



International Labour Office

GLOBALIZATION, LABOUR AND MIGRATION: A CALL FOR LEGAL PROTECTION AND A SUMMARY OF ANTI-DISCRIMINATION INITIATIVES

A presentation resource for the

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Summary

Under contemporary globalization, international labour mobility has increased, while levels of exploitation and deregulation have accelerated. Lack of legal protection for migrant workers heightens their attractiveness as instruments of “maintaining competitiveness” because they are obliged to work in situations where decent work conditions are not enforced. Irregular migrants are especially vulnerable because the threat of apprehension and deportation thwarts unionising and exposure of dangerous working conditions.

Current practices regarding labour migration present fundamental policy dilemmas for States, social partners, and civil society. Many States have placed increasingly strict barriers on legal entry of labour migrants, yet appear to tolerate the presence of large numbers of irregular migrants, especially those working in low-paid sectors lacking offer of national workers. Sectors employing irregular workers are usually those where little or no regulatory activity upholds minimum safety, health and working conditions that should ensure “decent work.” The absence of regulation reinforces employment of irregular migrant workers in substandard conditions, and provides incentive for shifting capital and employment from formal to informal activity.

Democratic governance depends on the rule of law; governance of migration and requisite regulation of the labour market are viable only to the extent they derive from a legislative foundation in turn based on sound international standards.

If the rule of law and democracy are to be strengthened under economic and social conditions of globalization, regulation of migration and of the labour market must be strengthened. The complementary existing international instruments for migration serve as coherent global guidance for national and international migration policies. Based on these norms and long experience, ILO proposes six key elements for viable and comprehensive standards-based national policy.

The role of social partner and civil society organizations in promoting comprehensive, sustainable and standards-based approaches to migration by governments is essential. ILO calls for ratification of the complementary package of ILO Conventions 97 and 143 and the 1990 International Convention on migrant workers.

The paper concludes with a summary overview of six broad types of anti-discrimination measures, and offers snapshots of various examples within each category.

INTRODUCTION

Migration today is about work. I begin with a story, to illustrate the challenges facing States in managing migration in the context of its economic importance.

Early in 2000, the US Immigration and Naturalization Service (INS) quietly suspended internal enforcement immigration raids and deportations, except at the borders. Acknowledgement of this suspension came just after US economic chief Alan Greenspan warned that the most significant threat to the US economy was inflation driven by wage increases. Implicit in Mr. Greenspan's message, and explicit in comments by other US economic analysts, was that potential wage increase pressures in the then-expanding economy were being countered by increased employment of women and the large presence of undocumented migrant workers. News articles reported on a national policy decision tying non-enforcement of immigration control to labour market and inflation control needs of the economy.¹ The effects of that policy also seem to have been well understood by some unions and undocumented workers themselves. It was reported that undocumented workers in Chicago were able to expand unionisation efforts, and to negotiate agreements that employers demand warrants for any future enforcement actions, advise migrant workers in advance of any planned immigration enforcement raids, and that migrant workers apprehended and deported would be reinstated at previous levels of pay and seniority when they returned.²

Fundamental Policy Dilemmas

In a considerable number of countries, migration is being simultaneously encouraged and combated. Distance between policy pronouncements and de facto arrangements reflects a major contemporary contradiction in States' practice. Despite all the political rhetoric about illegal migration, governments tolerate irregular migration while they officially reinforce controls against "illegal" migrant workers. The effects are, on the one hand, a continued supply of cheap labour, while on the other hand, "illegal" migrants unable to organize in the workplace to defend their dignity and decent work conditions, stigmatised and isolated as well from allies and support.

Trade and finance have become increasingly deregulated and integrated across regions and globally. By contrast, migration policies have not been liberalized, nor have they otherwise addressed the gulf between continued demands for cheap labour and the increasing supply of workers in other countries. Restrictive measures have been established with little or no consideration of domestic labour demand and supply. In some regions, imposition of tighter

¹ See for example, "U.S. Farmers Are Forced to Rely on Illegal Labor", *International Herald Tribune*, October 4, 2000.

² *International Herald Tribune*, March, 2000.

border controls and restrictions on movement have cut across traditional routes and patterns of labour and trade migration. To put it in simplified terms: basic labour economics theory would have it that placing restrictive barriers between high demand and large supply creates a potentially lucrative market for services of circumventing those barriers to bring the supply to where the demand is.

Tighter border controls have not halted migratory flows nor have they had projected results in reducing the number of workers crossing borders. Instead they have put more pressure on those who migrate. With few options available for legal migration in the face of strong pull-push pressures, irregular migration channels become the only alternative, and one which presents lucrative “business” opportunities for helping people arrange travel, obtain documents, cross borders and find jobs in destination countries.

Testimony to the fact that restrictive immigration policies fail is the fact that the trafficking and smuggling ‘business’ is considered to be worth well over 7 billion US dollars, second only to drugs and arms smuggling.³ As noted by the ILO Global Report on forced labour: ‘The recent rise in labour trafficking may basically be attributed to imbalances between labour supply and the availability of legal work in a place where the jobseeker is legally entitled to reside.’⁴

I. GLOBALISATION AND MOBILITY

Growing economic interdependence of states has been a widely acknowledged component of globalisation. The immediate effects on global population movements have been less easy to determine. However, as a recent ILO study put it, “**The evidence points to a likely worsening of migration pressures in many parts of the world...** Processes integral to globalisation have intensified the disruptive effects of modernization and capitalist development.”⁵ Many developing countries face serious social and economic dislocation associated with persistent poverty, growing unemployment, loss of traditional trading patterns, and what has been termed a “growing crisis of economic security.”

ILO estimates the current global total number of migrant workers and family members to be about 120 million. The total global population of people residing temporarily or permanently outside their country of citizenship is estimated at around 180 million by IOM and the UN. (in Western Europe, about 22 million economically active foreigners and dependents)

Most permanent immigrants and refugees --as well as migrant workers-- seek remunerative activity, participate in the labour force, and face discrimination and xenophobia directed at foreigners in host countries.

These concerns will only increase in significance in the next years and decades.

³ United Nations, *Human Development Report 1999*, New York, at 48

⁴ ILO, Global Report ‘Stopping Forced Labour’, *op cit* at 53

⁵ Peter Stalker: *Workers without Frontiers – the impact of globalisation on international migration*. ILO. Geneva 2000.

The anticipated growth in the trade of goods and foreign direct investment will not be able to significantly reduce the propensity to migrate in most countries. Rather, both the continued demand for low- and high-skilled foreign labour as well as the vast differences in living standards will continue to structure the character of migration flows.

In a number of countries, accelerated trade is replacing or undercutting domestic industrial and agricultural production with cheap imports, but at the expense of many jobs in those sectors. For example, a ton of corn to Callao, Peru or ton of rice to Manila can now be delivered more cheaply than what local, small-scale labour-intensive production costs. It is argued that the efficiency of mechanized large-scale agribusiness lowers food costs. However, growing each ton of corn in Peru, each ton of rice in the Philippines, occupied several farmers and labourers and supported their families.

These factors mean migration pressures are increasing as possibilities for employment and economic survival at home disappear. The number of persons living outside their country of origin more than doubled between 1975 and 2000, from 75 million to well over 150 million. While projections remain speculative, it may be reasonable to expect that today's figure will double again in the next 25 years.

Growing demand for migrant labour

Ireland's experience over the last decade is a graphic example of where economic growth expanded employment offer well beyond domestic labour supply. The result, as you well know, has been a new and expanding presence of foreign workers filling both high and low skilled jobs. Other European countries seem now to begin to realize that immigration may be a necessary option to address demographic trends and ageing work forces. Some governments have begun to consider "replacement migration" as one policy option.⁶

Globalisation and trade liberalisation have had contradictory impacts on employment conditions in countries of destination. Demand for cheap, low-skilled labour in industrialized countries as well as some developing nations in Africa, Asia, Latin America and the Middle East remains evident in agriculture, food-processing, construction, semi-skilled or unskilled manufacturing jobs (textiles, etc.), and low-wage services like domestic work, home health care and the sex sector.

These jobs are often those referred to as the "3-D" jobs: dirty, degrading and dangerous. Such employment needs are only partially met or unmet by available or unemployed national workers, for reasons of minimal pay, degrading and dangerous conditions, and/or low status in those jobs and sectors, as well as alternative access available for unemployed in some countries to social welfare, etc.

Despite relatively high unemployment in a number of developed countries, foreign workers – including particularly unauthorized migrants-- are able to find jobs easily⁷. On average, for example, a Mexican undocumented migrant worker to the USA will find a job two weeks after

⁶ UN Population Division: *Replacement Migration – Is it a solution to Declining and Ageing Populations?* New York, March 2000.

⁷ Lean Lim, Lin; *Growing Economic Interdependence and its Implications for International Migration* in United Nations: Population Distribution and Migration, New York, 1998, p.277.

his/her arrival. Similar evidence in Europe indicates that undocumented migrants are rarely 'unemployed'.⁸

A recent study prepared for ILO concluded, "we can conclude that migrants are in competition only with marginal sections of the national labour force ...when they are not sufficiently sustained by welfare provisions, in specific sectors, and/or in the less-developed areas inside these countries."⁹

Often they are well-educated people who are ready to take up jobs that they would not accept in their home environment and this process involves an enormous loss of human resources. Wage differentials however between countries of origin and destination justify their interest especially where conditions at home are akin to poverty.

Exploitation of Migrants

In contemporary conditions of globalisation, levels of exploitation and of informalisation of economic activity are increasing in many countries. The exploitability of migrant labour, particularly when it is legally unprotected, render it an attractive instrument for maintaining competitiveness. However, this is at the expense of formal protections of decent work standards and protection of basic human rights conditions.

Migrants without authorization for entry and/or employment, are especially at the margin of protection by workplace safety, health, minimum wage and other standards; they often are employed in sectors where such standards are non-existent, non-applicable or simply not respected or enforced.

As the International Confederation of Free Trade Unions (ICFTU) highlights, organizing migrants and immigrants into unions or organizations to defend their interests and rights is often extremely difficult. When it is not considered illegal under national laws, organizing --especially of those without legal authorization for employment-- is easily intimidated and disrupted by the threat or actual practice of deportation.¹⁰

And, in theory at least, irregular migrants are removable from the host country when domestic unemployment rises and/or when rising political tensions prompt the targeting of scapegoats.

II. DISCRIMINATION AND XENOPHOBIA

Worldwide, today almost every nation is a country of origin, of transit, of destination for people; many are all three. As is the case here in Ireland, virtually every country has become or is fast becoming multi-cultural, multi-ethnic, multi-racial, multi-lingual and multi-religious.

⁸ OSCE Office for Democratic Institutions and Human Rights Conference Report: Europe Against Trafficking in Persons', Berlin, 15-16 October 2001, at 72

⁹ E. Reyneri, *Migrants in Irregular Employment in the Mediterranean Countries of the European Union*. ILO International Migration Paper No. 41. 2002.

¹⁰ see for example, Linard, Andre: *Migration and Globalisation - the New Slaves*. International Confederation of Free Trade Unions. Brussels. July 1998

Whether deliberate or not, increasing application of restrictive policies has corresponded in many countries to increasing vilification of migrants –foreigners—in press, political discourse and public sentiments. The association of migrants and migration phenomena with criminality and, now, terrorism appear to be reinforced by usage of terminology of *illegal migrants* and language of *combating illegal migration*. In this context, increased occurrence of discrimination and outright violence reported in all regions is clearly more than mere coincidence.

While racism generally implies distinction based on difference in physical characteristics, such as skin coloration, hair type, facial features, etc, xenophobia describes attitudes, prejudices and behaviour that reject, exclude and often vilify persons, based on the perception that they are outsiders or foreigners to the community, society or national identity.”¹¹

A definition of discrimination

The ILO Discrimination (Employment and Occupation) Convention No.111, 1958, states in *Article 1* that:

For the purpose of this Convention the term “discrimination” includes-
(a) *any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;*
(b) *such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employer’ and workers’ organisations, where such exist, and with other appropriate bodies.*

Migrants and ethnic minorities experience discrimination on the grounds of their actual or perceived nationality, colour, “race”,¹² or ethnic origin. To measure, describe and respond to such discrimination, ILO launched in 1991 an ongoing project “Combating discrimination against (im)migrant and ethnic minority workers in the world of work. Resulting research demonstrated high levels of discrimination in access to employment against immigrant and ethnic minorities in Western Europe. Detailed country studies in Belgium, Germany, the Netherlands and Spain found net discrimination rates to be as high as 37 percent. That is to say that more than one in every three applications by minorities of immigrant backgrounds were rejected or not given consideration while identically qualified nationals were considered.¹³ Similar findings have been made in Canada, the United Kingdom, the USA and other countries. While detailed studies have

¹¹ Declaration on Racism, Discrimination, Xenophobia and Related Intolerance against Migrants and Trafficked Persons. Asia-Pacific NGO Meeting for the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance. Teheran, Iran. 18 February 2001

¹² The concept of >race= has long been exposed as a fallacy and as scientifically void. The term “race”, however, continues in wide usage, and its derivative >racial discrimination= has come to mean discrimination on the ground of perceived race, as opposed to factual race (which does not exist). Acknowledging that “race” is a subjective concept, the term *race* should be read as *perceived race* and *racial discrimination* as *discrimination based on the grounds of perceived race*. For ease of legibility, quotation marks are not inserted around the term. The ILO Committee of Experts on the Application of Conventions and Recommendations adopts a similar position. See ILO (1996a). For a scientific discussion of the concept of *race*, see UNESCO (1950).

¹³ Zegers de Beijl, R. *Documenting discrimination against migrant workers in the labour market*. International Labour Office 2001.

not been conducted in other world regions, anecdotal evidence suggests high rates of discrimination against legal migrant workers across Africa, Asia and in a number of Latin American countries.

Additional factors contributing to migrants' marginalisation are lack of sufficient knowledge of the host country's language, lack of appropriate education or training, and unfamiliarity with local customs and culture. Beyond linguistic disadvantages, some disadvantages faced especially by more recent migrants stem from poor educational opportunities in their home countries. However, the longer such migrants and their offspring live and work in a host society, the more likely it is that in fact prejudice and discrimination prevent them from reaching similar economic and educational attainments as the majority population.

Discrimination outside the workplace affects, conditions, and even prevents outright access to work and to decent working conditions for target groups. Systemic discrimination may be manifested by differential access to housing --such as relegating minorities to ghettos, or distant suburbs; by provision of inferior education through under-funding and understaffing schools in minority neighbourhoods; areas or regions, provision of inferior health facilities; by lack of public transportation between minority/target group living areas and places of available employment; and so on. These forms of discrimination have significant impacts on access to employment. "In this sense, the racialisation of areas can operate as a form of structural discrimination that perpetuates exclusion and disadvantage for ethnic minority groups."¹⁴

The intersection between race, ethnicity and nationality begs elaboration. On the one hand, popular perceptions in a considerable number of countries associate racial and ethnic identities differing from the 'national norm' with presumed foreign status. Non-whites remain perceived as 'foreigners' in many European countries. On the other hand, perceived convergences between race and nationality led to huge policy contention in the USA, to the extent that the AFL-CIO reversed last year its support for 'employer sanctions' enacted in 1986. Legal sanctions against employers who hired unauthorized foreign workers were found to have resulted in widespread discrimination in hiring against citizen and authorized resident blacks, Hispanics, Asians, and other non-white workers. Employers usually cited difficulties in verifying work-authorizing documentation presented by applicants as reason for excluding some or all minority candidates from consideration. However, civil rights and labour advocates widely raised concerns that concerns over sanctions provided a convenient cover for employers disposed to discriminate. The extensive patterns and practices of discriminatory treatment were sufficient for the US labour movement --and mainstream civil rights organizations-- to reverse policy to now explicitly oppose employer sanctions.

Gender and migration

A word on the gender dimensions of discrimination against migrants is more than warranted. Differential opportunities for legitimate employment affect men and women differently. Demand for migrant workers from receiving countries is very much defined by the labour market segmentation in these countries, i.e., opportunities are available for precisely these low-skilled jobs considered suitable for women.

¹⁴ Wrench, J. and Modood, T. *The Effectiveness of Employment Equality Policies in Relation to Immigrant and Ethnic Minorities in the UK*. ILO International Migration Paper No. 38. 2001. pages 37-39

The feminisation of international labour migration, together with the fact that most job opportunities for women migrants are in unregulated sectors (domestic work, sex industry) and the existence of sex-disaggregated labour markets contribute to the increase of discriminative labour markets in countries of destination. In addition, women have less access to information on migration/job opportunities, recruitment channels, and often have less preparation than men to cope with the working and living conditions in the countries of destination.

III. COMPREHENSIVE POLICY RESPONSES REQUIRED

Migration today is about work. Addressing migration means promoting employment and social protection.

Solidarity with migrant workers is fundamental; exclusion and disassociation from foreign workers simply facilitates situations in which migrant workers are exploited to the detriment of upholding decent work condition.

Assuring decent treatment for migrant workers cannot be obtained by piecemeal measures or isolated advocacy here or there.

What's Needed

Existing international norms, recommendations from World Conferences agreed by representatives of nearly all governments, and 80 years' experience of ILO with its tri-partite constituents provide a very solid policy framework. Aware of the emerging discussion on migration policy here in Ireland, we identify six core elements for viable and comprehensive standards-based national policy.

1) An **informed and transparent labour migration admissions system** designed to respond to measured, legitimate needs, taking into account domestic labour concerns as well. Such a system must be based in labour ministries, and rely on regular labour market assessments conducted in consultation with social partners to identify and respond to current and emerging needs for workers, high and low skilled. ILO research underlines this as a fundamental starting point: legal labour migration channels contribute to reducing exploitation, trafficking and smuggling of migrants¹⁵.

2) A **standards-based approach to “migration management”, protecting basic rights of all migrants and combating exploitation and trafficking**

It is increasingly evident that migration policy and practice can only be viable and effective when it is based on a firm foundation of legal norms, and thus operates under the rule of law

A Set of International Norms

Three International Conventions together provide a comprehensive “values-based” definition and legal basis for national policy and practice regarding non-national migrant workers and their family

¹⁵ ILO; Mekong Sub-Regional Project to Combat Trafficking in Children and Women, *Legal Labour Migration and Labour Markets: Alternatives to Substitute for Trafficking in Children and Women*, p.1.

members. They thus serve as tools to encourage States to establish or improve national legislation in harmony with international standards. They are not simply human rights instruments. Numerous provisions in each add up to a comprehensive agenda for national policy and for consultation and cooperation among States on labour migration policy formulation, exchange of information, providing information to migrants, orderly return and reintegration, etc.

The two ILO conventions on labour migration provide a basic framework for national legislation and practice on managing labour migration. These are ILO **Migration for Employment Convention**, of 1949 (No. 97) and the **Migrant Workers (Supplementary Provisions) Convention**, 1975 (No. 143). These instruments stipulate that States actively facilitate fair recruitment practices and transparent consultation with their social partners, reaffirm non-discrimination, establish a principle of equality of treatment between nationals and regular migrant workers in access to social security, conditions of work, remuneration and trade union membership. Accompanying Recommendations provide important policy guidelines, including a model for bilateral migration agreements.

42 States have ratified ILO Convention 97, including eleven member States of the European Union.

The **1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families** which is expected to enter into force imminently, is based on concepts and language drawn from the two ILO Conventions. It extends considerably the legal framework for migration, treatment of migrants, and prevention of exploitation and irregular migration.

A total of 69 different States have now ratified one or more of these three complementary standards¹⁶; although a large number of countries have yet to adopt any. The point of establishing legal rights and policy standards is to ensure social legitimacy and accountability, which can only be ensured by a foundation in the rule of law. Social legitimacy –and public cooperation—for governance comes of its association with justice, human dignity and democratic values.

3) Enforcement of minimum national employment conditions standards in all sectors of activity, to serve as a complementary system of criminalizing abuse of persons and of discouraging irregular employment. A major incentive for exploitation of migrants and ultimately forced labour is the lack of application and enforcement of labour standards in countries of destination as well as origin. Tolerance of restrictions on freedom of movement, long working hours, poor or non-existent health and safety protections, non-payment of wages, substandard housing, etc. all contribute to expanding a market for irregular migrants who have no choice but to labour in conditions simply intolerable and unacceptable for legal employment. Worse still is the absence of worksite monitoring, particularly in such already marginal sectors as agriculture, domestic service, sex-work, which would contribute to identifying whether workers may be in situations of forced and compulsory labour.

¹⁶ The ILO Migration for Employment Convention #97 of 1949, ratified by 42 countries, the ILO Migrant Workers (Supplementary Provisions) Convention #143 of 1975, ratified by 18 countries; and the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, ratified by 19 countries and signed by 12 others. Texts and related information available respectively on the ILO website, at www.ilo.org/ilolex, and on that of the Office of the UN High Commissioner for Human Rights, www.unhchr.ch

The response is enforcement of clear national minimum standards for protection of workers, national and migrant, in employment, and enactment of these where those do not exist. ILO Conventions on such aspects as occupational safety and health, against forced labour, and on discrimination provide minimum international norms for national legislation. A necessary complement is **monitoring and inspection** in such areas as agriculture, domestic work, sex industry and other sectors of 'irregular' employment, in particular to identify and prevent exploitation of children and to detect and stop forced labour, as well as to uphold minimal decent work conditions.

4) **A Plan of Action against discrimination and xenophobia** to sustain social cohesion.

The Declaration and Program of Action adopted at the World Conference Against Racism and Xenophobia (WCAR) in Durban in 2001 included no less than 40 paragraphs on treatment of migrant workers, refugees and other non-nationals. These paragraphs in themselves constitute a comprehensive and viable program of action to combat xenophobia and discrimination against migrants. The text "urges States to take concrete measures that would eliminate racism, racial discrimination, xenophobia and related intolerance **in the workplace** against all workers, **including migrants** and ensure the full equality of all before the law, **including labour law.**" Many specific measures and recommendations coincide with and reflect ILO norms and experience and that of social partners in combating discrimination, such as regarding fair wages and remuneration, gender dimensions, access to social services, economic opportunities, protection of workers' rights, adoption of national legislation, etc.

Main elements, identified in the Durban program of action, include:

- Adoption in national law of relevant standards to protect rights of non-nationals.
- Make racist and xenophobic discrimination, behaviour and action unacceptable and illegal.
- Elaborate administrative measures and procedures to ensure full implementation of legislation, and accountability of all government officials.
- Establish independent national human rights/anti-discrimination monitoring bodies with power to (i) monitor and enforce legislation; and (ii) receive and act upon individual complaints.
- Promote respect for diversity and multicultural interaction.
- Encourage communications media to emphasize positive images of diversity and of migration
- Incorporate multi-cultural and diversity training in educational curricula.
- Mobilize civil society cooperation.

5) **Reformulating development aid, trade, and investment policies.**

Growing economic disparities, increased marginalisation and armed conflict across the world will not diminish unless and until concerted attention is directed at redressing economic, trade and development disadvantages that are the legacy of colonialism, concentrations of power, lack of democratic traditions and weaknesses in legal and administrative mechanisms in many countries. Clearly, pressures for migration, particularly irregular migration, will not diminish without such response. Migration implications must be taken into account in trade, aid, investment and political relations. Changing terms of aid, trade and relationships to address profound inequities, marginalisation of entire populations, and situations of generalized violations of human rights requires elaborating national and regional strategies that engage industrialized countries –

including Ireland—in seeking alternative policies and identifying medium and long term solutions.

6) Institutional mechanisms for consultation and coordination with social partners in policy elaboration and practical implementation, to ensure coordination within governments and consultation with social partners and concerned civil society bodies on all main areas of policy concern. These include supervision of recruitment, administration of admissions, public education and awareness raising, training of public service and law enforcement officials, recognition of educational equivalencies, provision of social and health services, rights restoration and recovery for victims of trafficking, and numerous other aspects of managing labour migration.

The feminisation of migration and predominance of abuse of women migrants require elaboration of gender sensitive migration policies which recognize gender equality as integral to the process of policy making, planning and program delivery at all levels, focusing not only on providing equal treatment, but on ensuring equal outcomes.

Labour migration policy must be elaborated and implemented in full consultation with the social partners, namely the workers organizations and employer associations concerned. ILO experience shows that policy will only be viable, credible and sustainable if it takes into account the concerns and interests of employers and workers. Indeed, the extent of social partner involvement in elaboration and implementation of national labour migration policy is the extent to which it will be viable and sustainable over time.

The trade union movement in a number of countries has made enormous strides in recent years. Major policy shifts followed by major organizing drives among migrant workers have taken place in recent years by mainstream trade unions and national confederations in Belgium, Canada, France, Korea, Italy, Spain, the USA and others. The main national confederations in Argentina, France, Italy, Spain and the USA have full-time national staff for migrant worker organizing and anti-discrimination issues; all are active in policy advocacy for improved protection of rights and decent work conditions for migrants. The Korean Congress of Trade Unions (KCTU) cosponsors with church and other organizations the Joint Committee for Migrants in Korea. To better assist, support and combat discrimination against migrant workers of diverse nationalities in Korea, KCTU organized a division of work among its main constituent trade unions where each one assists in providing materials and services for a specific language/nationality of migrants.

Civil Society

Much of the concrete attention given to migrants, including protection of their rights and dignity, is given by the day-to-day work of local, national and regional non-governmental organizations. An extensive international survey of NGO activity in migration was conducted under the auspices of the UN Commission on Population and Development in 1997.¹⁷ More than 100 NGOs in all regions of the world responded.

The survey documented extensive civil society activity in information services and orientation seminars to migrants in countries of origin; assistance in return and reintegration; assistance in

¹⁷ UN Commission on Population and Development: *Activities of intergovernmental and non-governmental organizations in the area of international migration; Report of the Secretary General*. New York. 1997. UN document E/CN.9/1997/5

housing, employment, healthcare, education, legal services, skills retraining, recognition of qualifications, etc; social, vocational and psychological counselling; addressing specific problems related to trafficking and sexual exploitation of migrants; facilitating dialogue, mediation and good relations between migrants and host country nationals; combating racism and xenophobia; research on root causes of migration; public education activities, promotion of international standards and national legislation and policy; and cooperation with international agencies.

The Role of ILO

The International Labour Organization was established in 1919 to elaborate, promote and monitor implementation of international standards regarding treatment of labour; to provide orientation and technical assistance to its tripartite constituents; and to address contemporary issues affecting workers, employers and governments world-wide. ILO is a specialized agency of the United Nations system; it is unique in having civil society participation in its governance through its tripartite structure in which representatives of national employer and worker organizations participate alongside representatives of government, usually labour ministries.

ILO has addressed the treatment of migrant workers since its inception 80 years ago, and has elaborated standards and measures to uphold workers basic rights and dignity and to protect them from all types of discrimination in employment.

ILO has elaborated several Conventions addressing equality of opportunity and non-discrimination in most aspects of employment, such as recruitment matters, contract conditions, vocational training, promotion at work, and job security. The Discrimination (Employment and Occupation) Convention, No.111 (1958), referred to earlier, is considered one of the eight fundamental instruments of the ILO. It prohibits discrimination in employment based on a broad definition of discrimination. It has been widely ratified, as of January 2002 by 154 States, including Ireland. ILO elaborated the two international conventions on migration for employment currently in force, noted above.

ILO activity extends far beyond standard setting and monitoring, to research and documentation, technical advice and cooperation with governments, identifying policy options, etc. to support constituents in implementing effective policies and practices in accordance with agreed international standards.

IV. A TYPOLOGY OF ANTI-DISCRIMINATION MEASURES

Action to prevent discrimination and promote equality of opportunity in employment, as well as in other arenas, is the shared responsibility of all social partners, notably national and local government, employers and their associations, and workers' organisations.

Government authorities, employers, worker organizations and NGOs across Europe have initiated and implemented a wide range of measures to combat discrimination against migrant and ethnic minority workers. Some emerged out of legal requirements, others reflect organizational commitment to promote equality in the workplace and outside.

ILO research has identified a typology to categorize the multitude of diverse initiatives:

1. Organisational Initiatives

2. *Collective Action*
3. *Legislative And Legal Measures*
4. *Administrative Measures, Regulations and Practices*
5. *Political/Educational Action*
6. *International Standards and Programmes*

Measures identified within each of these categories overlap with and mutually reinforce measures in other categories. National efforts to combat discrimination can only hope to succeed when there is widespread implementation by employers, workers and community organisations, government, political and opinion leaders, in concert with international standards and programs.

Following we offer a summary definition of the main types, and snapshots of various examples of categories of measures within each of the six broad types:

1. Organisational initiatives

Organisational initiatives refers to those policies and practices established and implemented by employers in order to reduce discrimination and promote equality of opportunity in the workplace. The term *voluntary measures* has often been used to denote workplace measures put in place by businesses. Work-place measures may not always be *voluntary*, for example where established as the result of a binding collective agreement. They also apply to trade unions, community organisations and government offices in their role as employers.

Main categories include:

1. Equal opportunities statements and action plans
2. Equality targets or benchmarks for recruitment and management
3. Recruitment initiatives to encourage ethnic minority applications
4. Measures to improve the qualifications of minority applicants, trainees and employees
5. Elimination of arbitrary barriers
6. Job accommodation measures
7. Audits and ethnic monitoring of migrant/minority employees
8. Recruiter and Management Training
9. Diversity Management

(1) Equal opportunities statement and action plan

A growing number of employers, from transnational corporations to small businesses, trade union organisations, and government offices have adopted basic public policy statements that indicate that they offer equal opportunities for employment and promotion and equal working conditions for women, ethnic minorities and immigrants. It has been found in a number of countries that a greater proportion of companies with a stated equal opportunity policy actually engage in fair practice than those without.

These statements are often accompanied by equal opportunities action plans. These plans allocate responsibilities to ensure that staff are familiar with what is expected of them with regards an equal opportunities programme. They usually identify specific objectives and targets as well as deadlines for when these should be reached. Plans can also specify in what way and by whom the progress of each part of the action plan will be measured and assessed. An important component of an equal opportunities action plan is an equality target or benchmark by which results can be assessed.

(4) Measures to improve the qualifications of minority applicants, trainees and employees

Measures to improve the qualifications of minority applicants include pre-employment training or scholarships for training targeting primarily designated group members who lack such skills, language courses in the host country's language and management and leadership training for designated group members. Employers have also instituted targeted programs to improve qualifications of migrant and minority trainees and/or employees. The proportion of positive action trainees progressing into employment is high. Many employers surveyed report that most of their trainees subsequently gain employment.

(9) *Diversity Management*

Diversity management is an approach emphasising that organisations can validate differences amongst employees to the benefit of the company. It is based on treating individual differences and collective diversity as advantages, and on fostering an organisational culture of recognition and respect for difference, rather than a culture encouraging homogeneity. Experiences in some companies demonstrate that diversity management approaches lead to demonstrably greater efficiency and increased productivity. Proponents assert that organisations validating higher levels of diversity can also better address and reduce discrimination than organisations whose internal culture demands homogeneity, which often privileges the values and characteristics of one ethnic, social or national identity, usually the dominant one.¹⁸

2. Collective Action

This term is applied to the numerous and diverse measures worker organisations, employers and business associations, community groups including concerned NGOs can implement, within their own institutions and networks, in the work-place and in society.

1. Developing charters, guidelines and rules on equal opportunity
2. Encouraging minority participation within unions
3. Supporting minority self-organisation within unions and community groups
4. Identifying bias in hiring, in opportunities for training and advancement
5. Supporting action on grievances concerning discrimination
6. Collective agreements
7. Monitoring of equal opportunities practices
8. Organising and protecting migrants and minorities
9. Anti-harassment policies

(1) *Developing Charters, Guidelines and Rules on Equal Opportunity*

In some countries, an increasing number of trade unions and employer associations have set up separate committees or structures to deal with race relations and/or equal opportunities issues and have adopted equal opportunities policies and anti-racist statements.

Union charters aim at encouraging unions to be more active on the issue. Such charters usually include the following main points:

- the need to remove barriers which prevent ethnic minority and migrant workers from reaching union office;
- the need for vigorous action on employment grievances concerning racial discrimination;
- a commitment to countering racist propaganda;
- the necessity for appropriate personnel procedures for recruitment and promotion;
- the production of union material in relevant ethnic minority languages when necessary, and
- the inclusion of equal opportunity clauses in collective agreements.

¹⁸

Op.cit., p.90.

Unions can also establish internal rules condemning discrimination and racism. These can include the power to sanction those who have discriminated on the grounds of race.

Employers associations in some countries have developed good practice guidelines to encourage better practices by businesses, and provide models for organisational measures to be adopted by employers.

(2) *Encouraging Minority Participation within Unions*

To encourage equal opportunity of access to elected posts and other responsibilities, unions have also engaged in positive action measures. These include monitoring their own membership and composition of union decision-making bodies by ethnic origin, setting targets for proportions of ethnic minority members on executive councils and other major committees and developing closer links between race structures and bargaining structures. Other measures include advertising to ethnic minority and immigrant members their willingness to pursue grievance procedures and tribunal claims in cases of discrimination and harassment, and establishing training for full-time officers dealing with discrimination cases.

Some unions have a special committee dealing specifically with equal opportunities issues and have taken positive action steps, such as organising conferences for ethnic or minority members and producing literature in ethnic minority languages. More unions are giving special training for ethnic minority members to encourage their participation in union positions.¹⁹

(5) *Supporting action on grievances concerning discrimination*

Experience shows that discrimination-related grievances are more likely to succeed if the claimant obtains the support of his or her union. Trade unions involved with members' racial discrimination complaints have been encouraged by the results and it has been argued that the small success rate of such cases is improving with the involvement.

(6) *Collective Agreements*

Collective labour agreements negotiated with employers provide a locus for inclusion of language expressing common concern with discrimination in employment. Such collective bargaining agreements have in a number of cases contained specific anti-discrimination language and the promotion of equal opportunity for all. A common approach is to include "equal opportunity" clauses in such agreements.

3. Legislative and Legal Measures

Legislation plays an essential role in discouraging discrimination and promoting equal treatment. By adopting general standards and rules, legislators can positively influence societal behaviour and individuals may be persuaded to act in certain ways. For those already accepting and following such standards as just or self-evident, legislation will reinforce their beliefs and actions.

Comprehensive anti-discrimination provisions are contained in international norms. In adopting national legislation to comply with international obligations, States may often have discretion to decide whether to adopt constitutional, civil, criminal and/or labour law prohibitions of discrimination. The main categories include:

1. Constitutional law

¹⁹ Wrench, and Modood (2001) p. 65.

2. Civil legislation
3. Criminal legislation
4. Labour law
5. Monitoring bodies
6. Judicial process and civil proceedings

(2). *Civil legislation*

Almost all countries surveyed by ILO favour a civil law approach to combating discrimination against migrant and ethnic minority workers in employment. It is particularly important in this regard that civil legislation prohibits discrimination on the grounds of nationality, race, colour, ethnic or national origin and also:

- prohibits specifically direct and indirect discrimination;
- includes a positive action clause;
- contains a clear-cut list of admissible exceptions for direct discrimination and a narrowly construed exceptions clause for indirect discrimination;
- provides the possibility of shifting the burden of proof from the plaintiff to the defendant;
- includes a provision that holds employers liable for discriminatory acts committed by employees in the workplace;
- includes a specific provision declaring acts of victimisation unlawful.

One of the advantages of civil law is the flexibility it provides in determining remedies. It leaves room for courts to design tailor-made remedies, enabling them to take the particularities of each and every case into consideration.

(5) *Monitoring Bodies*

A variety of extra-judicial mechanisms have been instituted with the aim of encouraging the resolution of complaints and the enforcement of anti-discrimination legislation. These monitoring agencies aim to encourage the settlement of disputes without resort to court proceedings and can contribute to solving cases of discrimination and to the eradication of discriminatory practices that generate complaints. An enforcement agency can take the form of a body with a wider mandate, covering both racial and sexual discrimination for instance or human rights in general.²⁰

The powers of such bodies should include the ability to investigate on two levels; through general inspections of recruitment practices across a sector of employment and formal investigations involving notified cases of alleged discrimination. The monitoring body can provide the victim of discrimination with legal assistance as well as translation and interpretation services. It is usually entitled to analyse and make suggestions for the improvement of existing anti-discrimination law and its enforcement. An essential element of its enforcement function is promotional work, through information and training, as a preventive measure against the creation of a discriminatory environment.

The monitoring body may act as either a mediator or arbitrator in settling disputes. Mediation or arbitration is often less costly, more straightforward and speedier than court proceedings. It can be particularly effective in cases of alleged indirect discrimination, when the defendant may not be aware that a particular policy was discriminatory. Some States have opted to make mediation

²⁰ A listing of national anti-discrimination monitoring bodies in Western countries is provided in the Resource Chapter of the ILO Anti-Discrimination Handbook, (to be published in spring 2002).

and/or arbitration compulsory in cases of discrimination. Another virtue of mediation or arbitration is that it resolves many disputes before a court hearing is required and therefore lightens the potential caseload for the courts.

In some countries, monitoring bodies are also given powers to take cases of discrimination to court should the preliminary remedial procedures fail to resolve the case. This can include both the power to take cases to court on the monitoring body's own behalf, and to assist and represent individuals²¹.

4. Administrative Measures, Regulations and Practices

Measures, regulations and practices established under the administrative authority of national, state, and local government organs can be effective tools for demonstrating and carrying out the will of the State to discourage discrimination and promote equal opportunity. Types of measures practised in different countries include:

1. Technical advice and guidance
2. Contract compliance
3. Positive Action and training
4. Recruitment for Public Employment
5. Targeting Long-Term Unemployed
6. Incentives for entry jobs
7. Affirmative action
8. Codes of practice
9. Labour force surveying

(1) Technical Advice and Guidance

Some governmental agencies provide advice and guidance to employers, trade unions and others, on the promotion of equal opportunity policies and other issues relating to a multi-racial workforce. In particular, they help with recruitment and selection issues and the formulation of equal opportunity policies.

In a number of cases, they issue guides covering equal opportunities for women and disabled as well as for ethnic minorities where generally employers are encouraged to:

(2) Contract compliance

This measure entails making the awarding of governmental contracts, either local or national, for the provision of goods and services, conditional on the employer's compliance with anti-discrimination provisions and its active implementation of positive action measures as specified in law. By limiting the award of governmental contracts to employers who meet such criteria, clear incentives are given by the government to employers to achieve workplace equality. The possibility of being excluded from potentially valuable contracts often provides more motivation to the employer to incorporate good practices than the threat of a formal investigation or a court hearing.²²

5. Political and Educational Action

²¹ *Op.cit.*, pp. 44-53.

²² ILO (1998), pp. 77-80.

The development, implementation and eventual success of anti-discrimination measures in the workplace depend to a significant degree on the political and social climate that fosters and reinforces workplace action. Political leaders, communications media and educational institutions each have key roles in shaping or modifying public attitudes regarding discrimination. We suggest the following categories as useful to identify needs and responses:

1. Opinion shaping efforts by political leaders
2. Role of communications media.
3. Public education campaigns
4. Diversity festivals
5. Curricula for schools and universities
6. Research

(1) Opinion shaping efforts by political leaders

As evidenced by recent political developments in a number of countries, national and local political leaders can have an enormous influence on attitudes by encouraging or discouraging opinions and practices regarding migrant and ethnic minority members of society. However, recognition of the need to discourage political leaders and certain political movements from fostering racist and discriminatory sentiments has not resulted in a diminution of such attitudes. The challenge is two-fold, that of identifying effective means to discredit and isolate voices promoting discrimination and, at the same time, encouraging political leaders and opinion-shapers to more prominently voice support for principles and practices of equality. It is likewise desirable for corporate and trade union leaders to speak up and act as visible champions of equality principles.

(3) Public education campaigns

Organised public national or regional campaigns can be particularly visible and effective ways of encouraging respect for diversity, discouraging discrimination and building public pressure on institutions to adopt concrete measures to promote equality.

A *campaign* generally involves a planned effort to undertake a series of co-ordinated and multifaceted initiatives over a period of time, to give greater visibility to an issue and achieve certain results such as new legislation, changed policy, modified public attitudes. Building a successful campaign requires co-operation among a range of concerned institutions and actors, necessitates a planning and co-ordination body, and requires resources to implement the various aspects, such as publicity materials, advertisements in communications media, training kits, co-ordinating staff, etc.

Campaigns can also be built within specific arenas, such as among a national trade-union movement or among employers in specific geographical or sectoral areas of activity.

6. International Standards and Programmes

International standards, recommendations, mechanisms and services established by international inter-governmental institutions provide a comprehensive framework for and offer direct assistance in implementation of national and sectoral anti-discrimination measures. Elements include:

1. Conventions and treaty standards
2. Resolutions and recommendations adopted by inter-governmental bodies
3. Recommendations by international conferences
4. Rulings by international judicial bodies

5. Advisory functions of relevant international agencies
6. Training and capacity building by international agencies and other institutions.

(3) *Recommendations Adopted by International Conferences*

Several major International Conferences have developed programmes of action and made recommendations for States in relation to discouraging discrimination against migrant and ethnic minority workers. These include the Vienna World Conference on Human Rights in 1993, the 1994 Cairo World Conference on Population and Development, the Copenhagen World Summit for Social Development, 1995, the Beijing World Conference on Women, 1995 and most recently the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban in 2001. Relevant sections of the respective Programmes of Action offer comprehensive guidance to States and other actors in elaborating appropriate measures for tackling discrimination and also provide a framework within which policies and practices may be harmonised trans-nationally.²³

(5) *Advisory functions of relevant international agencies*

The ILO, the and the Office of the UN High Commissioner for Human Rights offer advisory services, through technical co-operation programmes, to governments, intergovernmental agencies, non-governmental organisations and others on issues related to the treatment of migrant and minority workers. As a specific outcome of the World Conference Against Racism in Durban, the OHCHR established a new unit of discrimination with a mandate to combat racism and xenophobia and promote equality and non-discrimination.²⁴ These initiatives respond to the needs of governments to develop coherent responses in migration policy, legislation and management.

A CONCLUDING NOTE

The ILO is identifying and publishing an evolving listing of “good practice” examples across these categories, to make them accessible as models and references for wider implementation. Comments and contributions towards further research on discrimination in employment and towards elaboration of this compendium are most welcome.

In conclusion, I would like to salute the vision, leadership and courage of the Ireland Equality Authority and its partners in conducting this national Anti-Racism Workplace. At this time, it is especially laudable that you agreed to tackle openly concerns about discrimination and integration of migrant workers. In this, you are light years ahead of some other European countries.

Your alliance leading this national anti-racism effort is as exemplary as it is broad. It seems unique to see the employers’ Irish Business and Economic Council and the Construction Industry Council, the Irish Congress of Trade Unions, government initiatives including Know Racism as well as the Equality Authority, the broad-based National Coordinating Committee Against Racism, and the Equality Commission of Northern all under the same roof.

²³ IOM, *Migrant workers and recent UN conferences*, 1997.

²⁴ See Durban Programme of Action paragraph 191©

This kind of leadership, of initiative and of cooperation must continue here, especially to prevent rising discrimination and xenophobia should economic conditions slide downward. We will certainly cite your experience as an example across Europe and elsewhere. Only this kind of broad cooperation and joint work will roll back the racism, discrimination and xenophobia still rampant everywhere we look.

Thank you, and keep up the good work.

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