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GLOBALIZATION, LABOUR MIGRATION AND DEVELOPMENT: KEY ISSUES FOR GOVERNANCE

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A. OVERVIEW

At the beginning of the 21st Century, 175 million people, 2.9 percent of the world's population, are living outside their countries of citizenship. This population would constitute the world's fifth largest country if put in one territory. Half of this population, some 86.5 million, is economically active, that is to say employed, self-employed or otherwise active in remunerative activity.¹

Some 20 million Africans are estimated to be living outside their country of origin, the large majority - some 16 million—elsewhere in Africa, most others in Europe. While total numbers may be less for the Caribbean and Pacific, it is estimated that 20% of the populations of a number of Caribbean states live abroad. The portions of national populations of some Pacific states abroad are considerably higher.

We can say that most adult migrants of working age are involved in the world of work, given that children and aged people are included in that total. In the context of the challenges of globalization, issues of protection of migrant workers are fundamental to good governance, decent work and social cohesion.

Migration is becoming a central feature of present and future economic progress and social well being in many countries. On the one hand, not enough jobs are being created for the world's growing labour force. Every year some 40 million new workers are added each year to the global work force. On the other hand, demographic and technological changes mean that some countries no longer rely solely on native workers and professionals to fill new and changing employment needs.

The benefits from the growth of global trade and investments have not been evenly distributed. As ILO studies have found, factors related to globalization and capitalist modernization directly contributed to eliminating traditional jobs and livelihoods while not providing enough alternative employment. For many people, migration is a natural response to the huge deficit of decent work. For many developing countries migration represents an adjustment to a troublesome disequilibrium in the global economy. Nonetheless, only some 2 million workers migrate annually to join the work forces of industrialized countries.

¹ ILO: *Towards a fair deal for migrant workers in the global economy* International Labour Conference, Geneva 2004, p. 7. Available on line at: <http://www.ilo.org/public/english/standards/reim/ilc/ilc92/pdf/pr-22.pdf>

Meanwhile, demography and technological change have been transforming the labour forces and economies in all regions, in Asia and the Americas as well as in Europe and here in Africa. People are living longer, families have fewer children, and educational attainments continue to rise. The result is increased need for foreign workers, even though immigration is not seen as the solution to complex economic and social challenges. Foreign born workers represent 10% or more of the work forces of Western European countries, in North America, in several countries in Asia, and even much higher proportions in some Middle East Gulf states. They are present in nearly all ACP countries; in a few of them, workers of immigrant origin comprise up to a quarter of the work force.

Migration is central to the global agendas of employment creation, decent work and social dialogue. Mobility of workers is essential to globalization's future possibilities to assure access to labour, distribution of income and wealth, and economic productivity worldwide.

B. THE IMPACT OF GLOBALISATION

Growing economic interdependence of states has been a widely acknowledged component of globalisation. However, its effect on international population movements is less easy to generalize. According to a recent ILO study, put it, evidence points to increasing migration pressures in many parts of the world, as 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.

As ILO Director-General, Juan Somavia put it, *if you look at globalization from the point of view of peoples' concerns, its single biggest failure is its inability to create jobs where people live.* In sum, migration pressures on the "supply side" are increasing as possibilities for employment and economic survival are reduced.

On the other side, **demand for migrant labour is also increasing.** Demographic trends, notably population declines and ageing work forces in industrialized countries mean that immigration is becoming an increasingly important option to address changing labour force composition and needs and future economic and social performance.

Already, growing competition for highly educated specialists in expanding service sectors has resulted in a significant **rise in skilled labour migration.** Simultaneously, the global efforts to fill shunned "3-D jobs" and maintain economic competitiveness produce a **continuous demand for cheap and low-skilled migrant labour** in many sectors of the world economy.

It is often said that, **migrant labour fills the "three-D" jobs: dirty, dangerous and degrading.** Migrant labour has long been utilized in developed and under-developed economies as a low cost means to sustain economic enterprises and sometimes, entire sectors that are only marginally viable or competitive. Today, migrant labour ensures low cost agricultural produce, domestic service, cheap construction labour, and services in the "sex industry" in many countries.

The persistence of dual labour markets under globalization is expanding the number of precarious jobs which national workers are reluctant to take. Small and medium size companies and labour-intensive economic sectors do not have the option of relocating operations abroad. Responses include downgrading of manufacturing processes, deregulation, and flexibilization of employment, with increased emphasis on cost-cutting measures and subcontracting.

Labour of irregular migrants is resorted to reduce cost of production, since they are willing to work for inferior salaries, for short periods in production peaks, or to take physically demanding and hazardous jobs. This is true today across the ACP countries as elsewhere in the world.

Legally unprotected, migrant labour, therefore, is an attractive instrument for maintaining competitiveness. This is, however, at the expense of formal protections of workplace safety, health, minimum wage and other standards.

C. REINFORCING THE MIGRATION AND DEVELOPMENT NEXUS

Migration in general and migrant workers in particular are actors in development both in host and home countries. They contribute skills, labour, knowledge and initiative to progress of host countries. They also make major contributions to home countries with their remittances, which contribute to improving human capital and local economies.

Migration has become a key feature for industrialized countries to meet economic, labour market and productivity challenges in a globalized economy. Migration today serves as an instrument to adjust the skills, age and sectoral composition of national and regional labour markets. Migration provides responses to fast-changing needs for skills and personnel resulting from technological advances, changes in market conditions and industrial transformations. In countries of aging populations, migration offers a potential to replenish declining work forces, as well as to inject younger workers, potentially increasing dynamism, innovation and mobility in work forces.

A growing body of knowledge amply demonstrates that migrants make large contributions to economic and social development in both their host and home countries. Numerous studies show that migrants fill vital jobs unwanted by natives, and that their presence, activity and initiative create additional employment. Migrant contributions to social security systems are helping balance national accounts in a number of countries, even though many will never benefit from their own contributions. By working at low or sub-standard wages, migrants contribute significant subsidies to ensuring cheap farm produce, accessible services, affordable buildings and available health care for example, although sometimes involuntarily challenging prevailing wage and conditions levels in host countries. A representative range of studies is cited in the ILO resource book prepared for the International Labour Conference in 2004.²

Migrant contributions to scientific, social, cultural and sports accomplishments are legend in the histories and identities of many immigration countries.

By volume, with official transfers estimated at some 160 billion dollars this year, migrant remittances are the largest international exchange value after petroleum, and far above current levels of international development aid and foreign direct investment.

While it is said that migrant remittances to their home countries –usually developing nations-- are expended primarily on consumption, much of this spending is apparently invested in improving housing, nutrition, healthcare and educational levels for families back home. These expenditures clearly have a substantial positive impact on improving human capital—the most basic component of development. These expenditures have multiplier effects on expanding local activity in construction, food production, and health care and educational facilities.

An urgent priority today is to reduce costs of remittance transfers, so that the largest proportion arrives to the beneficiary family and community, rather than being paid to financial middlemen in the form of transfer costs and fees that are commonly reported at rates up to 20% or more.

Social and labour conditions of migrant workers and the degree of integration of migrants determine the levels and extent of economic and social contributions they make to social and economic welfare in host countries. Specifically, the conditions of migrant workers directly affect both their abilities to

² ILO: *Towards a fair deal for migrant workers in the global economy* International Labour Conference, Geneva 2004, available on line at: <http://www.ilo.org/public/english/standards/relm/ilc/ilc92/pdf/pr-22.pdf>

remit part of their earnings and to acquire skills and knowledge useful upon return or in permanent settlement elsewhere. Thus these conditions have a direct bearing on the level and nature of migrant contributions to social welfare, human capital formation, and development, especially in their countries of origin.

For example, employment earnings denied to migrants in exploitative conditions or which deported migrants are unable to obtain prior to departure are economic resources not only stolen from the affected workers, but in effect expropriated from the countries of origin to which a significant part would have been remitted.

While protection of human rights of all migrants is a legal, political and ethical imperative in its own right—regardless of economic, financial or other considerations—protection of migrant workers, preventing discrimination, ensuring equality of treatment, and enhancing integration are demonstrably essential measures to ensuring that migration indeed contributes substantially and positively to development—economic and social, in host and home countries alike.

In sum, since labour is not a commodity, it is essential to emphasize that the migration-development nexus must be constructed on a *rights-based approach*.

D. ELEMENTS FOR A POLICY AGENDA

International dialogue and consultation on migration has increasingly focused in recent years on identifying common approaches and means for cooperation among States in regulating what is by definition a phenomena requiring international cooperation. A decade ago, delegates of some 160 countries agreed upon a comprehensive common agenda in the chapter on migration of the Plan of Action adopted by the 1994 International Conference on Population and Development (ICPD) in Cairo. More recently, regional migration dialogues—in Africa, the Americas, the Caribbean and elsewhere-- and the Berne Initiative's International Agenda for Migration Management have elaborated common approaches.

An essential recent contribution was the adoption by resolution, at the 2004 International Labour Conference in Geneva, of the Conclusions of a general discussion on migrant workers. The Conclusions provided for a **Plan of Action on migrant workers**. They outline a comprehensive approach to regulating labour migration from a rights based approach in the context of labour market and employment considerations. Especially significant was the adoption of the resolution by consensus by ministerial level government representatives and leadership of trade union and employer federations from the 177 ILO member States. Following this Plan of Action, the ILO subsequently drafted a comprehensive **Multilateral Framework for Labour Migration** from a rights-based approach that takes into account labour market concerns and sovereignty of States. This non-binding policy framework was adopted last November by an ILO Tripartite Meeting of Experts; it was approved for ILO publication by the Governing Body in March 2006.

Taking into account the 2004 International Labour Conference resolution, the framework together with provisions of the Berne Initiative's International Agenda for Migration Management as well as the report of the Global Commission on International Migration, eight main components of a labour migration policy agenda required to ensure that migration benefits host and home countries and the migrants themselves may be identified:

1) A standards-based foundation for comprehensive national labour migration policies and practices.

Migration policy and practice can only be viable and effective when they are based on a firm foundation of legal norms, and thus operate under the rule of law. The necessary framework for national law on migration is amply laid out in the two ILO conventions on labour migration, the ILO Migration for Employment Convention of 1949 (No. 97) and the Migrant Workers (Supplementary

Provisions) Convention, 1975 (No. 143) together with the 1990 International Convention on the Protection of Rights of All Migrant Workers and Members of Their Families. These three instruments comprise an *international charter on labour migration* providing a broad normative framework covering treatment of migrant workers and inter-State cooperation on regulating migration.

2) An informed and transparent labour migration policy and administration

Immigration practice must respond to measured, legitimate needs, taking into account domestic labour concerns as well. Such a system must rely on regular **labour market assessments** to identify and respond to current and emerging needs for workers, high and low skilled. Policy and practice will need to address such areas as awareness raising, supervision of recruitment, administration of admissions, training of public service and law enforcement officials, recognition of educational equivalencies, provision of social and health services, labour inspection, rights restoration and recovery for victims of trafficking, and other areas.

3) Institutional mechanisms for dialogue, consultation and cooperation

Labour migration policy can only be credible, viable and sustainable to the extent it takes into account the interests, concerns and experience of the most-directly affected stakeholders. Key stakeholders are the social partners: the employers and businesses that provide employment and the trade unions – worker organizations—representing the interests of workers, both migrants and nationals. Labour ministries need to have a key role. Of course, consultation and policy-making must also take into account the multiple concerned ministries and agencies within government as well as concerned civil society bodies and certainly migrants themselves.

4) Enforcement of minimum national employment norms in all sectors of activity

Preventing exploitation of labour migrants, criminalizing abuse of persons that facilitates trafficking, and discouraging irregular employment requires enforcement of clear national minimum standards for protection of workers, national and migrant, in employment. ILO Conventions on 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, construction, domestic work, the sex industry and other sectors of ‘irregular’ employment, to prevent exploitation, to detect forced labour, and to ensure minimal *decent work* conditions for all.

5) Gender sensitive labour migration measures

The feminization of labour migration and the prevalence of abuse of women migrants require recognizing gender equality as integral to the process of policy-making, planning and programme delivery at all levels.

6) A Plan of Action against discrimination and xenophobia

Discrimination and xenophobic hostility against migrants are serious challenges to governance and social cohesion in every region of the world. ILO research has found discrimination rates of 35 per cent against regular immigrant workers- unlawful discrimination- across Western Europe. The 2001 World Conference in Durban advanced the ICPD agenda on migration by defining a comprehensive and viable plan of action specifically to combat discrimination and xenophobia against migrants at national, regional and global levels, based on common experience from different regions.

7) Linking Migration and Development in Policy and Practice

Migration continues to generate significant contributions to both development and social progress and welfare in home and host countries alike. However, such contributions can be enhanced by a broad array of policy measures ranging from reducing costs and constraints on transfer of migrant workers’ remittances to providing accessible mechanisms for regular migration and recognition of employment contributions of all migrant workers.

8) International Consultation and Cooperation

Formalized mechanisms of regular dialogue and cooperation among States-- including participation of concerned stakeholders-- are essential in all regions. Dialogue and cooperation are necessary to

operationalize regimes for free circulation of labour/persons across regional economic integration initiatives in several world regions including the Andean Community and Mercosur in the Americas, as well as the East Africa Community, the Economic Community of West African States.

E. PROTECTION OF MIGRANT WORKERS: A CORE ISSUE FOR GOVERNANCE

As noted above, three instruments comprising an *international charter on migration* provide the normative framework and specific model legislative language required to establish a basis for national policy. **76 different States have now ratified** one or more of these three complementary standards, including some 30 members of the ACP group of States.³ A major point of establishing rights and legislative policy standards is to ensure social legitimacy and accountability, only guaranteed by a policy foundation in the rule of law.

In Africa, Algeria, Benin, Burkina Faso, Cameroon, Cape Verde, Ghana, Guinea, Kenya, Lesotho, Libya, Madagascar, Malawi, Mali, Nigeria, Senegal, Seychelles, Tanzania (Zanzibar), Togo, Uganda and Zambia have ratified ILO Conventions 97 and/or 143 on migration for employment and/or the 1990 International Convention on migrant workers. In the Caribbean, the Bahamas, Barbados, Belize, Cuba, Dominica, Grenada, Guyana, Saint Lucia, and Trinidad and Tobago have done so. (11 member States of the European Union have also ratified one or both of these ILO conventions.)

Recognizing the sovereign right of States over their migration policies, three fundamental notions characterize the protection in existing international law for migrant workers and members of their families:

1. Equality of treatment between regular migrant workers and nationals in the realm of employment and work.
2. Core universal human rights apply to all migrants, regardless of status. This was established implicitly and unrestrictedly in ILO Convention 143 of 1975 and later delineated explicitly in the 1990 Convention. It is also a principle of international human rights law.
3. The broad array of international labour standards providing protection in treatment and conditions at work, including in safety, health, maximum hours, minimum remuneration, non-discrimination, freedom of association, maternity, apply to all workers. This notion was most recently upheld in a recent Opinion issued by the Inter-American Court of Human Rights.

Elaboration of specific international normative instruments on migrant workers dates to 1920s. A first international treaty addressing treatment of foreign workers was established under ILO auspices in 1931. However, the economic and political turmoil that built up into World War II precluded promotion and adoption by more than a handful of States.

In 1949, the year after adoption of the Universal Declaration of Human Rights and two years before establishment of the 1951 International Convention on the Status of Refugees, the first widely implemented instrument on migrant workers was adopted by the ILO, and subsequently ratified by an important number of both host and home States of migrants in the 1950s and 1960s.

The ILO Migration for Employment Convention of 1949 (No. 97) established equal treatment between nationals and regular migrants in areas such as recruitment procedures, living and working conditions,

³ The ILO Migration for Employment Convention No. 97 of 1949 is ratified by 46 countries, the ILO Migrant Workers (Supplementary Provisions) Convention No. 143 of 1975 is ratified by 19 countries; and the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families ratified by 34 countries and signed by 16 others. A number of States have ratified both of the ILO Conventions, several have ratified one or both ILO Conventions plus the 1990 International Convention.

access to justice, tax and social security regulations. The ILO Migrant Workers (Supplementary Provisions) Convention of 1975 (No. 143) took law on international migration further by establishing norms to reduce exploitation and trafficking of migrants while insuring protections for irregular migrants, and to facilitate integration of regular migrants in host societies.

The content of ILO Conventions 97 and 143 formed the basis for drafting the 1990 International Convention, which expanded and extended recognition of economic, social, cultural and civil rights of migrant workers rights. This Convention is characterized as one of the seven fundamental human rights instruments that define basic, universal human rights and ensure their explicit extension to vulnerable groups world-wide.⁴

Eight points describe the importance of these three Conventions:

1 They establish comprehensive “values-based” definitions and legal bases for national policy and practice regarding non-national migrant workers and their family members. They thus serve as tools to encourage States to establish or improve national legislation in harmony with international standards.

2 They lay out 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.

3 The 1990 International Convention further establishes that migrant workers are more than labourers or economic entities; they are social entities with families and accordingly have rights. It reinforces the principles in ILO migrant worker Conventions on equality of treatment with nationals of states of employment in a number of legal, political, economic, social and cultural areas.

4 ILO Convention 143 and the 1990 Convention include provisions intended to prevent and eliminate exploitation of migrants.

5 ILO Convention 143 and the 1990 Convention explicitly address unauthorized or clandestine movements of migrant workers, and call for resolving irregular or undocumented situations, in particular through international cooperation.

6. These Conventions also resolve the lacunae of protection for non-national migrant workers and members of their families in irregular status and in informal work by providing norms for national legislation of receiving states and their own states of origin, including minimum protections for undocumented or unauthorized migrant workers.

7 While the three Conventions address migrant workers, implementation of their provisions would provide a significant measure of protection for other migrants in vulnerable situations, such as victims of trafficking.

8 The extensive, detailed and complementary text contained in these instruments provides specific normative language that can be incorporated directly into national legislation, reducing ambiguities in interpretation and implementation across diverse political, legal and cultural contexts.

⁴ Noted in the Report of the (UN) Secretary General on the Status of the UN Convention on migrants rights for the 55th Session of the UN General Assembly. Doc. A/55/205. July 2000. The other six are the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention for the Elimination of Racism and Racial Discrimination (CERD), Convention Against Torture (CAT), Convention for the Elimination of Discrimination Against Women (CEDAW), and the Convention on the Rights of the Child (CRC). Texts and status of these conventions available on the website of the Office of the UN High Commissioner for Human Rights: www.unhchr.ch

As the International Labour Conference reaffirmed in 2004, all International Labour Standards apply to all workers, regardless of nationality or status, unless otherwise explicitly stated.

This jurisprudence was strengthened in the Americas by the opinion of the Inter-American Court of Human Rights of 17 September 2003 that clearly reinforces the application of international labour standards to non-national workers, including those in irregular status.⁵

“The Court found that non-discrimination and the right to equality are jus cogens, applicable to all residents regardless of immigration status. Non-discrimination and the right to equality, the Court said, dictate that States cannot use immigration status to restrict the employment or labor rights of unauthorized workers, giving unauthorized workers inter alia equal rights to social security (see paragraph 157). The Court acknowledged that governments have the right (within the bounds of other applicable human rights norms) to deport individuals and to refuse to offer jobs to people without employment documents. However, the Court said, once the employment relationship is initiated, unauthorized workers become rights holders entitled to the full panoply of labor and employment rights available to authorized workers”.⁶

In its conclusions, "The Court decides unanimously, that:

“The migrant quality of a person cannot constitute justification to deprive him of the enjoyment and exercise of his human rights, among them those of labour character. A migrant, by taking up a work relation, acquires rights by being a worker that must be recognized and guaranteed, independent of his regular or irregular situation in the State of employment. These rights are a consequence of the labour relationship.”

While this jurisprudence applies specifically to the Caribbean, its general findings should be relevant elsewhere as well.

RELEVANT ILO ACTION

Over the last two years, ILO has conducted an ambitious technical cooperation and capacity building programme covering Maghreb countries as well as East Africa and West African countries. The core aims of this project on Managing Labour Migration for Integration and Development were:

- to enhance the capacities of tripartite constituents for managing labour migration as an instrument for development
- to promote social dialogue and to raise awareness among stakeholders regarding regional labour migration issues
- to advance labour migration as an integral element of regional integration with a view to developing regional policy frameworks
- to enhance cooperation between East Africa, West Africa, North Africa and Europe on labour migration.

The ILO involved tri-partite constituents in a series of project-related consultations, research and capacity-building activities that raised awareness about existing linkages between migration and development as well as about the need to improve the legislative and statistical base in order to develop regional policy frameworks. Project activities also enhanced social dialogue and encouraged administrative arrangements in support of effective migration management based on relevant international labour standards.

Significant progress has been registered in sensitizing stakeholders about different policy and practical approaches to managing labour migration within and from those regions. National focal points have

⁵ Corte Interamericana de Derechos Humanos. *Condición Jurídica y Derechos de los Migrantes Indocumentados* Opinión Consultativa OC-18/03 de 17 de Septiembre de 2003, solicitada por los Estados Unidos de Mexico.

⁶ As reported by Beth Lyons, (USA) National Employment Law Project, September 28, 2003

been established in labour ministries with a view to coordinating and initiating inter-ministerial policy consultation forums in project countries. These forums include competent representatives of national employer and labour federations as well as delegates from the several relevant ministries concerned with labour migration. The development of tripartite plans of action on labour migration has been encouraged on the basis of recommendations emanating from five major conferences, one to two held in each sub-region over the last 18 months.

Some 30 national studies on data, legislation and migration and development linkages have been produced; nine sub-regional synthesis studies are currently being published, three for each of the three sub-regions covering assessments of data collection and application, the current state of legislation and regional harmonization, and migration-development synergies. These studies are now available on the ILO Africa migration website: <http://migration-africa.ilo.org>

This effort has set in place the basis to expand dialogue and cooperation with counterpart organizations and government administrations among these different sub-regions and Europe.

An *African-European Inter-regional Dialogue: Managing Labour Migration for Integration and Development* takes place in Brussels, 4-6 April 2006 to further encourage this international engagement and cooperation.

CONCLUSIONS

Accommodating migration in the context of globalization, development imperatives, and inevitably greater diversity in national societies requires implementing a deliberate policy framework. Such a framework must assure respect for migrants' rights and equality of treatment as well as facilitate development dynamics by States and societies.

For ACP, it would be timely to develop an agenda for action on migration to support member States in improving governance, enhancing development, and contributing to social welfare.

In broad terms, such an agenda might include chapters on: implementing basic international human and labour rights standards; addressing labour market needs and composition; enhancing migration and development synergies; ensuring *decent work* opportunities for all; enacting legislation to ensure protection of migrants, combat discrimination and promote their integration; and putting in place the institutional structures and practical measures to implement this agenda.

The newly published ILO Multi-lateral Framework for Labour Migration provides a comprehensive set of guidelines that offer orientation on virtually all aspects of labour migration policy and administration; this can serve as a basic guide to construct an ACP agenda on migration.

Governments, employers' and workers' organizations across together with parliamentarians and civil society organizations in all ACP countries have fundamental roles to play in assuring a rights-based approach to international labour migration. This approach offers the best route to ensuring that migration becomes truly and instrument of development, regional integration and social welfare in home and host countries and for migrants themselves.

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