

Migration and labour solidarity

If the rule of law is to be respected, labour markets are to be regulated and social dialogue is to be maintained, trade unions must become much more involved in migration policy. The need is urgent.

Patrick A. Taran
Senior Migration Specialist
ILO

The migration of labour poses fundamental policy dilemmas to governments and their “social partners”, particularly unions. Many States have placed increasingly strict barriers on the legal entry of migrant workers yet paradoxically appear to tolerate the presence of large numbers of irregular migrants, especially those working in low-paid jobs not filled by the national labour market.

Unions must therefore ensure that migrant worker issues are on the negotiating table and that national policies are worked out including contributions from labour and management. Trade union advocacy of migrant workers is essential. ILO experience suggests several basic policies.

Exploitation of migrants

It is often said that migrant labour fills the “three-D” jobs: dirty, dangerous and difficult. Migrant labour has long been utilized in both developed and developing economies as a low-cost means to sustain businesses that are only just viable. Today, migrant labour continues to be used in many countries to keep down the cost of farm produce, to ensure low-cost construction labour, and to provide services in the “sex industry”.

The most vulnerable migrant workers are those without authorization for entry or for employment. They work and live

on the margins of society, lacking the protection given, or meant to be given, to officially authorized workers.

As the International Confederation of Free Trade Unions (ICFTU) points out, it is often extremely difficult to organize migrants into unions or organizations to defend their interests. When it is not considered illegal under national laws, organizing – especially of those without legal authorization for employment – is easily intimidated by the threat of deportation.¹

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.

The impact of globalization

The growing economic interdependence of States has been a widely acknowledged effect of globalization. The immediate impact on global population movements has 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 globalization have intensified the disruptive effects of modernization and capitalist development.”² Many developing countries face serious social and economic dislocation associated with persistent poverty and growing

unemployment, loss of traditional trading patterns, and what has been termed a “growing crisis of economic security.” Small wonder that people are abandoning their homes in search of a better life elsewhere.

How extensive is the exodus? Unsurprisingly, nobody knows for sure. The ILO says that statistics in some countries are “lamentably scarce” and do not account for irregular migrants. It’s best estimates for the numbers of international migrant workers and members of their families as of 1995 – the latest year for which comprehensive data is available – are shown in the following table.

Numbers of international migrant workers and their families (best estimates, 1995)

Africa	18-21 000 000
South and East Asia	5-7 000 000
Europe*	26-30 000 000
North America	16-18 000 000
South/Central America	7-12 000 000
West Asia (Arab States)	8-9 000 000
Total	80-97 000 000

* The numbers for Western Europe would be about 22 million economically active foreigners and dependants.

Source: ILO: *Migrant workers*, Report III(4), International Labour Conference, 87th Session, Geneva, 1999.

While future projections remain speculative, a notable starting point is that global estimates for international migration roughly doubled between 1975 and 2000, from a total of 75 million people living outside their homelands to 150 million (including labour migrants, dependants, refugees, permanent immigrants).

Growth in the trade of goods and foreign direct investment will not be enough to reduce the desire to migrate from developing countries. On the contrary, demand for low-wage migrants is likely to increase.

A speed-up in international trade can have the unintended effect in a developing country of replacing or undercutting

domestic industrial and agricultural production with cheap imports at the expense of many jobs in those sectors. For example, a ton of imported corn in Callao (Peru) or a ton of imported rice in Manila can now be delivered more cheaply than the output of local, small-scale enterprises. It is argued that the efficiency of mechanized large-scale agribusiness lowers food costs. However, growing a ton of corn might sustain several farmers and labourers in Peru, and support their families, and so might the rice in Manila.

Jobs have also gone in developing countries as a result of IMF-backed structural adjustment programmes (SAPs). In return for loans, the International Monetary Fund (IMF) insisted that governments should cut their wages bill and reduce their budget deficits. This meant significant reductions in government employment, including professionals as well as skilled and unskilled workers. The trouble was that the jobs lost by government spending cuts were not offset by the creation of new jobs in the private sector or in former state enterprises that had been privatized as part of the reforms. On the contrary, the first thing that new managers of privatized state enterprises did was to cut further the number of employees.

It all added up to migration pressure as possibilities for employment and economic survival at home disappear. Rarely considered, long-term factors also have an influence: global warming may damage the world economy; civil conflicts seem endemic in certain parts of the world; and some States have simply collapsed and slid into anarchy.

Taking account of all of these factors, ILO analysts reckon that as many as 500 million people may be living outside their countries of origin by 2050. Meanwhile, demand for migrant labour is not declining.

Demographic trends have an influence, too. The ageing workforce in many industrialized countries may lead decision-makers to consider immigration as an important option. The value of “foreign labour” will be increasingly recognized, including as a means of propping up tot-

tering social security schemes in industrialized countries. Migrant labour may also increasingly be seen as a potential force to boost the economy, as older workforces tend to be less flexible, less adaptable to technological change and therefore less innovative.

Globalization and trade liberalization have had contradictory impacts on employment conditions in countries of destination. There is still a demand for cheap, low-skilled labour in industrialized countries as well as a considerable number of developing nations in Africa, Asia, Latin America and the Middle East. Much of this demand is in agriculture, food-processing, construction, semi-skilled or unskilled manufacturing jobs (textiles, etc.), and low-wage services such as domestic work, home health care and the sex sector.

Some small and medium-sized companies in the industrialized world cannot afford to move to countries where labour costs are cheaper. So they tend to reduce the manufacturing and labour-intensive side of their business, cut costs and subcontract this work in developing countries. In a considerable number of countries, these measures have expanded the number of jobs at the bottom of the employment scale.

These jobs are often those referred to as the “three-D” jobs: dirty, difficult and dangerous. Not all of them are filled by citizens of the country concerned. Many workers in the industrialized countries would refuse jobs with low wages and dangerous or poor conditions, which explains why unemployment often coexists with an increasing demand for migrant labour.

Migrant workers are often well-educated people who are ready to take up jobs that they would not accept at home. The departure from poor countries of specialists such as doctors, teachers and other professionals seeking a better life represents an enormous loss of human resources. Wage differentials are often decisive especially when conditions at home are akin to poverty.

A double standard prevails in the case of specialists. Many traditional migrant-

receiving countries adopted restrictive immigration policies in the last two decades. However, they also competed with each other to woo highly educated specialists in developing countries. This has led to a significant rise in skilled labour migration over the past years.

At the same time, there was an almost worldwide effort by governments to fill shunned “three-D jobs” and expand the economy by making it competitive with the introduction of cheap and low-skilled migrant labour.³

ILO research has shown that some developing countries lose from 10 to 30 per cent of qualified manpower through this “brain drain”, damaging the prospects for economic growth.⁴

The news is not all negative, however. The ILO researchers pointed to positive side-effects: migrant workers sent precious foreign exchange to their families in developing countries; many learned new skills and went home to apply their knowledge where it was most needed.

Fundamental policy dilemmas

The conclusion to be drawn from our information is that in a considerable number of countries, migration is being simultaneously encouraged and combated. This is a major contemporary contradiction. Despite all the political rhetoric about illegal migration, a considerable number of governments tolerate it. The effect: a steady supply of “illegal” migrant workers, stigmatized, isolated and unable to organize in the workplace to defend their dignity and to press for decent working conditions.

A recent – but pre-11 September – example from the United States serves to illustrate duality in managing irregular immigration. Early in 2000, the US Immigration and Naturalization Service (INS) quietly suspended raids and deportations, except at the Mexican borders. It cannot have been a coincidence that this suspension came just after the Chairman of the Federal Reserve Board, Alan Greenspan, warned that the most significant threat to

the US economy was inflation driven by wage increases. What better way of holding down this wage-induced inflation than by increasing the supply of workers on the labour market?⁵

The mild new policy was seen by some unions and undocumented workers as an opportunity. These workers expanded their unionization campaign. In Chicago, they were able to convince employers not to let the INS carry out investigations in their plants without warrants being obtained beforehand – conveniently giving time to any undocumented migrant working there to slip out of the back door.⁶

Yet another paradox: trade and finance have become increasingly deregulated and integrated across regions and globally. Migration policies have not been liberalized, and do not deal with the gulf between continued demand for cheap labour and the increasing supply of such labour in other countries. On the contrary, most industrialized countries have imposed restrictive immigration laws and policies over the last decade, and many developing countries across the South appear to be following suit.

These restrictive measures have been established with little or no consideration of domestic labour demand and supply. In some regions, imposition of tighter border controls and restrictions on movement have cut across traditional routes and patterns of labour and trade migration.

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 back the claim that restrictive immigration policies fail is the estimate that the business of trafficking and smuggling people is worth roughly

US\$7 billion. This places the business in third place after drugs and arms smuggling. The ILO says: “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.”⁷

Ultimately, labour trafficking would not take place if jobseekers had more freedom of geographical movement and freedom of access to employment. Smuggling occurs because borders have become barriers between jobseekers and job offers. Trafficking occurs not only when borders are barriers preventing the supply of labour from meeting the demand for it but also when no knowledge is available about proper migration channels, when employment is itself illegal and/or underground, and where conditions of work much worse than the legal minimum are tolerated or ignored.⁸

Discrimination and xenophobia

At the start of the twenty-first century, virtually every country has become or is fast becoming multicultural, multi-ethnic, multiracial, multilingual and multi-religious. At the same time, virtually every country is experiencing increasing manifestations of hostility and violence against non-nationals – migrants, refugees, immigrants, even sometimes students and tourists. In Africa, Asia and the Middle East, discrimination and abuse is rampant against persons coming from neighbouring countries with shared racial, ethnic, cultural and historical characteristics.

ILO researchers have exposed levels of discrimination in access to employment against immigrant and ethnic minorities in Western countries. Detailed country studies in Belgium, Germany, the Netherlands and Spain found net discrimination rates to be as high as 37 per cent, 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.⁹ Similar findings have been made in Canada, the United Kingdom, the United States and other countries. While similarly detailed studies have not been conducted in countries in other regions of the world, anecdotal evidence suggests high rates of discrimination against legal migrant workers in countries in Africa, Asia and Latin America as well.

Rampant discrimination in the United States led the American trade union centre, AFL-CIO, last year to reverse its support for "employer sanctions" enacted in 1986. The application of legal sanctions against employers who hired unauthorized foreign workers were found to have resulted in widespread discrimination in hiring against blacks who were US citizens or authorized residents, Hispanics, Asians, and other non-white workers. Employers usually cited difficulties in verifying work-authorizing documentation presented by applicants as the reason for excluding some or all minority candidates from consideration. However, civil rights and labour groups said sanctions provided a convenient cover for employers seeking to discriminate.

A worrying recent development has been a public linkage of migrants and migration with criminality. These include frequent news reports that blame foreigners or immigrants for the rise in crime, putting immigration control in the same category as crime, arms and drug control, and the generalized use of the terminology of *irregular migrant* or *illegal alien*. Legally and semantically, the term *irregular migrant* is a contradiction by any reading of human rights values. It contradicts the spirit, if not the letter, of the Universal Declaration of Human Rights, which clearly establishes in Article 6 that *every person* has the right to recognition before the law, and in Article 7, that every person has the right to due process.

It is now claimed that xenophobia and racism against migrants are *caused* by immigration itself. By an extension of demagogic logic, the victims are the cause of the problem; by removing the cause, the prob-

lem can be resolved. This kind of argument can only encourage recourse to draconian measures by rich countries.

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 available for precisely those low-skilled jobs considered suitable for women.

The feminization of international labour migration, together with the fact that most job opportunities for women migrants are in unregulated sectors (such as domestic work and the sex industry), have reminded analysts of the discrimination against women. They have less access to information on migration/job opportunities and recruitment channels, and often have less preparation than men to cope with the working and living conditions in the countries of destination.

Challenges for workers and their organizations

Dealing with migration is a major concern of employers and workers as well as of labour ministries. It means promoting employment and social protection and requires anti-discrimination and integration initiatives. ILO standards provide the necessary legal foundation for broad migration policy.

As trade union movements in countries such as Belgium, Canada, France, Italy, Republic of Korea, Spain and the United States have recognized, solidarity with migrant workers is fundamental; exclusion and disassociation from foreign workers simply facilitates situations in which migrant workers are exploited.

As with race and gender, nationality often serves as a convenient instrument

for segmentation of labour, and for justifying relegation of certain groups of workers classified by ethnic minority status, gender or nationality into work in substandard conditions.

In the last few years, controlling or managing migration has become an expressed priority for many governments. Intergovernmental dialogues towards policy coordination have been established in virtually all regions. New legislation affecting labour migration has been established or proposed in dozens of countries worldwide. However, increasingly, migration management responsibilities are being shifted from labour ministries to interior or home affairs ministries, thus transforming the framework of policy elaboration and implementation from that of labour market regulation to that of policing society.

Recent new national and regional policy frameworks on migration management now emerging in the Andean region, in the Caribbean, in Europe, in North Africa and elsewhere simply make no reference to the relevance of international norms on migrant workers and decent work standards.

Consultation with social partners is not even mentioned in most of these new policy initiatives. This means that treatment of an increasingly important number of workers is being deregulated, exempted from legal protection and removed from the agenda of social dialogue.

The importance of labour standards

Policy responses to labour migration must deal with the problem that victims of exploitation or forced labour conditions, as well as of trafficking, usually have no choice or perceive having no choice but to submit. Trafficking of migrant agricultural workers, domestic workers, sweatshop workers, and particularly those in the informal sector, has been detected on many continents.¹⁰ Growth in many countries of a visible but legally restricted “sex industry” has opened a major area of de-

mand for foreign “workers” not subject to any inspection or regulatory control, and thus more highly exploitable.

ILO Conventions

The two ILO Conventions on labour migration – the Migration for Employment Convention (Revised), 1949 (No. 97) and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) – provide a basic framework for national legislation and practice on managing labour migration. These instruments stipulate that States actively facilitate fair recruitment practices and transparent consultation with their social partners, reaffirm non-discrimination and 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. (See also article by Cécile Vittin-Balima, p. 5.)

Other ILO Conventions and Recommendations provide norms for legislation and monitoring to assure minimum “decent working conditions” applicable to migrants. Establishing and upholding these norms is the most effective means of reducing the attraction of irregular migration and of avoiding the use of migrants to undermine conditions and compete unfairly with nationals for jobs.

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 (it has now obtained the required 20 ratifications) 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.

These Conventions together provide a comprehensive “values-based” definition and legal basis for national policy

and practice regarding non-national migrant workers and their family members. It thus serves as a tool 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.

Comprehensive policy responses required

Assuring decent treatment for migrant workers, and resolving tensions between sometimes differing immediate interests of national and foreign workers cannot be obtained by piecemeal measures or isolated advocacy and actions here or there.

Workers' organizations potentially have the knowledge base, social authority and political legitimacy to play leading roles in national and international efforts to address labour migration in a decent work and human rights framework.

The numerous and complex aspects require elaborating a comprehensive approach. Fortunately, most of the elements for such an approach have already been identified if not elaborated. Furthermore, several international conferences have put together comprehensive frameworks incorporating most if not all of the necessary elements.

Most recently, the Declaration and Programme 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 programme of action to combat xenophobia and discrimination against migrants. Trade union delegates from all regions to WCAR preparatory meetings and the conference itself contributed considerably to

this achievement.¹¹ The text reaffirms ILO Conventions No. 97 and No. 143 as well as the 1990 international Convention on migrant workers rights as basic standards. It “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”.

What's needed

ILO experience in combination with recommendations adopted by governments in Durban and other international conferences identifies the following basic elements for policy:

- **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 migrants.¹²
- **A standards-based approach to “migration management”**, protecting basic rights of all migrants and combating exploitation and trafficking. Advocacy by worker organizations for adoption and implementation of the ILO and UN Conventions on migrant workers is fundamental. While 69 states have now ratified one or more of these three complementary standards a large number have yet to adopt any. The point of establishing legal rights and policy standards is to ensure social legitimacy and accountability, with a foundation in the rule of law.¹³

- **Enforcement of minimum national employment conditions standards in all sectors of activity.** This involves enactment of clear national minimum standards for protection of workers, national and migrant, in employment, where those do not exist. ILO Conventions on aspects such 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 areas such as agriculture, domestic work, the sex industry and other sectors of “irregular” employment. An effort should be made in particular to identify and prevent exploitation of children and to detect and stop forced labour, as well as to uphold the need for decent work conditions.
- **A Plan of Action against discrimination and xenophobia** to sustain social cohesion. Main elements, identified in the Durban programme of action, include:
 - adopting in national law relevant standards to protect rights of non-nationals;
 - making racist and xenophobic discrimination, behaviour and action unacceptable and illegal;
 - elaborating administrative measures and procedures to ensure full implementation of legislation, and accountability of all government officials;
 - establishing independent national human rights/anti-discrimination monitoring bodies with power to (i) monitor and enforce legislation; and (ii) receive and act upon individual complaints;
 - promoting respect for diversity and multicultural interaction;
 - encouraging communications media to emphasize positive images of diversity and of migration;
 - incorporating multicultural and diversity training in educational curricula; and
 - mobilizing civil society cooperation.
- **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 non-governmental organizations 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, provision of social and health services, and numerous other aspects of managing labour migration.

The feminization 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 programme delivery at all levels, focusing not only on providing equal treatment, but on ensuring equal outcomes.

These five themes may be the most essential lines for advocacy and practical work that assures protection of migrants and promotes decent work for all workers. However, fully addressing the dynamics of labour migration today also requires:

 - policies for labour mobility – freedom for workers to move – within regions;
 - creation of specialized institutions for policy coordination, enforcement and monitoring;
 - encouraging voluntary return and re-integration of migrants into their countries of origin; and
 - combating trafficking and exploitation of migrants by organized crime.

Trade union engagement

Re-establishing a more active role in national policy will require change in many workers’ organizations. The trade union movement in a number of countries has made enormous strides in recent years,

often with great benefits for unions themselves as well as for national and foreign workers alike.

The ICFTU has increasingly put concern for migrant workers high on its list of priorities. It has produced several reports and publications for affiliates and constituents and has consistently raised concerns over treatment of migrant workers at the UN Commission on Human Rights, at the World Conference in Durban and in other forums, and has encouraged the ILO to take a more active profile in this arena.

Recent progress is encouraging, but the challenge is huge. A strong commitment to change by workers' organizations in each and every affected country is essential if migrant workers are to get a fair deal, decent working conditions and a better life for them and their families.

Notes

¹ See for example, Linard André: *Migration and Globalisation – the New Slaves*. Brussels, ICFTU, July 1998.

² Peter Stalker: *Workers without frontiers – The impact of globalization on international migration*, Geneva, ILO, 2000.

³ UN Population Division: *Replacement migration – Is it a solution to declining and ageing populations?*, New York, March 2000.

⁴ B.L. Lowell and A. M. Findlay: *Migration of highly skilled persons from developing countries – Impact and policy responses*, Synthesis Report, Geneva, ILO, August 2001.

⁵ See for example, “U.S. Farmers Are Forced to Rely on Illegal Labor”, in *International Herald Tribune*, 4 October 2000.

⁶ *International Herald Tribune*, March 2000.

⁷ ILO: Global Report *Stopping Forced Labour*, op. cit., p. 53.

⁸ ILO: Global Report *Stopping Forced Labour*, op. cit., p. 53.

⁹ R. Zegers de Beijl: *Documenting discrimination against migrant workers in the labour market*, Geneva, ILO, 2001.

¹⁰ ILO: Global Report *Stopping Forced Labour*, op. cit., p. 47.

¹¹ The International Confederation of Free Trade Unions (ICFTU) facilitated and coordinated much of the workers' input to this process.

¹² ILO: *Legal labour migration and labour markets: Alternatives to substitute for trafficking in children and women*, Mekong Sub-Regional Project to Combat Trafficking in Children and Women, p. 1.

¹³ The ILO Migration for Employment Convention, 1949 (No. 97), ratified by 42 countries, the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), ratified by 18 countries; and the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, now (December 2002) ratified by 20 countries. Texts and related information available respectively on the ILO web site, at <http://www.ilo.org/ilolex>, and on that of the Office of the UN High Commissioner for Human Rights, <http://www.unhcr.ch>