



International Labour Office

PRESENTATION

THE ILO CONVENTIONS AND THE MULTILATERAL FRAMEWORK ON LABOUR MIGRATION

At the IOM-ILO WORKSHOP ON ESTABLISHING LABOUR MIGRATION POLICIES IN COUNTRIES OF THE WESTERN BALKANS

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Introduction

Migration today has become a central imperative for the global economy, and for national economic well being in many countries. Today's globalizing world is explicitly characterized by increasing competition for markets, resources and labour. This process is accompanied by generalized rise in costs of raw materials and technological inputs. At the same time, costs of access to capital, raw materials, agricultural produce and manufactured goods have become increasingly equalized among countries and across regions. More and more, labour costs are a key variable.

One consequence of these trends has been the shift to the periphery of industrial activities that previously were main sources of capital accumulation and growth for Western countries. The periphery, where labour costs are kept low by combinations of labour surplus, repression of organization, and denial of human and labour rights.

However, high tech activity, information, and a large range of services remain viable and difficult to offshore. Activities such as construction and many health services simply cannot be dislocated. Small and medium size business enterprises don't have the means to relocate offshore. And many advanced countries have deliberate policies to retain part of their food production within their territories.

Due to economic, demographic and technological changes, increasing numbers of jobs in industrialized and in some developing countries simply cannot be filled by native-born workers. Ageing of native work forces combined with declining populations is an important factor. By current projections, Italy's population will be 25% less in 2050. But this dilemma is no longer a monopoly of Europe. The work force of Russia will be 5 million workers less by 2010 compared to 2000. Tunisia reached the fertility rate of zero population growth last year. The current projection for Europe is that while today the average social security dependency is 2 retired persons for seven economically active, the ratio will rise to 4 per 7 by 2050: meaning either twice the contributions per working person or halving the income for retirees. What is striking is that the figures of this looming crisis in social security dependency rates are similar for China.

Labour Migration today

Migration 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.

ILO figures demonstrate the extent that migration today is about production of the world's goods and services –and thus the reproduction of capital. Of the 200 million people living today outside their countries of birth or citizenship, ILO estimates show that 90 to 95 million of this number are economically active—employed, self-employed or otherwise engaged in remunerative activity. Engaged in what we call the world of work.

Foreign-born workers commonly represent 10% work forces in Western Europe, 15% in North America, and even higher proportions in some countries in Africa and the Middle East.

Migrant labour is now a key factor of production and services. But the big difference with other factors of production is that migrant workers are human beings. They require protection and regulation of their treatment and conditions of work. International migrants are the more so as they work and live outside the territories that offer the protection afforded to citizens in their home States. They are often treated as less than rather than equals, in many places explicitly excluded from protections of certain human and labour rights. They are seen as exploitable and expendable, a source of cheap, docile and flexible labour, apt for the 3-D -- dirty, dangerous and degrading-- jobs nationals are unavailable for and/or unwilling to take. There is also need for attention to skilled labour, but that is not where most of the policy and practical challenges lie.

Policy Challenges

Rather, the fundamental challenge is the tension between the imperative of equality of treatment and non-discrimination versus the enormous competitive pressures to exploit vulnerable labour. However, the history of capitalist industrial development has shown that equality of treatment across national work forces is essential to assure functional national labour markets, labour peace and social cohesion.

The reality of globalization is increasing pressures to lower labour costs and social protection in order to maintain competitiveness, and even to retain economic activity itself. That is, to retain production and services on their territories that are ever more easily shifted to lower labour cost countries and regions.

In this context, regulation of labour migration, let alone labour markets, cannot be left primarily to market mechanisms. The lack of regulation for labour migration results in:

- Return of slavery like conditions of forced labour
- Trafficking
- Generalized fear of loss of jobs and livelihoods blamed on immigration
- As a result, increasing anti-immigrant hostility
- Ultimately, communal violence

By contrast, the challenges of preventing exploitation and ensuring equality of treatment are essential elements of building democratic governance of societies, necessarily built on a foundation of the rule of law.

The importance of protecting foreign workers and regulating migration has been formally acknowledged for nearly a century; it was specifically addressed in the Treaty of Versailles that ended world war one in 1919. The first international conventions on the protection of migrant workers were elaborated in the 1930s. This setting of basic norms advanced substantially just before and then after World War II, notably with the adoption of ILO Convention 97 in 1949, sixty years ago.

International standards and national legislation based on these provide themselves neither the structures nor the practices to put into effect the principles and norms contained in this law. Laws and

codes on public health need hospitals, clinics, inspectorates, training of doctors and nurses, public education and more to obtain health of populations, prevent diseases, treat illnesses and heal victims of accidents. It is the same with migration, which needs its structures, measures and practices to make for effective protection and regulation.

Three fundamental notions characterize the protections in existing international law for migrant workers and members of their families.

- Equality of treatment and non-discrimination between regular migrant/immigrant workers and nationals in the realm of employment and work.
- Universal human rights apply to all migrants, regardless of status.
- The broad array of international standards providing protection in treatment and conditions at work –safety, health, maximum hours, minimum remuneration, non-discrimination, freedom of association, maternity, etc.—apply to all workers. By the way, this notion was upheld in an Opinion issued by the Inter-American Court.¹

This essential foundation for migration policy and good practice is laid out in the seven fundamental human rights instruments that define basic, universal human rights and ensure their explicit extension to vulnerable groups world-wide² and in the 1998 ILO Declaration of Fundamental Principles and Rights at Work.

Three specific international instruments explicitly define the application of human and labour rights to migrant workers: ILO Convention 97 on Migration for Employment (of 1949), ILO Convention 143 on migrant workers (Supplementary Provisions) (of 1975), and the 1990 International Convention on the Protection of All Migrant Workers and Members of Their Families.

These three instruments comprise an *international charter on migration*, providing together a broad and comprehensive framework covering most issues of treatment of migrants. These are not just instruments on rights, they contain provisions to encourage and guide national policy and intergovernmental consultation, information sharing and cooperation on nearly all aspects of international migration.

Since nearly all countries represented here have ratified both of these ILO Conventions on migration for employment, I will not dwell on their content. ILO Convention 97 provides the foundations for equal treatment between nationals and regular migrants in most areas related to employment, including recruitment procedures, living and working conditions, access to justice, and tax and social security regulations. It sets out details for contract conditions, the participation of migrants in job training or promotion and offers provision for appeals against unjustified termination of employment or expulsion, and other measures to regulate the entire migration process.

The two main objectives of ILO Convention 143 are to regulate migration flows, eliminate clandestine migration and combat trafficking and smuggling activities; and to facilitate integration of migrants in host societies. Part one includes protections for basic human rights of all migrant workers and specifically certain measures for migrant workers who have lost their employment and certain rights arising out of past employment as regards remuneration, social security and related benefits. The Committee of Experts has interpreted these provisions in a manner consistent with those rights articulated in the 1990 International Convention on rights of migrant workers and the 1998 ILO

¹ Corte Interamericana de Derechos Humanos: *Condición Jurídica y Derechos de los Migrantes Indocumentados*. Opinión Consultativa OC-18/03 de 17 de Septiembre de 2003. 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 labor 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 en the State of employment. These rights are a consequence of the labor relationship."

² 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

Declaration on Fundamental Principles and Rights at Work.³ Part II of Convention 143 provides specific guidance on the integration of migrant workers in host countries.

The content of ILO Conventions 97 and 143 formed the basis for drafting the 1990 International Convention on migrant workers, which expanded and extended recognition of economic, social, cultural and civil rights of migrant workers rights.⁴

Eight points summarize the importance of these three Conventions:

1 They provide 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 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 established 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, thus reinforcing the ‘decent work’ agenda defined by International Labour Standards, nearly all of which apply explicitly or implicitly to all migrant workers.

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

6. These Convention also resolve the lacuna 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 provides significant 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 indeed has been incorporated in national legislation of most of the countries of the Western Balkans, thus reducing ambiguities in interpretation and implementation of these international standards.

For the record, a total of 81 different States have ratified one or more of these three complementary standards as of May 1 2006⁵; 11 member States of the European Union have ratified one or both ILO conventions.⁶ In addition, there are 15 additional signatories to the UN Convention (signing is a

³ For a more detailed discussion of rights recognized for irregular workers in this Convention, see: Taran & Geronomi, “Globalization, Migration and Rights, Protection is Paramount.” ILO; Perspectives on Migration No. 3, ILO, Geneva 20026.

⁴ Texts and related information available respectively at www.ilo.org/ilolex and www.unhchr.ch

⁵ The ILO Migration for Employment Convention No. 97 of 1949 is ratified by 48 countries, the ILO Migrant Workers (Supplementary Provisions) Convention No. 143 of 1975 is ratified by 23 countries; and the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families ratified by 40 countries and signed by 15 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.

⁶ Belgium, France, Germany, Italy, Netherlands, Norway, Portugal, Slovenia, Spain, Sweden, and the United Kingdom

preliminary step to ratification that requires general compliance). This is a quite high proportion of the some 130 countries worldwide for which migration is an important feature, whether as origin, destination and/or transit countries.

The record for this region is already outstanding; an example to the world at sub-regional as well as national levels: Albania and Bosnia-Herzegovina were among the first to ratify all three. The Former Yugoslav Republic of Macedonia, Montenegro and Serbia have ratified both ILO instruments, and --- Montenegro and Serbia have already signed the 1990 Convention.

The general array of International Labour Standards, particularly those focusing on workplace treatment, **provide norms for legislation and monitoring to assure minimum “decent work” conditions.** Establishing and upholding these norms is the most effective means of reducing the attraction of irregular migration and of avoiding use of migrants to undermine conditions and compete unfairly with nationals for jobs.

Putting Into Practice

However, the detailed policy and administration to put these principles and normative guidelines into practice is what we are about at this workshop. It is evident that much still needs to be done to put in place or consolidate the policy lines, competent institutions, practical measures and needed coordination among different branches of government and the other stakeholders concerned. Based on the comprehensive standards largely in place, policies, institutional structures, programmes and practical measures are required to effectively govern migration. These need to cover a broad range of concerns, migratory movements, admission, labour market insertion and so on, covering domains as diverse as public health, education, housing, law enforcement, labour inspection and so on.

However, until recently, there was simply no compilation bringing together the normative principles, policy guidelines and practical measures.

In the last six years, two global efforts made important contributions to compiling general guidelines on managing migration. One was the Berne Initiative process initiated by the Swiss government and managed by IOM, which produced the International Agenda for Migration Management. The other comprised the recommendations of the Global Commission on International Migration. However, neither drew out the essential links between the foundational principles on migration in international norms and the policy guidelines and specific practical measures to give them effect.

Genesis of the Framework

In taking a comprehensive approach to analyzing the challenges of contemporary labour migration and setting out a comprehensive Plan of Action on migrant workers, the International Labour Conference in 2004 agreed that a comprehensive policy framework on labour migration was urgently needed.

An extensive two-year research and development effort went into collecting policy and practice examples from around the world, elaborating the framework, and conducting expert and tripartite review of the draft.

The objective of the non-binding Framework is to provide practical guidance to governments and to employers' and workers' organizations with regard to the development, strengthening, implementation and evaluation of national and international labour migration policies. The framework should be “of particular interest to countries emerging either as origin, destination or transit countries.” It offers virtually everything any government needs to know –and do— to effectively and sustainably address migration.

It gives policy makers, stakeholders and analysts the knowledge, guidance, and guidelines you need to improve national policy and practice on migration.

Some countries have developed explicit national policy statements, plans or frameworks on migration –a useful exercise to ensure the consultation and coherency needed. This framework provides the model or guide to do so, recognizing of course that some measures in the MLF apply more to host and others more to origin countries.

The ILO multilateral framework:

- is the only comprehensive collection of principles and guidelines on migration policy and management firmly grounded in international instruments and best practices (rights based).
- It takes a positive perspective on labour migration and is not limited to protection issues alone. It emphasizes the contribution of migrant workers to economic prosperity and development to both source and host countries and the benefits to migrant workers themselves.
- It highlights the role and value of social partner participation in migration policy.
- It provides the policy framework underlying the OSCE-IOM-ILO Handbook around which this workshop is structured.

The Framework Content

Four broad themes underlie the framework: decent work for all; management and governance of migration; promotion and protection of migrant rights; and, migration and development. The Framework itself is composed of 15 broad principles and corresponding guidelines. The document includes examples of best practices as well as a list of relevant Conventions and Recommendations.

The principles and their corresponding guidelines are:

Decent Work: The principle and guidelines focus on expanding opportunities for decent work at home or abroad, developing policies that create decent work, and supporting the Global Employment Agenda.

Means for International Cooperation on Labour Migration: The principle encourages international cooperation by governments and by employers' and workers' organizations to promote regulated labour migration. The guidelines contain recommendations on such issues as the exchange of information, intergovernmental dialogue and cooperation, bilateral and multilateral agreements, and development assistance.

Global Knowledge Base: The principle promotes the collection and application of knowledge and information on labour migration, and the guidelines contain recommendations on such issues as improving data collection and analysis, international exchange of data and research.

Effective Management of Labour Migration: There are four principles, which focus on the effective management of labour migration; expanding regular labour migration, taking labour market needs and demographic trends into account; social dialogue; and consultation with civil society. The guidelines provide recommendations on such issues as policy formulation, the role of ministries involved in labour migration and coordination between them, tripartite procedures for consultation with employers' and workers' organizations, labour market analyses, transparent policies, establishing or strengthening social dialogue procedures and consulting with civil society and migrant associations.

Protection of Migrant Workers: There are three principles, promoting respect for the human rights of migrant workers; application of international labour standards to migrant workers, and enforcement of national law. The guidelines provide specific recommendations on human rights, the application of standards to migrant workers and labour inspection and enforcement of the rights of migrant workers.

Prevention of and Protection Against Abusive Migration Practices: The principle concerns the prevention and elimination of abusive migration conditions. Corresponding guidelines address

protecting victims of abusive conditions, sanctioning those who commit abusive practices and prevention of abuse and exploitation.

Migration Process: Two principles, one addressing an orderly and equitable process of labour migration and the other addressing the supervision of recruitment agencies. The guidelines provide specific recommendations on assistance to migrant workers during the migration process and supervision of recruiters to ensure that they respect the rights of migrant workers.

Social Integration and Inclusion: The principle encourages integration of migrant workers and their families in the destination country, while the guidelines specifically address anti-discrimination measures and means for assisting migrant workers and their families with integration.

Migration and Development: The principle promotes the contribution of labour migration to employment, economic growth and development for the benefit of both origin and destination countries. The corresponding guidelines address issues such as regional integration, enterprise creation, remittances and mitigating the loss of skilled workers.

Examples of Best Practices: A wide range of practices and policies from around the world are briefly summarized in the annex on best practices, with 132 examples provided. References are included with each one to lead readers to more detailed information, if desired. The practices are organized along the lines of the Framework principles and guidelines, with references given to specific guideline numbers relevant to each practice. Most practices cut across more than one principle and sometimes more than one major heading. An attempt was made to include practices covering each guideline.

Concluding Comment

These three Conventions we have discussed provide together the necessary foundation for comprehensive, viable and effective labour migration policy and administration. The Multilateral Framework offers the policy options and guidelines putting in practice the principles and standards established in the Conventions. And as you will see, the Handbook that is the core of this seminar gives you the detailed ‘how to’ put in place the standards, measures and practices needed to regulate and manage labour migration. You will find a more detailed discussion of these standards and their application to labour migration in Chapter 1 of the Handbook.

We trust these building blocks will assist you to improve migration policy and practice back home. A measure of success –for your policy- will surely be the extent that it incorporates these elements – which together will make for viable, credible, sustainable and effect approaches to governing migration in your countries.

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Presented by:
Patrick Taran,
Senior Migration Specialist, International Labour Office (ILO)
Phone: (41-22) 799-8091. Fax: (41-22) 799-8836
taran@ilo.org
Website: www.ilo.org/migrant