

Immigration and workers' rights

This article is drawn from information contained in a draft working document prepared for an IFBWW Conference on Migrant and Cross-Border Workers in the Asia-Pacific Region, held in October 2002. The information has been gathered through surveys of the IFBWW-affiliated unions in the Asia-Pacific region. Based on the needs, experiences and case studies of IFBWW affiliates, it will contribute to a larger global study on migrant and cross-border workers, to be finalized by early 2003.

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Immigration is integrally linked to workers' rights and, as such, is of concern to trade unions. It is a complex issue for unions, because the nature of migration flows and the legal status of migrants vary. Many migrant workers – including many in the construction, wood and forestry industries in Asia-Pacific – are effectively invisible. This makes it difficult to gain adequate and reliable data as a basis for useful analysis and planning.

Many countries in the Asia-Pacific region are experiencing economic reform, with the adoption of market economies, trade liberalization and new forms of international trade agreements and cooperation. Structural adjustment programmes, as promoted by the International Monetary Fund and the World Bank, have contributed to the loss of jobs, with the decline of traditional industries and public sector employment. Indications are that job creation by the private sector in countries impacted by adjustment has not matched the number of jobs lost. As earning opportunities drop at home, the pressure increases to move to find them elsewhere. Globalization means that access to travel and awareness of “other places” has increased. So workers are driven and able to migrate, legally or illegally.

Developing nations in the Asia-Pacific region continue to have a demand for cheap, low-skilled labour in construction and related areas. Rather than move where labour can be found, many companies restructure and subcontract, as part of the search for cheap labour. As these countries' own economies grow, there is a decline in the number of local people prepared to take on the “dirty, degrading and dangerous” jobs. Certain jobs become less attractive when there is no increase in pay or status. Rising levels of education, which usually accompany increased economic strength, accentuate the reluctance to take unskilled jobs, such as casual labouring on construction sites.

Demographic change in many industrialized countries (for example, Australia and Japan) shows populations ageing and families usually having fewer children. There is a consequent demand for young workers with limited skills and experience, who are cheaper and have fewer options while offering more flexibility and adaptability to new technology.

Gaps need to be filled, and the most available source will be migrant workers, whether authorized or not. There will be a demand for immigrant labour, both to fill vacant jobs and to provide additional

taxpayers who can contribute to state-run pension schemes in ageing societies.

As economies develop, disposable income and lifestyle become more important. There are anecdotes of employers' preferring foreign workers, as they have few family commitments or personal interests and are therefore more available to work days and hours not acceptable to local workers.

In the 1970s, there were massive flows of construction workers out of Asia-Pacific into the Gulf area, where OPEC (Organization of the Petroleum Exporting Countries) members needed labour for new construction as their economies boomed. The labour came largely from Egypt, India, Indonesia, Pakistan, the Philippines and Thailand. In the next two decades, newly industrialized countries (NICs) within Asia drew intra-regional sources of labour as workers migrated to new locations for employment.

There are some cases where migrant workers are allowed in on the basis of specific agreements between governments and companies. In Australia, Bangladesh, Hong Kong, Indonesia, Japan, the Republic of Korea, Malaysia and Pakistan, there have been some examples of migrant workers' being recognized – even sought – for particular projects. However, this is often under unsatisfactory conditions or severe limitations. In some cases, the workers are brought in despite general policies of not welcoming them. Where this happens, there is often a wide gap between the estimated numbers of legal and irregular migrant workers, as companies and project managements find alternative sources when they are blocked legally.

These illegal workers are very vulnerable – and it is this illegal status of many individual migrant labourers in the construction industries that creates most difficulty for trade unions needing to act and react in workers' interests. But there are clear needs to act and react. These irregular migrants have no access to trade unions and therefore no avenues for insisting on basic workers' rights. With no rights, they can be manipulated to depress salaries, stand-

ards, terms and conditions for local workers who may be members of trade unions. They may also be used as strike-breakers.

Trade unions are constantly hindered by not knowing the numbers and origins of illegal workers and by the inability to contact and engage with them. There is often anecdotal knowledge, but the risky and uncertain lifestyle of the illegal immigrant labourer makes it virtually impossible to substantiate stories even of severe abuse and exploitation. Many trade unions, particularly in the construction industry, have therefore concentrated on limiting the potentially harmful impact of irregular migrant workers on the terms and conditions of union members. This must continue – with vigilance and with determined action against opportunistic employers who are ready to set workers against one another.

But this is only one side of the story. Workers may come from countries where there are active unions. They may want to have union protection, if they can overcome the risks involved in becoming visible. These people may constitute a massive new reservoir of trade union membership, particularly in the construction and related sectors.

It is essential that the IFBWW and member unions recognize these workers and understand the forces that drive them and the contexts in which they operate. One current example of such efforts is a draft Memorandum of Understanding being developed for cooperation regarding workers migrating from Malaysia to Indonesia. Under this arrangement, they can receive advice before leaving their home country trade union.

An emergent factor is the “trade” in the illegal movement of massive numbers of individual workers.

Estimates by the United Kingdom Home Office are that approximately 30 million people are smuggled across international borders every year, with approximately 7 million of these in South and East Asia.

It is a trade worth between US\$12 billion and US\$30 billion annually, well cap-

alized and organized. There are at least 50 major smuggling rings operating globally with strong links to Asia. They are known as "Snakehead Gangs", and their fees are so high that the UN Office for Drug Control and Crime Prevention calculates that it is more profitable to smuggle people than drugs.

Many of these irregular migrants are indebted to the smuggling rings, and are often forced to work for starvation wages (or in illegal trades such as drug running or prostitution) in order to pay off the cost of their transportation. This further weakens any potential for organizing or insisting upon rights.

The distinction between smuggling and trafficking lies in the level of criminalization. Smuggling, while illegal, is often done with a degree of consent by those smuggled. Trafficking, on the other hand, involves threat, abduction, fraud or abusive exploitation.

Both operations broker labour, responding to demand by exploiting sources of supply, finding ways around restrictive practices and policies and creating extensive illegal regional (and global) enterprises where legal channels are inadequate.

Some smuggling rings are difficult to distinguish from some legal labour recruitment agencies, registered in Asian countries to provide assistance with passports, visas, travel loans and transportation. In India, a National Act of Parliament recognizes the functioning of recruitment agencies that are registered with the Ministry of Labour and that comply with the regulations of their establishment, i.e. financial soundness, trustworthiness, experience, etc. The importance of the financial security is to cover the cost of repatriation of any recruited worker in the event of that worker's being stranded overseas.

Unfortunately, examples of exploitation exist even when a worker has emigrated properly, through a registered recruitment agency. Workers are placed in jobs that were not agreed. The contract of employment signed in the home country is changed to the detriment of the worker.

Workers are not in fact provided with any employment at all by sponsoring companies, but are required to find employment and then pay a percentage of their salary to the sponsor company. Many recruitment agencies charge well above the prescribed fees. Workers encounter unfair wages and terms; early dismissal by the foreign companies; and inadequate conditions of housing and other benefits in comparison to agreed terms in the home country.

There are problems of definition in ascribing the term "foreign" to many immigrants. In Hong Kong, for example, the majority of workers brought in for construction of the airport and associated projects were from China. These were only the low-level labourers, while skilled workers and managers came from other places monitored but not controlled by government policy.

In India, too, definitional problems exist. Although India is a large exporter of labour, there is also a huge flow of internal – interstate – workers within India itself. According to an IFBWW Indian affiliate, approximately 80 per cent of the workforce in the building and construction industry in the Mahaboobnagar district (Andhra Pradesh) are workers who have migrated from other parts of India, generally employed on nine-month contracts with minimal if any social protection. Terms and conditions are often very bad, particularly for women. Although India has legislation that covers inter-state migrant workers, it is rarely invoked. Up to 80 per cent of the building and construction workers in the district are organized, but still migrant workers, commonly known as Palmoori labourers, work in unsafe, unprotected and unregulated conditions.

In the Indian Parliament in 1993, it was acknowledged that problems of low wages, poor terms and conditions, and particularly a lack of appropriate housing and medical facilities existed for migrant workers. When young workers, especially men, migrate from their homes for long periods of time, this also results in inadequate care and support of their extended family. Many elderly people suffer,

and women and children are left without male support.

Many countries in Asia-Pacific, along with many other industrialized countries, have introduced or retained restrictive immigration policies. These policies seem not to recognize or keep pace with their own domestic demand for labour. Certainly, they do not give any weight to the forces driving migrant labourers out of their own countries.

It is not surprising, therefore, that with barriers to legal migration, illegal migration has developed and grown to meet demand. It is now a massive flow of labour in the hands of operators and there are no controls or monitoring of method, costs or standards and no limits to criminality.

The government response has been to attempt to restrict the flow, with border controls, policing and penalties.

In 1998, the Hong Kong Government reduced wages paid to foreign workers and abolished maternity protection for women who marry local nationals.

In the Republic of Korea, IFBWW affiliates report that unskilled foreign labour is not permitted, except in the case of trainees. While the business community and the Ministry of Trade, Industry and Energy believe foreign labour should be imported, this is opposed by other ministries and by most trade unions, who are worried that foreign workers could threaten the conditions and jobs of local workers. In 1992, an amnesty was offered to all undocumented foreign workers. Over 61,000 accepted: 22,000 from China, 19,000 from the Philippines, 9,000 from Bangladesh and 5,000 from Nepal. Three times, their stay was extended for periods of approximately six months. At least 63,000 were estimated to be in the country in December 1993. Most of these workers were in manufacturing, but it is an example of how some governments pick and choose when to turn a blind eye to illegal labour, and how they exploit the availability of an uncontrolled workforce. Undocumented foreign workers are estimated to receive less than half the wage of Korean workers doing the

same job and have few if any benefits in case of accident.

According to the IFBWW Japanese Affiliates Council, the Government of Japan puts extensive prohibition on unskilled foreign migrant and cross-border workers. Most unskilled illegal foreign workers overstay visas or are smuggled in illegally. If detected, illegal workers are forcibly returned to the country of origin. It is estimated that 90 per cent are from mainland China and the remainder from other countries in the region.

Israel is currently estimated to have 23,345 Thai workers employed under contract. In 2002, it was announced that this number would be increased to a quota of 28,000. These workers suffer extreme hardship in terms of their legal and contractual rights in Israel, which has a government policy of binding the migrant workers to their employers. Any worker who, for whatever reason, leaves the employment of the company that originally contracted him or her is deemed an illegal inhabitant. It is estimated that there are 30,000 Filipino nationals employed in Israel as migrant workers. There is a general negligence by the Israeli Government in the protection and services provided to migrant workers. Moreover, trade union membership is denied to non-citizens in Israel.

Trade unions may do better by addressing the needs of workers at their source, by educating workers about their rights in whatever country they are employed, and by finding ways to make contact with illegal workers.

Polarized responses

It is not a simple task to formulate and implement practical and effective policies around migration, which take into account the needs of both the receiving economic community and the workers who make up a migrant labour pool.

Responses may be polarized. One is described as the "open door", and is based on humanitarian principles of allowing entry to any workers whose lives would be im-

proved by migrating. Another is characterized as the “slammed door”, with intense restrictions based on protecting and maintaining the national workforce and culture – even when this culture has, itself, developed from decades of migration as in, for example, Australia, Fiji, Hong Kong or Malaysia. A third policy response may be based on admission of migrants who are likely to add to the economy of the receiving country. Clearly, there are difficulties with any of these approaches.

IFBWW-affiliated trade unions are aware of the need to protect local workers. They know that there have traditionally been difficulties in identifying specific areas of skill needed as a basis for allowing migration. There is often a time lapse, which can result in problems, particularly given the up-and-down nature of construction booms. However, there is an urgent need to press for review and sensible overhaul of most government policies. These policies are impacting on the lives of many workers in the construction industry in countries around the region.

International covenants and agreements can provide standards and benchmarks for the treatment of workers. These are particularly relevant and can be applied to legally migrating workers in many countries. Ratification and implementation of these agreements would provide a useful framework for trade policies. However, while discrepancies continue between immigration policies and labour needs, illegal migration will also continue. The causes of this problem need to be highlighted while criminal operations are policed and penalized. Essential to dealing with the role of trade unions in defending and contacting irregular migrants will be recognizing the extent to which Asia-Pacific Governments do or do not ratify established international agreements.

There are many national, regional and global networks of non-governmental organizations (NGOs) concerned with migration issues. Not all of these have a direct focus on workers in the construction industry. However, they are important allies in providing analysis of trends, data

on patterns and movements of workers and networks for the gathering of information.

As trade unions develop both awareness and skills in the understanding of issues, many of these NGOs could provide models of research as well as related data and insights.

Many NGOs are strong and effective advocates in areas of international trade and macroeconomics.

Union action

Trade unions will need to increase their own expertise in making the links between macroeconomic practice and policy and the impact on the ground for workers in the construction, wood and forestry sectors.

So, what can the IFBWW and its members do at the national, regional and international levels?

- Continue to support trade unions that focus on identifying and countering threats to their membership – threats which may come from illegal or inadequately controlled migrant labour.
- Increase awareness in other trade unions not currently alert to such threats in their own national communities.
- Alert trade unions to the pool of potential members represented by irregular migrant workers in the construction industry. This will include highlighting the need to recognize the nature, numbers and needs of these workers.
- Work with trade unions to gather and quantify relevant data. This may include a range of methodologies including:
 - cross-referencing estimates of numbers from personnel at key sites and key multinational corporations in selected countries;
 - training trade union representatives to record and collate data;
 - identifying key people to collate and analyse estimates.

- Continue work against racism and xenophobia, which fuels barriers to information-gathering and solidarity amongst construction workers.
 - Assist trade unions to campaign for appropriate maternity protection for working women and better family benefits for people with young children – for all workers in the sector.
 - Work with IFBWW globally in networks to advocate for responsive and ethical policies on the part of multinational corporations, rather than policies that create or exacerbate unemployment in developing countries – and thus lead to migrant flows.
 - Work with regional networks to urge Asian and Pacific governments to ratify and implement relevant international agreements and standards.
 - Develop working relationships with international and national agencies working to combat the exploitation and abuse of migrant workers who are forced to move via illegal channels.
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