



# **GMPA**

**Global Migration Policy Associates**  
*An International research, policy development,  
advisory services and advocacy group*

## **POLICY BRIEF**

# **LABOUR INSPECTION and MIGRANT WORKERS: SPECIAL CHALLENGES IN AN AGE OF GLOBALIZATION AND DEREGULATION**

The ILO estimates that 105 of the total 214 million people living outside their countries of birth or citizenship (in 2010) are economically active and thus engaged in the world of work. In Western European countries, the foreign born proportion of the work force is ten percent or more, it is 15-20% in “immigration” countries Australia, Canada and the USA; similar proportions apply in some African, Asian and Latin American countries; in some Middle East and North Africa (MENA) countries it is more than 50% and over 90% in Qatar and the United Arab Emirates (UAE).

Ensuring that migrant workers have decent and safe working conditions is among the most basic challenges of providing protection and decent work for all workers.

### **Addressing substandard conditions**

Foreign workers are evidently more often subject to substandard conditions and abusive treatment in employment. Even in developed countries with presumably more rigorous standards, data shows much higher workplace accident and death rates for migrant workers than for national cohorts; for example in Western Europe the rates for foreign workers are double those for nationals.

Beyond enactment of international labour standards in national law, labour inspection is the key and main guarantor of respect for and enforcement of occupational safety and health protections.

Universal injunctions on discrimination at work and widely adopted international standards for equality of treatment of migrant workers in regular situations impose a particular dimension for labour inspection applying to most migrant workers as well as to visible minorities. Furthermore, International Labour Standards are generally considered applicable to ALL workers, including specifically migrant workers in irregular situations.

An opinion of the Inter-American Court of Human Rights consistent with findings of the ILO Committee of Experts on Application of Conventions and Recommendations (CEACR) clearly reinforced the application of international labour standards to non-national workers, particularly those in irregular status.<sup>1</sup>

The Court found that non-discrimination and the right to equality are jus cogens applicable to all residents regardless of immigration status. Non-discrimination and the right to equality, the Court said, dictate that States cannot use immigration status to restrict the employment or labor rights of unauthorized workers, giving unauthorized workers inter alia equal rights to social security (see paragraph 157). The Court acknowledged that governments have the right (within the bounds of other applicable human rights norms) to deport individuals and to refuse to offer

<sup>1</sup> Corte Interamericana de Derechos Humanos. *Condición Jurídica y Derechos de los Migrantes Indocumentados* Opinion Consultativa OC-18/03 de 17 de Septiembre de 2003, solicitada por los Estados Unidos de Mexico.

jobs to people without employment documents. However, the Court said, once the employment relationship is initiated, unauthorized workers become rights holders entitled to the full panoply of labor and employment rights available to authorized workers.<sup>2</sup>

However, upholding labour standards for foreign workers presents distinct challenges that require particular attention and specific approaches. Both types of jobs and treatment of migrant workers are often distinct from that for national workers. On the one hand, the perceived vulnerability and lack of familiarity of migrant workers -particularly those in irregular status in host countries—is often associated with their employment in substandard conditions and in activity, locations or workplaces where standards and or their enforcement is weak or non-existent. On the other hand, precisely because of foreign, immigrant and sometimes ethnic minority status, migrants often have lesser or little knowledge of legal standards, do not adequately understand the host country language(s), and may have little formal training or education. As well, migrant workers are often poorly or not at all organized into representative trade union organizations that would provide collective support for their protection and defend them in cases of abuse.

Increasing international labour mobility and the visibly increased presence of foreign workers in work forces in a growing number of countries have served to make much more central the challenges for labour inspection to address the distinct specificities enforcement of labour standards for migrant workers.

This was amply illustrated by concerns raised and attention given to application of labour inspection to migrant workers at the IALI (International Association of Labour Inspectors) Conference in Geneva in 2005, and subsequently at the World Congress on Occupational Safety and Health in Seoul in 2007. Addressing migrant workers has become a prominent issue on agendas of national labour inspection agencies in a number of countries, including Argentina, Belgium, Canada, France, Ireland, Mauritius, Switzerland, the UK and USA to name just a few.

### **Labour Migration and Undeclared Work**

In an opinion survey undertaken in the EU, people were found to associate migrant workers very closely with the phenomenon of undeclared work. Migrants are often perceived 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. The lack of adequate legal protection and/or inadequate enforcement makes migrant workers attractive in certain employment circumstances because they can be underpaid, provided with little or no workplace safety and health protections, hired and dismissed on a moment's notice, and union organizing can be impossible. The global crisis has accentuated risks for foreign workers. Migrants are more susceptible to being paid less than prevailing wages and to be placed in situations where basic safety and health protections are ignored.

The legal and economic vulnerability of foreign workers makes them susceptible to serving as vectors to undermine respect for and enforcement of *decent work* conditions and standards in national labour markets. National laws do not necessarily guarantee equality of treatment and non-discrimination for non-citizens in the work force. Increasing labour mobility and the visibly increased presence of foreign workers in work forces (both internal and third country migrants) in Europe have served to make much more central the challenges for labour inspection to address the distinct specificities enforcement of labour standards for migrant workers.

In the EU, migrants in irregular situations number between 2.8 and 6 million, representing between 11 per cent and 23 per cent of 29 million total foreign born in EU member countries.<sup>3</sup> However, in numerous

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<sup>2</sup> As reported by Beth Lyons, (USA) National Employment Law Project, September 28, 2003

<sup>3</sup> "Clandestino Undocumented Migration: Counting the Uncountable. Date and Trends Across Europe". Research project funded by the

situations, the presence of migrants in irregular situations appears to have been tolerated by authorities. An absence of legal recognition may be correlated with heightened exploitability and lowered cost of migrant labour, a situation perceived to allow some only marginally competitive economic activity to remain in business.

### Challenges for labour inspection

Upholding labour standards for migrant workers presents distinct challenges that require particular attention and specific approaches. Several main concerns can be identified.

Firstly, the perceived vulnerability and lack of familiarity of migrant workers - particularly those in irregular status in host countries—is often associated with their employment in substandard conditions and in activity, locations or workplaces where standards and-or their enforcement are weak or non-existent.

Secondly, precisely because of foreign, immigrant and sometimes ethnic minority status, migrants often have lesser or little knowledge of legal standards, do not adequately understand the host country language(s), and may have little formal training or education.

As well, migrant workers are often poorly or not at all organized into representative trade union organizations that would provide collective support for their protection and defend them in cases of abuse.

Thirdly, a predominance of informal, irregular and/or undocumented employment agreements leaves many migrant workers with little or no basis for upholding claims to wages or payment. This is often compounded by significant differences in conditions and pay rates promised at recruitment and those imposed upon arrival at employment sites in destination countries. Sometimes bogus employment contracts are issued at the stage of recruitment and then substituted for contracts with less favourable conditions at the final employment stage. Related issues include unpaid overtime, excessive working time, lack of breaks and/or rest days, and others.

Fourthly, inspectors themselves report about difficulties to ensure compliance along sub-contracting chains. In economic sectors in which sub-contracting is common, such as construction or cleaning, small enterprises close down frequently only to open up elsewhere. As noted above, some European countries have enacted laws on joint liability but these need to be enforced effectively.

Fifthly, inspectors need clear guidelines to assess the extent of abuse within an employment relationship with a view to initiating appropriate action. A not uncommon abuse is outright non-payment of earnings. Migrants in irregular status are particularly vulnerable. Reports are not infrequent of unscrupulous employers hiring migrants and then discretely denouncing their own workers to immigration enforcement authorities just before payday to prompt arrest and deportation before workers can collect their earnings.

In a number of cases, non-payment of wages or illegal wage deductions are combined with other coercive measures, such as threats of violence, psychological abuse, restriction of the freedom of movement or retention of identity documents. Migrants, in particular irregular migrants, can thus end up in a situation of forced labour from which they find it difficult to escape. Labour inspectors have a key role to play to facilitate access to assistance for those workers and to collaborate with criminal justice authorities to adequately enforce sanctions.

A rising challenge to effective labour inspection is an increasingly widespread imposition of measures that compel labour inspectors to conduct immigration enforcement activity as part of their workplace

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European Commission. See <http://clandestino.eliamep.gr> (country reports, research briefs), and <http://irregular-migration.hwwi.net> (database)

inspection agenda, or to involve immigration control agents in “combined” inspection activity. This presents a particular challenge to effective enforcement of labour standards as it inevitably has the effect of intimidating migrant workers - especially those most vulnerable to abuse precisely because of their precarious legal status - from exposing or resisting abusive conditions. This practice collapses necessary distinctions between universal enforcement of labour standards and targeted policing functions for non-labour law matters. It is not consistent with the general principles of ILO Convention 81 on labour inspection. This practice also imposes law enforcement responsibilities for which labour inspectors are neither competent nor trained, and it ultimately drives an important portion of immigrant labour further into non-regulated and clandestine employment situations.

### Innovative approaches emerging

Labour inspection agencies in a number of countries have been developing specialized approaches. For example, following employment discrimination situation testing in Belgium, the national labour inspectorate incorporated review of equality of treatment standards in inspection activity, and included discrimination issues in training of labour inspectors. In Mauritius, the Ministry of Labour and Industry set up a “Special Expatriate Squad” to oversee all aspects of employment of foreign workers; specialized labour inspectors with ILO-provided training, interpreters and legal officers maintain direct contact with migrant workers and employers. The team vets all contracts to ensure that workers have decent working and living conditions and it coordinates between various relevant ministries.

### Specialized Policy and Training needs

Discussions on labour inspection covering foreign workers have highlighted two main and yet unmet needs:

1. articulation of a set of clear policy guidelines on the appropriate roles, activities and requisite knowledge for labour inspection to effectively uphold labour standards for foreign migrant workers, and
2. focused and detailed training materials and modules to provide inspectors with the specific and specialized knowledge required to conduct labour inspection in workplaces, sectors and/or industries where migrant workers are found

Experience of tripartite constituents and the ILO has long shown that properly addressing and regulating labour mobility requires policy guidelines and specialized approaches. As mandated by the 2004 International Labour Conference, ILO developed a general ***Multilateral Framework on Labour Migration*** to provide policy guidance implementing relevant international standards. This framework provides a general context for elaboration of specific guidance regarding labour inspection. Effective implementation of this guidance will require specific training for labour inspectors, and thus development of a training manual and modules for shorter and more detailed training exercises usable in national contexts.

GMPA can play a role in developing model policy guidelines and in compiling a master training manual providing the general orientation and specific measures for labour inspectors. Training modules could be developed for use in national and international courses -such as at the ILO International Training Center in Turin. Of course, the ILO itself needs to engage on developing appropriate policy guidelines, ones that ensure respect and protection of all relevant international labour standards for all migrant workers. Such an endeavour necessarily involves consultation among the key social partner stakeholders as well as government expertise.

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Prepared by Patrick Taran, President, GMPA; Revised July 2012. [www.globalmigrationpolicy.org](http://www.globalmigrationpolicy.org)  
Some points adapted from: *Labour inspection in Europe: undeclared work, migration, trafficking*. International Labour Organization – Geneva, January 2010.