of the UN Commission on the Status of Women, New York (February 2008); Geneva (March 2008); Parliament of Catalonia, Barcelona, Geneva, Dakar, Madrid and Valencia (April 2008); Rome and Gwangju, Republic of Korea (May 2008); Geneva and Bilbao (June 2008); Cartagena and Geneva (July 2008); Paris, Geneva and Montevideo (September 2008); Oviedo, Turin, New York and Basque Parliament, Vitoria (October 2008); La Plata and Buenos Aires, Argentina, and Bosco Marengo, Italy (November 2008); Luxembourg, Geneva and Barcelona (December 2008); Geneva and Barcelona (January 2009); Yaoundé, Cameroon (February 2009); Figaredo, Asturias, Geneva and New York (March 2009), Johannesburg, Seville, Madrid, Santiago de Compostela and Bangkok (April 2009), Trevi, Italy, Mexico and Seville (May 2009). For more information on these meetings, please see <http://www.aedidh.org>

[2] On 15 March 2007 both the SSIHRL and the International Society of Human Rights (Frankfurt) convened an open *Information Meeting on the Luarca Declaration*; on 16 March 2007, the SSIHRL organized a *Technical Meeting* with NGO and human rights experts with a view to building a common strategy for a world-wide campaign on the human right to peace; 11 June 2007, both UNESCO Etxea and SSIHR organized an additional parallel meeting on the relationship between peace and solidarity rights; on 12 September 2007, the SSIHRL in collaboration with the UNESCO Liaison Office in Geneva organised a Roundtable on the legal content of the human right to peace; on 21 September 2007, the SSIHRL organised the commemoration of the International Day of Peace in the Council Chamber of the Palais de Nations; on 7 March 2008, the SSIHRL, the International Society of Human Rights (Frankfurt) and UNESCO Etxea organised a Roundtable on the relationship between extreme poverty and the human right to peace; on 4 June 2008, the SSIHRL and UNESCO Etxea organised a Roundtable on the right to education on peace and human rights; on 12 September 2008, the SSIHRL and UNESCO Etxea organised a Roundtable on the human right to peace and indigenous peoples; on 19 September 2008, the SSIHRL, UNESCO Etxea and the NGO Liaison Office of UNOG organised the commemoration of the International Day of Peace in the Council Chamber of the Palais de Nations

[3] International Conference on Population and Development, A/CONF.171/13, Cairo, 5-13 September 1994

[4] Program of Action of the World Summit for Social Development, A/CONF.166/9, Copenhagen, 14 March 1995

[5] VILLÁN DURÁN, C., *Curso de Derecho internacional de los derechos humanos*, Madrid, Trotta, 2002 (reimpresión: 2006), 1028 p., at 96

[6] Corte IDH: “Condición jurídica y derechos de los migrantes indocumentados”. Opinión Consultiva OC-18/03 de 17 de septiembre de 2003. Serie A No. 18, párr. 101

[7] Arts. 8-35 of the Convention. The Convention has been ratified by 39 States

[8] Ratified by 162 States

[9] VILLÁN DURÁN, C., “Los derechos humanos y la inmigración en el marco de las Naciones Unidas”, in HIDALGO TUÑÓN (A.) y GARCÍA FERNÁNDEZ (R.) (coordinadores), *Ética, pluralismo y flujos migratorios en la Europa de los 25*. Oviedo, Eikasía Ediciones, 2005, 329 p. at 267-329.

[10] Ratified by 173 States

[11] CERD General Recommendation XXX (2005) relating to discrimination against non-citizens. Vid. doc. HI/GEN/1/Rev.9 (Vol. II), of 27 May 2008.

[12] Consultative Opinion OC-18/03, of 17 de September 2003, on the legal status and the rights of undocumented migrants, cit., paras. 134 y 173, item 8 (opinion)

[13] Beijing Declaration and Platform of Action, Forth World Conference on Women, 15 September 1995, A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995), para. 46

[14] Human Rights Commission Resolution 2002/58, on violence against women migrant workers, E/2002/23- E/CN.4/2002/200, 25 April 2002, para. 4

[15] “Protection of migrant workers”, A/Res/60/169, 7 March 2006, para. 5

[16] Report submitted by the Special Rapporteur, Mrs. Gabriela Rodríguez Pizarro, according to Human Rights Commission resolution 1999/44, on human rights of migrants E/CN.4/2000/82, 6 January 2000, paras. 55-56

[17] Report submitted by the Special Rapporteur, Mrs. Gabriela Rodríguez Pizarro, *supra*, para. 63

[18] International Labour Organization, *Child Labour Elimination: a goal that can be reached*, global report submitted according



to the follow up of ILO Declaration on Fundamental Principles and Rights at Work 2006, Geneva, 2006, p. 11

[\[19\]](#) Report submitted by the Special Rapporteur, Mrs. Gabriela Rodríguez Pizarro, *supra*, para. 69

[\[20\]](#) Report of Mr. Jorge Bustamante, Special Rapporteur on the human rights of migrants, A/HRC/7/12, 25 February 2008, para. 55

[\[21\]](#) The Protocol to Prevent, Suppress and Punish Trafficking of Persons Especially Women and Children that supplements the United Nations Convention against Transnational Crime, made in New York on 15 November 2000. Ratified by 43 Estados

[\[22\]](#) 1989 Convention on the Rights of the Child, ratified by 193 States