



International Labour Organization

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MIGRATION, GLOBALIZATION AND DECENT WORK:

WHAT ROLE FOR LABOUR INSPECTION?

A Panel Contribution

INTERNATIONAL ASSOCIATION OF LABOUR INSPECTION

11th Congress
13-14 June 2005
Geneva

On behalf of the International Labour Office, I would like to add my compliments to the initiative of holding this conference and Congress at the ILO, and to including the question of migrant workers on the agenda.

Migration is the key global challenge of this decade for economic welfare and for decent work and thus for social cohesion and governance. As such, migration inevitably becomes a major challenge for labour inspection.

I don't want to take the plethora of misconceptions about migration for granted. Therefore, I will focus remarks on suggesting several major global trends and challenges, on highlighting irregular migration issues, and on an overall response framework to set the necessary context for introducing the labour inspection dimension.

Globalization has opened borders for trade and freer flows of capital, goods, services and technology. Elementary economics suggests that movements of capital, goods and services not only depend on movement of people, but they also drive further cross-border movements of people. Globalization is clearly accompanied today by accelerated push and pull factors for migration.

Today, some 200 million people, two and a half percent of the world's population, are living outside their countries of citizenship.¹ This population would constitute the world's fifth largest country if put in one territory.

Features of globalization are clearly compelling out-migration. 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... Many developing countries face serious social and economic dislocation associated with persistent poverty, growing unemployment, loss of traditional trading patterns, and what has been termed a 'growing crisis of economic security'."

The ILO Director General, Juan Somavia, put it in these terms: ***if you look at globalization from the point of view of peoples' concerns, its single biggest failure is its inability to create jobs where people live.***

¹ Approximate extrapolation from published UN and ILO data for the year 2000: 175 million people living outside their country of origin; 86.5 million economically active.

Traditional livelihoods are simply disappearing as cheap imported goods replace national industrial and agricultural production. Structural adjustment programmes have folded up State-supported safety nets—food subsidies, State-run industries and government itself. ILO data suggests that job creation has not matched job losses due to downsizing government.

At the same time, **demand for migrant labour is also increasing**. Demographic trends and ageing work forces in many industrialized countries mean that immigration is becoming an increasingly important option to address changing labour force composition and needs and future economic and social security performance. In one dramatic example, the native workforce of the Russian Federation will decline by an estimated five million workers by 2010; it may already lose some 750,000 this year to aging and retirement not replaced by young nationals entering the work force.

ILO conducted last year a future simulation for Western Europe using its methodology to predict performance of social security systems, a method proven accurate over the last ten years. The findings: If current trends remain the same regarding population aging and decline, female participation in the work force, retirement age, low immigration, and modest advances in productivity, the standard of living in Western Europe measured by per capita income of gross domestic product will be 78% of what it is today, 22% lower. To offer one image, the children of Europeans driving Audis and Mercedes today can look forward to Fiat 500s or Vespa scooters in 40 years.

Nearly 100 million people –half of the total 200 million outside their countries of origin-- are economically active, that is to say employed, self-employed or otherwise active in remunerative activity. We can say that most adult migrants of working age are involved in the world of work, given that children and aged people are included in that total. Decent work issues in the context of globalization are thus fundamental to migration today.

A. MAJOR TRENDS AND CHALLENGES

Nine major trends and challenges characterize international migration at the dawn of the 21st Century:

<u>Major Trends and Challenges</u>
<ol style="list-style-type: none"> 1. Certain features of globalization are leading to deterioration of human security –and increased human displacement. 2. Global economic, technological and demographic developments have resulted in an increased demand for both high- and low-skilled migrant labour in a growing number of countries. 3. The “feminisation of migration” reflects the fact that, globally, women now comprise nearly 50% of migrant workers. 4. Increased competition and informalization of economic activity continues to result in both high levels of exploitation and lack of respect for basic human rights and dignity of migrants, particularly those in irregular situations. 5. Manifestations of discrimination, violence and xenophobic hostility towards migrants have dramatically increased in many parts of the world. 6. The lack of regulated, legal channels for international labour migration, despite increased demand for migrant labour, has contributed to a dramatic increase in trafficking of human beings. 7. Despite positive impact of migrants’ remittances, the loss of talent and skills through “brain drain” seriously undermines development potential. 8. Roles of migration in development and regional integration remain little understood and un-addressed in policy and practice. 9. Most countries lack comprehensive policies to ensure regular inflow of migrant workers, ensure protection of migrants, and uphold decent work conditions for foreign workers.

B. IRREGULAR MIGRATION

It is often said that, **migrant labour fills the “three-D” jobs: dirty, dangerous and degrading.** Migrant labour has long been utilized in developed and under-developed economies as a low cost means to sustain economic enterprises and sometimes, entire sectors that are only marginally viable or competitive. Today, migrant labour ensures low cost agricultural produce, domestic service, to cheap construction labour, and services in the “sex industry” in many countries.

The persistence of dual labour markets under globalization is expanding the number of precarious jobs which national workers are reluctant to take. Small and medium size companies and labour-intensive economic sectors do not have the option of relocating operations abroad. Responses include downgrading of manufacturing processes, deregulation, and flexibilization of employment, with increased emphasis on cost-cutting measures and subcontracting.

As resulting demand for foreign labour reflects the long term trend of informalization of low skilled and poorly paid jobs, where irregular migrants are preferred as they are willing to work for inferior salaries, for short periods in production peaks, or to take physically demanding and dirty jobs.

This constellation of factors presents major challenges to the reach and effect of labour inspection.

Despite relatively high unemployment in some developed countries, foreign workers – including unauthorized migrants – find jobs easily. For example, a Mexican undocumented migrant worker to the USA will usually find a job two weeks after his/her arrival. ILO research in Southern Europe found that “the migrants take jobs that the locals refuse. It’s simply a matter of substitution... We can conclude that migrants are in competition only with marginal sections of the national labour force ... when they are not sufficiently sustained by welfare provisions, in specific sectors, and/or in the less-developed areas inside these countries.”

The exploitability of migrant labour, particularly when it is legally unprotected, renders it an attractive instrument for maintaining competitiveness. **This is, however, at the expense of formal protections of workplace safety, health, minimum wage and other standards.**

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

De facto tolerance of irregular migrants

Despite all the political rhetoric about illegal migration, numerous governments informally tolerate irregular migrants while they officially reinforce controls against “illegal migration.” The effects are, on the one hand, a continued supply of cheap, docile labour, while on the other hand, “illegal” migrants unable to organize in the workplace to defend their dignity and decent work conditions, stigmatised, and isolated as well from allies and support.

With few options available for legal migration in the face of strong pull-push pressures, irregular migration channels become the only alternative, one which presents lucrative “business” opportunities helping people arrange travel, obtain documents, cross borders and find jobs in destination countries. The flow of low-skilled migrants to more developed regions is channelled by clandestine means precisely because of the non-existence of legal migration categories that would allow for their legal entry in destination countries. ILO research underlines that legal labour migration channels contribute to both reducing trafficking in children and women and the smuggling of migrants.

The policy dilemmas in the economic realm are echoed in the political discourse and ideological frameworks advanced in host States regarding migrants. The utility of their presence –in irregular and

exploited situations— represents a challenge to normative and ideological values of most industrialized countries inasmuch as these persons are denied legal and social protection.

Recognizing the urgency of labour migration policy dilemmas worldwide, the International Labour Conference last year (2004) focused its General Discussion on migrant workers. Over ten days of arduous discussion, the Conference drew up and adopted Conclusions and a Plan of Action on migrant workers. Those Conclusions outline a comprehensive approach to regulating labour migration from a rights based approach in the context of labour market and employment considerations. What is especially significant was their unanimous adoption by ministerial level government representatives and leadership of trade union and employer federations from the 177 ILO member countries, including those of this region. Equally important is that there standing behind this Plan of Action is a normative system, institutional structure, organizational competence and constituent engagement to see to its effective implementation.

C ELEMENTS FOR A POLICY AGENDA

The ILC Conclusions and tripartite experience identify the essential elements for a viable and effective national policy agenda to regulate labour migration. These elements provide a necessary contextual framework to ensuring that labour inspection does its job of reinforcing decent work for all workers.

1) A standards-based foundation for comprehensive national migration policies and practices.

Migration policy and practice can only be viable and effective when they are based on a firm foundation of legal norms, and thus operate under the rule of law. The two ILO Conventions on migration --the ILO Migration for Employment Convention of 1949 (No. 97) and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)-- together with the 1990 International Convention on migrant workers provide a broad legal framework for migration policy and practice. Together, these three instruments comprise a sort of **international charter on migration**; they provide a normative framework covering most issues of treatment of migrants and of inter-State cooperation on regulating migration. **70 different States have now ratified** one or more of these three complementary standards. A major point of establishing legal rights and policy standards is to ensure social legitimacy and accountability, only ensured by a foundation in the rule of law.

The International Labour Conference Resolution adopted last year clearly reiterated that most international labour standards apply to all workers, migrant and national, and regardless of status, including the conventions on occupational safety and health and working conditions.

2) An informed and transparent migration policy and administration

Immigration practice must respond to measured, legitimate needs, taking into account domestic labour concerns as well. Such a system must rely on regular **labour market assessments** to identify and respond to current and emerging needs for workers, high and low skilled. Policy and practice will need to address such areas as awareness raising, supervision of recruitment, administration of admissions, training of public service and law enforcement officials, recognition of educational equivalencies, provision of social and health services, labour inspection, rights restoration and recovery for victims of trafficking, and other areas.

3) Institutional mechanisms for dialogue, consultation and cooperation

Migration policy can only be credible, viable and sustainable to the extent it takes into account the interests, concerns and experience of the most-directly affected stakeholders. Key stakeholders are the social partners: the employers and businesses that provide employment and the trade unions –worker organizations—representing the interests of workers, both migrants and nationals. Labour ministries need to have a key role. Of course, consultation and policy-making must also take into account the multiple concerned ministries and agencies within government as well as concerned civil society bodies and certainly migrants themselves.

4) Enforcement of minimum national employment conditions norms in all sectors of activity

Preventing exploitation of migrants, criminalizing abuse of persons that facilitates trafficking, and discouraging irregular employment requires **enforcement of clear national minimum standards for protection of workers, national and migrant, in employment**. ILO Conventions on 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 such areas as agriculture, construction, domestic work, the sex industry and other sectors of ‘irregular’ employment, to prevent exploitation, to detect forced labour, and to ensure minimal *decent work* conditions for all.**

5) Gender sensitive migration measures

The feminization of migration and the predominance of abuse of women migrants requires recognizing gender equality as integral to the process of policy-making, planning and programme delivery at all levels.

6) A Plan of Action against discrimination and xenophobia

Discrimination and xenophobic hostility against migrants are serious challenges to governance and social cohesion in every region of the world. ILO research has found discrimination rates of 35% against regular immigrant workers- unlawful discrimination- across Western Europe. The 2001 World Conference in Durban represented an advance in articulating a visionary but practical agenda on migration by defining a comprehensive and viable model plan of action to combat discrimination and xenophobia against migrants at national, regional and global levels, based on common experience from different regions.

D. LABOUR INSPECTION

Labour inspection is a key supervisory tool for application of labour standards. Absence of labour inspection in sectors and workplaces attracting migrant workers is associated with higher incidences of exploitation and abuse, as well as employment of unauthorized workers. ILO Conventions numbers 81 and 129 provide the basic normative guidance for national law and policy; these norms generally apply to all workers, national and foreign, unless explicitly excepted.

I would like to insist that labour inspection, targeted at the sectors and the workplaces where migrant workers are concentrated, is the key to ensuring that (1) migrant workers indeed benefit from decent work conditions, (2) employers are encouraged to provide minimum protections, thus avoiding unfair competition based on inferior working conditions, and (3) the incentive is there to recruit and hire workers in regular status rather than seeking irregular migrants because they cannot denounce substandard conditions and treatment.

Of course, inspection has to be part of a comprehensive approach to ensuring decent work for foreign and national workers alike. A particular challenge is that labour inspection must be or become aware of and able to deal with the particular conditions of migrant employment. Specific features to address include language challenges, different training backgrounds, concentration of migrants in informal and hard to inspect workplaces and sectors, reluctance of migrants coming from undemocratic experiences to cooperate with authorities –any authorities, and so on.

Several countries have given specific attention to focused labour inspection in areas where migrants predominate as a means of ensuring decent work and, as appropriate, equality of treatment with nationals.

The UK national inspection service recently conducted a review of issues and conditions affecting inspection in sectors where migrants predominate, with a view to establishing or improving specific measures to ensure full compliance with national labour standards.

A model, of what one country did to put it all together comes from Mauritius. About five years ago, the Ministry of Labour of Mauritius, concerned about growing challenges with a population of already 20,000 foreign workers in a small economy, set up what they call the Migrant Worker Squad. Established within that Ministry, it was targeted to enhance inspection by ensuring that inspectors would be trained to review issues specific to migrant worker employment, including housing and eating facilities, and to expediting remedial actions when anomalies are found.

If I can suggest a policy objective to frame labour inspection's intent in this arena, it could be: ***obtain effective labour inspection and enforcement as a tool to ensure decent work for migrant workers and reduce incentives to employ unauthorized workers.***

Indeed, the multilateral policy framework for labour migration management that the ILO is called to develop is to include a component of: **improving labour inspection and creation of channels for migrant workers to lodge complaints and seek remedy without intimidation.**

Several practical elements and management tools need to be referred to in extending labour inspection to migrant workers. These might include:

- Reference in national legislation providing for inspection of all workers.
- Obtaining labour force and employment information to determine where migrants are employed and relevant data regarding compliance issues.
- Ensuring capacity, abilities and specialized approaches to extend labour inspection to work sites, places and sectors where migrant workers are commonly employed.
- Establishment of a specialized inspection unit and/or specialized training to labour inspectors to ensure competency to address specific issues of migrant workers.
- Ensuring coordinated, coherent and integrated approaches with other aspect of labour migration policy and practice.

I note one caution: labour inspection must remain separate and distinct from immigration enforcement. The surest way to undermine the effectiveness of both is to link them in practice. If any association is made, irregular migrants in particular will avoid any role in upholding labour inspection for fear of discovery and possible deportation. Using labour inspection to seek unauthorized workers will only drive the latter further into clandestine situations, benefiting no-one but unscrupulous employers seeking to exploit migrants in vulnerable and unprotected situations.

Conclusion

The link between labour inspection and migration is only now being recognized as a key link between regulating labour migration and ensuring decent work for all workers. It is a new focus for ILO, and appears to be new for many national labour inspection services. Much remains to be done to identify and share the good practices, models and guidelines to improve labour inspection action in countries in all regions experiencing increased participation of migrant workers.

We invite you to share with us your concerns, your responses, your activities to help us disseminate these to facilitate broader understanding and more effective labour inspection across a world whose work forces are increasingly internationalised.

Accommodating migration in the context of inevitably greater diversity requires policy in all arenas – including labour inspection-- that assures respect for migrants' rights, dignity and equality of treatment in the practice of States and societies.

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