



International Labour Office

***A FRAMEWORK FOR EFFECTIVE GOVERNANCE***  
***INTERNATIONAL STANDARDS FOR LABOUR MIGRATION***

***Presentation Session 2, International Normative Framework***

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Migration cannot be ruled by market forces alone. Migrants are human beings, and the risks and vulnerabilities they face require rules and regulations to protect their rights and dignity as well as ensure their contributions to social welfare precisely when economic pressures lead to abuse and exploitation.

One has hardly to stray from the front pages of everyday newspapers to see that the protection of migrants and governance of migration are a fundamental contention of our time. So why has the question of labour migration, and protecting migrant workers, become so contentious?

In this age of globalized competition, migration is one of few economic variables to sustain capital accumulation when free trade is equalizing costs of material resources, goods and technology.

Migration today is a 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.

Migrant labour largely fills “three-D” jobs: dirty, dangerous and degrading. Efforts to fill 3-D jobs and to obtain economic competitiveness through labour productivity at low cost produce a continuous demand for cheap and low-skilled migrant labour across 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.

Recognizing rights does mean raising the costs. It means safety and health protections at work. It means unionisation and collective bargaining for decent wages and working conditions.

Migrants in irregular status are even cheaper than regular migrant workers. Indeed, unauthorized migrants usually cannot unionize to demand fair pay, equal treatment or decent working conditions. No surprise then that migrants in irregular situations –undocumented migrants, have long been de facto tolerated in North America and some European countries, despite official rhetoric about the need for governments to show that they control the borders.

But the increase in coercive control measures and the deepening inequalities pose fundamental contradictions to the legal and ideological constructs of modern societies and governance, based as they are on notions of democracy, equality and human rights.

### **A Policy Agenda**

The starting point for regulation of migration is necessarily reference to the international instruments that represent the codification of human rights values into legal norms.

The history of explicit international protection of workers outside their countries goes back long before WWII, in fact to the Treaty of Versailles of 1919 that ended WW I. The constitution of ILO established in that Treaty explicitly mandates protection of foreign workers. The first Convention on migrant workers in fact dates to mid 1930s. And the first international conference addressing the protection of emigrants –migrant workers—took place in Naples in 1924, organized by the Government of Italy.

Evolution of both the normative framework and policy measures over the last Century reflected a generally constant expansion and extension of explicit rights protections and measures for international cooperation. 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.

For the record, 78 different States have ratified one or more of these three complementary standards to date.<sup>1</sup> A large majority of the States on all shores of the Mediterranean have adopted one or more of these instruments: Algeria, France, Egypt, Israel, Italy, Libya, Morocco, Portugal, Spain, Syria, and Turkey. 11 member States of the European Union have ratified one or both ILO conventions.

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.
3. Core universal human rights apply to all migrants, regardless of status.

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

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<sup>1</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)

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 and mutual benefits are achieved in practice.

In the context of migration related to the world of work, migration policy formulation and implementation must be 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 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**. ILO has since produced 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

Other elements as well are required for comprehensive, viable and sustainable migration policy; these are described in the Handbook, and in policy terms in the ILO Multilateral Framework<sup>2</sup>.

### **What will it take?**

Achieving a regulated approach to labour migration will only come about through concerted action by concerned government officials, social partner organizations, and other concerned stakeholders. An irresistible force has to be generated to overcome an otherwise immovable object.

If regulating migration from a rights-based approach is on the agenda today in countries around this region and elsewhere, it is in part a result of increasing involvement of trade unions and other civil society actors.

Over the last decade, the attitude and engagement of the trade union movement as a whole has reversed direction from marginalizing migration policy and expressing hostility towards irregular migrants. Major policy shifts followed by extensive organizing drives among migrant workers have been conducted by mainstream trade unions and national confederations across Europe, Africa, and Asia as well as here in the Americas<sup>3</sup>. The policy stances elaborated by the AFL-CIO and Canadian Labour Congress are exemplary reflections of an almost worldwide trend.

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<sup>2</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

<sup>3</sup> For a global overview of trade union views and activities, see ILO. “Migrant Workers” Labour Education 2002/4. No. 129. Available in English, French and Spanish at: [www.ilo.org/actrav/](http://www.ilo.org/actrav/)

Today, national labour confederations and/or sectoral unions in Argentina, Belgium, Canada, France, Germany, Ireland, Italy, Korea, Mauritius, Mexico, the Netherlands, Portugal, Spain, Sweden, South Africa, the UK and the USA – among others – 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 main global and regional trade union confederations are working for wider ratification of the ILO Conventions as well as the 1990 International Convention on migrant workers rights.<sup>4</sup> In Ireland and Italy, the national trade union confederations are at the core of new national campaigns for ratification of the ILO and UN Conventions on migrant workers.<sup>5</sup>

A combination of core policy lines and actions is essential. At the outset, it is imperative to articulate an understanding of the importance of labour migration to development and social welfare, North and South. It is similarly vital to complement emphasis on market relations, primacy of economic power and competitiveness with emphasis on social values driving society and social relations.

- 1) Common vision that this is about human beings, human dignity and that these are only secured through a rights based approach., underlined by core principles:
  - a) 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
  - b) non-discrimination and equality of treatment for non-nationals are imperative for social cohesion
  - c) migration must be addressed in context of the rule of law and democratic participatory governance
- 2) Ratification and implementation of the migrant worker conventions, as the foundation of effective governance of migration
- 3) Implementing policies, institutions and practices outlined in ILO MLF and detailed in Handbook

A key element is construction of national and international structures or mechanism for dialogue and cooperation

## **Conclusion**

Migration—and treatment on non-nationals-- is today a central arena for expression of values in law, policy and practice. Implementing a rights-based framework for governance of migration is imperative to ensuring the dignity of all migrants, to obtaining social cohesion and to fostering development. This requires organizing, advocacy, and action; the Handbook provides the guidance and tools needed.

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<sup>4</sup> See website of International Trade Union Confederation at: [www.ituc-cis.org](http://www.ituc-cis.org) Some 200 articles and items posted relate to trade unions and migrant workers; search by key word *migrants*

<sup>5</sup> For a recent global overview of evolving trade union views and activities, see ILO. “Migrant Workers” Labour Education 2002/4. No. 129. Available in English, French and Spanish at: [www.ilo.org/actrav/](http://www.ilo.org/actrav/)