



International Labour Office

## ***IMPERATIVES FOR UNION LEADERSHIP IN DEFENDING A RIGHTS BASED APPROACH TO MIGRATION IN THE AGE OF GLOBALIZATION<sup>1</sup>***

### **1. Role of Labour Migration Today**

Migration today is about work. About decent work. And about work relations.

Of the 191 million people living outside countries of birth or citizenship, nearly 90 million are economically active.<sup>2</sup> Most migrants and immigrants of working age are engaged in the world of work.

Migration is about work because migrant labour has become a key feature in meeting economic, labour market and productivity challenges in a globalized economy. Migration 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.

The foreign born commonly represent 10% of the work force in Western European countries. Proportions in a number of countries in Africa, Asia and the Americas are higher; some countries in the Gulf rely on foreign workers for 50 to even 80% of their work forces.

Migration is about decent work because migrant labour largely fills “three-D” jobs: dirty, dangerous and degrading. Efforts to fill 3-D jobs and to acquire economic competitiveness through labour productivity at low cost produce a continuous demand for cheap and low-skilled migrant labour in numerous sectors of national economies. Immigrant labour has long been utilized as a low cost means to sustain economic enterprises and even entire sectors of economic activity that are only marginally competitive. Small and medium size companies and labour-intensive economic sectors do not have the option of relocating operations abroad.

The 2004 International Labour Conference noted:

Despite the positive experiences of migrant workers, a significant number face undue hardships and abuse in the form of low wages, poor working conditions, virtual absence of social protection, denial of freedom of association and workers’ rights, discrimination and xenophobia, as well as social exclusion.

Migration is also about the absence of decent work. Much migration is not by choice, nor mainly a product of disparities in economic factors between countries or regions. Rather, as it is the direct and inescapable result of deteriorating conditions for welfare and survival in many countries. The

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<sup>1</sup> Prepared by Patrick Taran, Senior Migration Specialist, ILO for the ITUC (International Trade Union Confederation) Workshop on Organizing Migrant Workers and Promoting Their Rights, Brussels, 12-15 December 2006.

<sup>2</sup> 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/realm/ilc/ilc92/pdf/pr-22.pdf>

evidence points to a likely worsening of migration pressures in many parts of the world. Processes integral to globalization have intensified the disruptive effects of modernization and capitalist development. 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’<sup>3</sup>.

As the ILO Director General, Juan Somavia, said, *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.*

Finally, migration today is about work relations. It is the cutting edge of dispute and redefinition in relations between labour and capital in distribution of benefits deriving from economic activity, in the level of protection and regulation of conditions of employment and work, and in the extent working people –foreign workers in particular-- and civil society can organize to articulate and defend their interests.

In the American and European contexts, migration is the vector for the expanding dichotomy between a so called social economy characterized by highly quality, highly skilled production and a land of low paid unskilled workers among whom are many migrants in irregular situations and in so-called atypical employment. In the USA, 37% of labour is categorized as *bon marché* –low cost. For Germany, this figure is 43% and for Sweden 34% according to the Financial Times. The FT further notes that if accurate figures for immigration were available, it is likely that the overall proportion of low cost --I add low protection—labour in Europe would be similar to that of the US economy.

More broadly stated, the question of migration reflects a broader clash between value systems for governance of class relations and society at national and supra-national levels. One pole can be characterized as a rights-based approach, with an implicit primacy of individual freedoms, equality of opportunity and concern for social welfare. In contrast, a contending approach argues for emphasis on corporate security, in particular that of the State, and on pragmatic support for deregulation, economic competitiveness, and growth.

## **Two Poles**

These alternatives are clearly reflected in two distinct approaches to migration. One of these poles is characterized by clear reference to a normative foundation of international human rights and labour standards, reflected in international Conventions. In the context of migration related to the world of work, it is based on social dialogue, recognizing the social partners as essential stakeholders. It likewise explicitly ties migration policy to labour market regulation, labour force composition, economic performance and, ultimately, social protection and welfare. Its primary reference in government is the ministry concerned with labour and employment. Overall this approach seeks to regulate natural and necessary phenomena that acquire increasing importance as labour mobility is internationalised.

In contrast, another approach is quite literally called migration management. This would appear to be the dominant approach today in discourse and practice. It is explicitly deregulatory, stating that there is no international instrument on migration comparable to the UN Convention and Protocol on the Status of Refugees that provides a legal framework for refugee protection and policy. It is a fully “states owned” process, where international dialogue and cooperation on migration are developed in regional and now global forums essentially outside the existing international United Nations system. Its primary reference in government is usually with interior ministries often in tandem with foreign ministries.

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<sup>3</sup> Peter Stalker: *Workers without Frontiers – the impact of globalisation on international migration*. ILO. Geneva 2000.

This approach admits consultation with other stakeholders, but usually separately from the intergovernmental dialogues and from internal governmental policy consultation. The other stakeholders are defined as the private sector and civil society, the former not necessarily referring to organized expressions of employers and the latter acknowledging trade unions as one among a variety of civil society formations. In particular, this reference to civil society makes no distinction among different levels of representivity, responsibility and accountability regarding workers between NGOs and trade unions.

The logic of this migration management approach may be described as utilitarian consequentialist, seeing migrants as factors of economic activity and ones that can be employed at lower standards of pay and conditions than those prevailing in host countries, precisely because lower pay will lead to creation of more jobs. A prominent feature of this approach is promoting temporary migration schemes where “bundles of rights” may be traded away in exchange for access to employment in labour markets where conditions are better than in home countries.

Both of these contrasting approaches have organizational manifestations in the array of international institutions. While both approaches utilize the language of dignity and protection of migrants, it may be safe to suggest that both do not have equal status as “rights-based” approaches.

In any case, both approaches call on cooperation and support of trade unions, and benefit from the credibility of working with worker organizations. Given the limited resources and particular interests of worker organizations, there may be some benefit from setting priorities in building alliances.

### **A Policy Agenda on labour migration**

The starting point for a rights based agenda would be reference to the international instruments that represent the codification of human rights values into legal norms. The main international human rights conventions and International Labour Standards generally apply to non-citizen migrant workers. Nonetheless, the international community saw fit to elaborate three specific instruments explicitly addressing migrants: ILO Conventions 97 and 143 and the 1990 International Convention on the Protection of Rights of All Migrant Workers and Members of Their Families. These instruments comprise an *international charter on migration* providing a broad normative framework for both treatment of migrants –including non-discrimination—and inter-State cooperation on regulating migration. They provide comprehensive “values-based” definitions and legal bases for national policy and practice. They lay out a comprehensive agenda for national policy as well as for consultation and cooperation among States on labour migration policy formulation, exchange of information, orderly return and reintegration.

These three Conventions resolve a lacuna of protection for non-national migrant workers and members of their families by providing specific norms for national legislation, including on minimum protections for unauthorized migrant workers.

76 different States have ratified one or more of these three complementary standards to date.<sup>4</sup> 11 member States of the European Union have ratified one or both ILO conventions. With 16 additional signatories to the UN Convention, it can be hoped that 90 States will soon have adopted core international standards as a basis of national migration policy.

Existing international law established three fundamental notions regarding migrants:

1. Equality of treatment between regular migrant workers and nationals in employment.
2. International Labour Standards apply to all workers. (This notion was recently upheld in a unanimous Opinion issued by the Inter-American Court.)
3. Core universal human rights apply to all migrants, regardless of status.

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<sup>4</sup> Texts, status of ratifications and related information available respectively at [www.ilo.org/ilolex](http://www.ilo.org/ilolex) and [www.unhchr.ch](http://www.unhchr.ch)

The ILO Migration for Employment Convention of 1949 (No. 97) established equal treatment between nationals and regular migrants in recruitment, living and working conditions, access to justice, tax and social security regulations. The ILO Convention of 1975 (No. 143) elaborated norms to reduce exploitation and trafficking of migrants, insure protections for irregular migrants, and 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 on the rights of migrant workers, which expanded and extended recognition of economic, social, cultural and civil rights of migrant workers.

A comprehensive policy framework must also address organizing and administering migration to ensure that protection of migrants, non-discrimination, and mutual benefits are achieved in practice.

### **A Comprehensive Policy Agenda**

In 2004, the International Labour Conference in Geneva –representing ILO’s 177 member States including social partners-- adopted a detailed **Plan of Action on migrant workers**. This year, ILO published a Multilateral policy Framework for Labour Migration providing detailed practical guidelines based on principles and good practices.

These mutually reinforcing initiatives underline that migration policy must comprise:

- 1) A standards-based foundation for national migration policies and practices.
- 2) Informed and transparent migration administration
- 3) Institutional mechanisms for dialogue, consultation and cooperation, and
- 4) Action against discrimination and xenophobia

Several other core elements are required for comprehensive, viable and sustainable migration policy; these are detailed in the Multilateral Framework<sup>5</sup>.

Given enormous economic and political interest in pursuing a management approach to migration, obtaining primacy for a rights based approach will only come about when significant political and social pressure is generated for full implementation of relevant standards, for equality of treatment and integration.

Based on this context, I suggest several policy imperatives that this ITUC consultation may want to consider in determining recommendations and lines of action for trade unions:

- 1) First of all, organize the unorganised. Ensure explicit inclusion and outreach to migrant workers, regardless of status.
- 2) Engage in visible and well-resourced efforts to obtain ratification and implementation of the core migrant worker conventions.
- 3) Reaffirm and advocate that non-discrimination and equality of treatment for non-nationals are imperative to maintaining social partnership as well as social cohesion today.
- 4) Make explicit the stance that all migrant workers, regardless of status, are first and foremost workers entitled to decent work, protection of all labour rights and the full support of unions.
- 5) Convene and build spaces or mechanisms for social partner consultation and dialogue on labour migration policy, implementation and evaluation.
- 6) Work visibly and publicly to effectively prevent racism and discrimination
- 7) Build alliances and partnerships based on common agendas and interests

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<sup>5</sup> Multi-lateral policy Framework for Labour Migration. ILO. Geneva. 2006. Available on line at: [www.ilo.org/migrant/download/tmmflm-en.pdf](http://www.ilo.org/migrant/download/tmmflm-en.pdf) also in French /tmmflm-fr and Spanish /tmmflm-sp

## **ILO Activity**

As with any organization, ILO activity in capacity building, advisory services, technical support and international cooperation are intended to obtain implementation of its agenda set by tripartite constituents.

ILO has developed models of cooperation to implement the Plan of Action on migrant workers. Technical cooperation and capacity building emphasise the building blocks of rights-based regulation: putting in place the legal-legislative foundation, establishing the mechanisms of social dialogue that incorporate social partners, building the necessary knowledge base intersecting with labour market considerations, and enhancing the capacity of the government and partner institutions that carry out this agenda in practice.

Over the last three years, ILO has implemented pilot cooperation and capacity building approaches in Africa and Eastern Europe. These efforts have obtained ratifications of conventions by several countries, they have established national tri-partite dialogue forums on migration policy in 12 countries, they strengthened the knowledge base on labour migration data, and they have contributed to strengthening the institutional capacity and mechanisms of labour ministries for addressing migration policy.

They highlighted the essential role that regulated labour migration can play in regional economic development, particularly in the East Africa Community and the Economic Community of West African States (ECOWAS).

These efforts are currently being expanded in Asia, in the Russian Federation and CIS countries, and in South American countries along similar lines: lines determined by ILO's tripartite constituents.

On the discrimination-integration agenda, an EU supported effort "Promoting equality in diversity: integration in Europe" supported social partner engagement. It expanded a website compendium data-base to include 160 practice profiles. See [www.ilo.org/migrant/equality](http://www.ilo.org/migrant/equality)

It identified key indicators of integration, compiled a practitioners handbook on discrimination and developed tool kits for employers and trade unions as well as organizing European social partner networking on integration and discrimination.

Seeing the still dispersed and contradictory stands of trade unions on migration, it seems to me that there is merit in pushing for a generalized trade union analysis and agenda on migration. This trade union agenda would address the political stakes and seek response to needs of working people in the long term.

This would include deciding where to prioritize common efforts in the international arenas. It could also involve sharpening proposals for cooperation with international partners, and determining where trade union presence is most effective and useful among the many competing international processes addressing migration.

And it might involve defining whether and how tripartite social dialogue on migration can be taken up internationally, globally. There is at present no regular, ongoing process specifically bringing the key stakeholders –employers, trade unions, labour ministries-- together on this important issue that most directly affects their common concerns.

## **Conclusion**

Migration—and treatment on non-nationals-- is today a central arena for expression of values in law, policy and practice. It is key to reasserting the agenda of the trade union movement in obtaining decent work, social protection and human welfare. Implementing a rights-based framework for non-discrimination and equality of treatment of migrants is imperative to social cohesion worldwide.

It is trade unions that have the objective basis to take leadership on this agenda. This requires organizing, advocacy, social dialogue and action. Content will necessarily include promotion of human rights law, of labour standards, of equality of treatment and respect for diversity. These are the guarantors of democracy, social peace and ultimately, welfare of workers.

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