



International Labour Office

GLOBALIZATION, MIGRATION AND HUMAN RIGHTS PAST AND FUTURE KEYS TO TURKISH MIGRATION

Presentation to Conference

TURKS ABROAD; 50 YEARS OF MIGRATION AND INTEGRATION

At

Ankara

21-23 May 2009

Organized under auspices of the Prime Minister and Hacettepe University

May I begin by highlighting that this event is a remarkable occasion, a true celebration of what another country calls its heroes, those millions of people who have gone abroad to work, to contribute to the construction and well being of other countries and, in so doing, to contribute to the development and welfare of their own families and their own country.

On the occasion of this important conference, I would like to offer a few words on what migration is about, its importance in the age of globalization, and the challenges of the human dimension, specifically the human rights of migrants.

I. ROLE AND IMPORTANCE OF MIGRATION TODAY

Migration today is essentially about work; it is a labour issue. It is about internationalized labour mobility to meet the skills and labour needs of a globalized economy. Today more than ever, migration serves as an instrument to adjust the skills, age and sectoral composition of national and regional labour markets. Migration provides responses to fast-changing needs for skills and personnel resulting from technological advances, changes in market conditions and industrial transformations. In countries of aging populations, migration offers a potential to replenish declining work forces as well as to inject younger workers, increasing dynamism, innovation and mobility in work forces.

ILO estimates that 95 to 100 million of the total 200 million people living outside their countries of birth or citizenship are economically active, engaged in the world of work. This involves most working-age adults, taking into account that the migrant population includes children and aged dependents. In Western European countries, the foreign born proportion of the work force is ten percent or more, nearly 15% in Ireland, 25% in Switzerland and some 40% in Luxembourg.

Already some time ago, the International Labour Office ran a simulation using the methodology its actuarial section used over the last ten years to predict –quite accurately—the future performance of social security systems. This simulation carried forward calculations to the year 2050 based on presumed continuity of current trends in population aging and decline, retirement

age, female workforce participation rates, immigration numbers, and modest economic growth and productivity rates. The simulation outcome suggested that some 40 years from now, the standard of living of Western Europe, as measured by per capita income of gross national product, may be 78% of what it is today. That is to say, 22% lower.¹

As was true 50 years ago, Europe's need today for low and medium skilled migrants is as critical as for high skilled. This was highlighted in the recently issued annual OECD report on migration trends. Due to economic, demographic and technological changes, many jobs in industrialized economies simply cannot be filled by native-born workers. 50 years ago, it was rapid reconstruction and reindustrialization of Western Europe that required more labour.

Migrant labour then and now largely fills "three-D" jobs: dirty, dangerous and degrading. Efforts to fill 3-D jobs and to maintain economic competitiveness through low cost labour produce a continuous demand for cheap and low-skilled migrant labour in numerous sectors of national economies. Immigrant labour has long been utilized as a low cost means to sustain economic enterprises and sometimes, 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.

Employment needs in agriculture, construction, low-skilled production tasks, healthcare, and many services are met only partially, or not at all, by national workers. In many situations, migrants take jobs that the locals refuse. It's simply a matter of substitution.²

Ageing of native work forces combined with declining populations is today an important factor. By current projections, the populations of Italy will be 25% less in 2050 than in 2000. Latvia and Lithuania have already seen reductions of nearly 10% since 1989 –almost entirely of working age adults. Fertility rates in Spain and in the Ukraine are about 1.2 children per woman, far below replacement. Rates in most of the European Union countries are or soon will be at or below replacement. France is one of the few exceptions.

The current projection for the European Union region is that while today the average social security dependency is 2 retired persons for seven economically active, the ratio will rise to 4 per 7 by 2050: meaning either twice the contributions per working person or halving the income for retirees. The European Commission itself made a projection that the EU will need an annual influx of some 700,000 immigrants by 2050.

At lower skilled levels, migrants are too 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 vulnerability of migrant workers makes them attractive for some employers, because they can be underpaid, provided with little or no workplace safety and health protections, hired and dismissed on a moments notice, and union organizing can be impossible.

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ILO. *Towards a Fair Deal for Migrant Workers in the Global Economy*. International Labour Conference 92nd Session June 2004. Report VI. P. 37-38. Available on line at: <http://www.ilo.org/public/english/standards/relm/ilc/ilc92/pdf/rep-vi.pdf>

² Reynieri, E., "Migrants in Irregular Employment in the Mediterranean Countries of the European Union", International Migration Paper No. 41, ILO, Geneva, 2001.

ILO has estimated that, globally, some ten to twenty percent of international migrant workers are in irregular situations, without legal authorization or undocumented. A newly established on-line database project on irregular migration in the European Union provides detailed estimates indicating that migrants in irregular situations number between 2.8 and 6 million, giving a range of 11% to 23% of total stocks.³ Migrants in irregular situations are even more vulnerable to exploitation and abuse. However, the presence of migrants in irregular situations appears to have been tolerated by authorities in certain circumstances in some countries. This appears to coincide with the fact that absence of legal recognition heightens the exploitability and lowers the costs of migrant labour, in some cases allowing marginally competitive economic activity to remain in business.

The flow of low-skilled migrants 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. Once they are in host countries, they remain confined to jobs in unstructured or informal sectors, in irregular work and under exploitative conditions of employment.⁴ In contrast, ILO research underlines that legal labour migration channels contribute to both reducing trafficking and the smuggling of migrants.

But migration is also about the absence of work, of decent work, in many parts of the world. Much migration is not by choice, nor mainly a product of disparities in economic factors between countries or regions. Rather, as it is the direct and inescapable result of deteriorating conditions for welfare and survival in many countries.

As the ILO Director General, Juan Somavia, said, *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.* 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'.

These factors have made Turkey itself today a major transit country of migration, and increasingly a destination country for migrants. Thus the challenges of protecting rights of migrants are not only for Turkish migrants abroad, but they are now an immediate issue for governance in this country.

II. ISSUES AND CHALLENGES

Migration today, and the contention over protection of the human and labour rights of migrants has become a cutting edge issues of politics, governance, and social cohesion worldwide. It is

³ CLANDESTINO *Undocumented Migration: Counting the Uncountable. Data and Trends Across Europe.* Research project funded by the European Commission, DG RTD, FP6, 2007-2009. For more information, visit

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

⁴ Abella, M.I., "Mondialisation, marchés du travail et mobilité", in *Migrations et avenir*, CIEMI, Paris, Vol. 14, No. 79, January-February 2002.

often headline news, and the subject of almost innumerable news headlines, conferences, and pronouncements by politicians across the partisan spectrum.

Migration and the protection of migrants rights has also become the cutting edge issue of contention between capital and labour. The treatment of migrant workers becomes a central and significant arena of dispute and redefinition between labour and capital in the level of protection and regulation of conditions of employment and work, in the distribution of benefits deriving from economic activity, and in the extent working people –foreign workers in particular-- can organize to articulate and defend their interests.

A passage from the Resolution and Conclusions on migrant workers of the 2004 International Labour Conference offers a very brief snapshot of the protection issues faced generally by migrant workers, in Europe as elsewhere.

Despite the positive experiences of migrant workers, a significant number face undue hardships and abuse in the form of low wages, poor working conditions, virtual absence of social protection, denial of freedom of association and workers' rights, discrimination and xenophobia, as well as social exclusion.

Underpayment or non-payment of wages, physical abuse, sexual harassment and violence against women workers, denial and repression of freedom of association and trade union rights are widespread situations.

Serious abuses represented by absences of health and safety protections are widespread. For example, occupational accident rates are about twice as high for migrant workers as for native workers in Europe (Braunschweig et al, 2001). Migrant workers generally face increased levels of precariousness and higher risk of adverse health outcomes (ILO, 2003b). Migrant workers tend to be employed in high-risk and hazardous sectors, such as agriculture, mining, construction and informal sector work; sectors where inspection and enforcement of Occupational Safety and Health (OSH) standards are weak or non-existent. Furthermore, language and cultural barriers require specific OSH communication, instructions and training approaches. Thirdly, many of these workers overwork and/or suffer from poor general health and are therefore particularly prone to occupational injuries and work-related diseases. Migrants, particularly those in irregular situations, often accept dangerous working conditions for fear of bringing attention to themselves and losing their jobs or being deported.

Temporary workers, and in particular migrants in an irregular status, are often unable to access social security benefits such as health insurance and employment injury coverage. In addition, they tend to resist seeking medical treatment because of the cost, inability to take time off work, lack of childcare, and problems of transportation. Many are unfamiliar with the local health-care systems and may have linguistic or cultural difficulties in communicating their problems. These problems are compounded for migrants in irregular status and trafficked persons. In a number of countries, there is also stereotyping of migrant workers as a “threat” to public health and as disease carriers without any solid evidence. This leads to further discrimination.

Many immigrant workers more commonly face atypical employment and problems in gaining entry to the professions or in taking up self-employment and they are barred from most public-service jobs. Employment conditions for immigrants are often less favourable than local people's and they are likelier to be in temporary employment. There are disproportionately large numbers of them in vulnerable employment sectors and in undeclared and unskilled employment. The

larger proportion of immigrants in atypical employment – temporary employment, part-time employment and so on – means that those immigrants are more often exposed to discrimination and exploitation. In Spain, for example, almost 56% of immigrants are in temporary work, 25% more than for the indigenous population (OECD, 2007a). Immigrant workers, forced to take atypical jobs that suffer from the flexibility imposed by economic change, are not covered by regulations ensuring adequate protection. They suffer from financial insecurity, are ill-protected, and receive no income when they are in between jobs.

In OECD countries (apart from Poland, Hungary and the United States) the unemployment level for immigrants is higher than for the indigenous population. In Austria, Belgium, the Netherlands and Switzerland the proportion of immigrants among the unemployed is twice their proportion in the active population (OECD, 2007a). Immigrants are relatively more liable to suffer long-term unemployment than the indigenous population. In Finland, the Czech Republic, the Netherlands, Norway and Switzerland the gap exceeds 10 percentage points. In Belgium over 17% of immigrants are looking for work, and nearly 60% of these have been doing so for over a year.

Discrimination

Significant and pervasive discrimination against immigrants and persons of immigrant origins in access to employment, housing, and public services has been amply documented across Europe. Migrants also face obstacles to obtaining access to education and training and limited opportunities for taking part in civic life. For many immigrants, the combination of these factors adds up to exclusion that precludes possibilities for integration.

Large scale *situation testing* carried out in nine European countries has shown discriminatory behaviour by employers and labour market gatekeepers against immigrant and immigrant origin applicants to be significant and pervasive. These studies showed that young applicants of migrant origin had to apply four to five times as many times as persons of national backgrounds with equivalent skills, education and experience in order to obtain positive responses in seeking employment (Cediey, 2007). Results of the most recent study showed results similar to previous testing: in nine out of ten cases the choice between equally qualified candidates was made before the employer had seen either one (Cediey et al, 2007). Somewhat higher discrimination rates were detected in the services sector than in other sectors, and in small and medium-sized enterprises than in bigger ones (Zegers De Beijl, 2000)⁵. (This testing done under ILO auspices is to date the only methodologically consistent, statistically significant research on actual behaviour in labour markets.)

Freedom of Association

Migrant workers' rights to organise and protect their interests are still far from fully respected in European countries. Permanent migrant workers are more often able to exercise these rights than temporary workers or, in particular, migrant workers in irregular status.⁶ But legal restrictions

⁵ Country discrimination testing studies can be downloaded from: www.ilo.org/migrant/publ/imp-list.htm
See list in Bibliography at: ILO (1995-2008) International Migration Papers (Situation Testing)

⁶ According to the 29 Council of Europe member country responses to the ILO International Labour Migration Survey of 2003, only 3 Council of Europe member states (Albania, Bulgaria and Hungary) reserve for nationals both the right to form or join workers' organisations and the right to bargain collectively. 22 member states provide both of these rights to all migrant workers and nationals, though one limits the right to organise to joining but

based on nationality may make it more difficult for migrant workers to act as trade union officials, to be active as members of an organisation, or to form their own unions. For example, restrictions on union membership and on taking leadership positions remain in effect in several countries in Europe. Workers in an irregular situation are generally not in a position to demand any rights, given their precarious position.

III. THE NORMATIVE FOUNDATION

Historical experience shows that regulation providing protection for migrant workers cannot be left alone to market mechanisms. When highly competitive and now globalized market pressures are brought to bear in the absence of protections and appropriate regulation, migration is usually characterized by abuse and exploitation of migrant workers, irregular migration, fear of loss of jobs blamed on immigration and anti-immigrant sentiments and, ultimately, xenophobic violence.

Defense of migrants' rights along with an enabling policy environment are only viable and effective when based on a firm foundation of legal norms, and thus operate under the rule of law. International standards set parameters for the protection of migrant workers and the preservation of States' interests. They also provide an essential framework for national legislation, policy and practice as well as for co-operation within States and between States across the migration process.

With an understanding that preventing exploitation and ensuring equality of treatment are essential elements of building prosperity, social cohesion and democratic governance of societies, a substantial set of international and European protection and regulatory standards have been elaborated on labour migration.

Specific international and European legal instruments set minimum standards relating to the protection of migrants, their families, and refugees as well as for international co-operation on migration. International law has established three fundamental notions that characterize protection for migrants, particularly migrant workers and members of their families:

- Equality of treatment between regular migrant workers and nationals in the realm of employment and occupation.
- Core universal human rights apply to all human beings, including all migrants, regardless of status.
- A broad array of international labour standards providing for protection in treatment and conditions at work (including occupational safety and health, maximum hours of work, minimum remuneration, non-discrimination, freedom of association, and maternity leave) apply to all workers.

.i International Standards

Five categories of international law directly set standards providing for protection of rights of migrant workers:

not forming workers' organisations and one did not provide information on the right to collective bargaining. 10 of these 22 States extend both rights to workers in irregular status, and 3 extend only the right to organise to workers in irregular status (though one limits this to the right to join and not form, and another imposes conditions). 4 member State respondents did not provide information on either of these rights for any categories of workers.

- 1) International Human Rights law, notably the eight fundamental human rights instruments, comprising the two Covenants respectively on Political and Civil rights and on Economic social and Cultural Rights, along with the six international conventions addressing specific groups and situations: victims of racial discrimination, victims of torture, women, children, migrant workers, and disabilities.
- 2) International Labour Standards, in effect all of them, except where –rarely—foreign workers are exempted.
- 3) Refugee and asylum law, namely the 1951 Convention and the 1967 Protocol on the Status of Refugees
- 4) Consular Relations, namely the Vienna Convention on the subject of protection of foreign nationals through access to representatives of their governments
- 5) International Criminal Law, particularly the Protocols on Trafficking in persons and smuggling of migrants of the International Convention on Transnational Organized Crime.

International Human Rights Conventions provide a broad and ample normative framework for the protection of migrants. The Universal Declaration of Human Rights of 1948 laid out a comprehensive set of universal human rights principles. Two major International Covenants elaborated these principles into binding normative standards on political and civil rights, and economic, social and cultural rights in the 1960s⁷. These Covenants, together with the UDHR, are often referred to as the "International Bill of Human Rights", and are applicable to all human beings. Specific conventions subsequently explicitly extended the application of universal rights to victims of racial discrimination, women, children, and migrants: Convention for the Elimination of Racism and Racial Discrimination (CERD), Convention Against Torture (CAT), Convention for the Elimination of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMR).⁸

These seven instruments --the two Covenants plus the five Conventions cited above-- have been characterized as the seven fundamental human rights instruments that define basic, universal human rights and ensure their explicit extension to vulnerable groups world-wide.⁹ It has been noted that more than ample human rights protection for all migrants would be assured by full implementation of the two Covenants and the CERD, CAT, CEDAW and CRC in countries concerned. Most European states have ratified these six instruments.

An International Charter on migrants rights

Three international *Conventions on migrant workers* can be considered as an “international charter” for their protection and provide a normative framework covering their treatment and related inter-state co-operation. They are the ILO Migration for Employment Convention 1949

⁷ See, *International Covenant on Civil and Political Rights*, adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966, entered into force on 23 March 1976 and *International Covenant on Economic, Social and Cultural Rights*, adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966, entered into force on 3 January 1976.

⁸ Texts and status of ratifications of these conventions are available on the website of the Office of the UN High Commissioner for Human Rights, at: www.unhchr.ch.

⁹ Noted in UN General Assembly: *Status of the UN Convention on migrants rights*, Report of the Secretary General, 55th Session of the UN General Assembly, Doc. A/55/205, July 2000.

(No. 97), the ILO Migrant Workers (Supplementary Provisions) Convention 1975 (No. 143), and the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW).

These conventions lay out a comprehensive agenda for national policy and for consultation and co-operation among States on labour migration policy formulation, exchange of information, providing information to migrants, and, where necessary, facilitating their orderly return and reintegration. The 1990 International Convention establishes that migrant workers are more than labourers or economic entities; they are social entities with families. It reinforces the principles in ILO migrant worker Conventions on equality of treatment with nationals of states of employment in a number of legal, political, economic, social and cultural areas. ILO Convention 143 and the 1990 Convention explicitly address unauthorised or clandestine movements of migrant workers, and provide for resolving irregular situations, in particular through international co-operation.

These Conventions resolved the lacuna of protection for non-national migrant workers and members of their families in irregular status and in informal work by providing norms for national legislation of receiving states and their own states of origin, including minimum protections for unauthorised migrant workers. The extensive, detailed and complementary text contained in these instruments provides specific normative language that can be incorporated directly into national legislation, reducing ambiguities in interpretation and implementation across diverse political, legal and cultural contexts.

Lest anyone still assert that these Conventions are poorly ratified, I highlight that as of today, 82 different States have ratified at least one of these three complementary Conventions. That would be close to two thirds of the some 120 to 130 countries around the world for which migration is an important issue of governance. 41 countries –including Turkey-- have ratified the 1990 International Convention on rights of migrant workers.

Nineteen Council of Europe member countries have ratified one or both of the ILO instruments; and eleven member States of the EU have done so, among them the larger migrant destination countries: Belgium, France, Germany, Italy, the Netherlands, Spain, Portugal and the UK, as well as Norway, Slovenia and Sweden.

As Turkey becomes a destination country as well as one of transit for migrant workers, it would certainly benefit from ratifying the two ILO migration for employment conventions. These provide the legislative standards that this country needs to adequately regulate the admission and employment of workers and skilled personnel as well as ensuring equality of treatment and protection of their rights in national law.

International Labour Standards

Some principles and rights at work that derive from the ILO Constitution and have been expressed in eight ILO Conventions,¹⁷ are deemed to be fundamental for the protection of human rights for all workers, including migrant workers, by the international community and the ILO. They concern freedom of association and the right to collective bargaining, freedom from forced labour and child labour and non-discrimination in employment and occupation. Moreover, following the adoption of the 1998 ILO Declaration on Fundamental Principles and Rights at Work,

all members, even if they have not ratified the Conventions in question, have an obligation

arising from the very fact of their membership of the Organization, to respect and to promote and to realize in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions (ILO, 1998: para.2).

Migrant workers' rights are not only a matter of fundamental rights found in the eight core ILO Conventions. The International Labour Standards in the areas of occupational safety and health, conditions of work, protection of wages and labour inspection, employment policy, maternity protection, the regulation of private and public employment agencies, as well as those covering sectors employing a large number of migrant workers are equally important to the promotion of decent work of all migrant workers. The ILO instruments that promote equality of treatment between migrant workers and nationals in the field of social security are also particularly relevant¹⁸

International jurisprudence has amply reinforced the application of *International Labour Standards* to policy and practice regarding employment dimensions of migration. Decisions and opinions of the ILO treaty supervisory Committee of Experts have repeatedly underscored the applicability to all migrant workers of International Labour Standards covering conditions at work, occupational safety and health, maximum hours of work, minimum remuneration, non-discrimination, freedom of association, collective bargaining, and maternity leave, among others. The ILO Committee on Freedom of Association supervising the core international conventions on freedom of association and collective bargaining has specifically ruled that all migrant workers regardless of status are entitled to protection and expression of basic association and representation rights.

Other relevant international law

The 1951 Convention and 1967 Protocol on the Status of Refugees provide essential standards regarding recognition, protection of and assistance to *refugees and asylum seekers*. The Convention defines who is a refugee, sets out rights of individuals granted asylum, delineates the responsibility of States to non-refoulement and provides other provisions such as regarding refugee travel documents. It was initially limited to protecting European refugees after World War II, but the 1967 Protocol removed the geographical and time limits, expanding the Convention's scope.

The refugee instruments have particular relevance for an integrated migration policy given that migratory movements today often comprise *mixed flows*, including some individuals who merit refugee protection. At the same time, recognised refugees and asylum seekers usually enter the world of work once resettled or granted status, meaning they seek and obtain employment and many eventually integrate in resettlement or asylum countries.

Two Protocols on *trafficking and smuggling* to the International Convention Against Transnational Organized Crime provide specific definitions and measures to combat trafficking and criminalise smuggling. The Palermo Convention Against Transnational Organized Crime and its Protocols on Combating Trafficking in Persons and against Smuggling of Migrants were adopted in December 2000 in the spirit of the fight against organised crime. The main provisions of the Convention and Protocols provide for criminalising offences committed by organised groups, cracking down on the proceeds of crime, speeding up and widening the reaches of

extradition of members of criminal groups and tightening law-enforcement co-operation to seek out and prosecute suspects.¹⁰

These instruments assist in clarifying distinctions between smuggling of migrants across borders and trafficking in persons --the latter by definition comprising deception, coercion and exploitation—in the context of inadequate regular migration channels and important imbalances between labour supply and demand. The trafficking protocol in particular provides for an approach of prevention, prosecution of traffickers, and, notably, some protections for victims of trafficking.

.ii European Instruments

The Council of Europe has a number of instruments in the field of migration covering general human rights as well as more specific agreements relating to migrants and migrant workers. The European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR) (Council of Europe, 1950) has the broadest application in that it applies to all persons within the jurisdiction of States parties, including migrant workers and regardless of their legal status. While there are no specific provisions on migrant workers in the ECHR, migrants have obtained remedies from the European Court of Human Rights under its case law in protection of their right to respect for family life and the non-discrimination principle¹¹.

The European Social Charter (1961) and its Additional Protocol (1988), as well as the Revised European Social Charter (Council of Europe, 1996), in addition to being firmly based on the non-discrimination principle, include a number of provisions relating to individuals living and working in countries of which they are not nationals, covering the right to engage in a gainful occupation in another Contracting Party's territory, provision of information to migrant workers, facilitation of the migration process, equality of treatment of nationals and non-nationals in employment, the right to family reunification, and guarantees against expulsion, etc.

The European Convention on the Legal Status of Migrant Workers (Council of Europe, 1977) includes provisions relating to the main aspects of the legal status of migrant workers coming from Contracting parties, and especially to recruitment, medical examinations and vocational tests, travel, residence and work permits, family reunion, housing, conditions of work, transfer of savings, social security, social and medical assistance, expiry of the contract of employment, dismissal and re-employment, and preparation for return to the country of origin. Eleven Council of Europe member states have now ratified this Convention.

European Union

Regarding the EU framework, differences exist in terms of rights and benefits granted to migrant workers coming from within the EU, from future accession countries, and migrant workers coming from third countries. The Treaty Establishing the European Community (EC Treaty) provides for freedom of movement for workers from EU member states, although transitional

¹⁰ See *After Palermo: An Overview of what the Convention and Protocols Hope to Accomplish* at www.undcp.org/palermo/sum1.html.

¹¹ Regarding the strengthening of the principle of non-discrimination, see: Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 177), open for signature on 4 November 2000, not yet entered into force.

arrangements are in place limiting this freedom for nationals from certain new member states. The Treaty prohibits any discrimination based on nationality between these workers as regards employment, remuneration and other conditions of work and employment, including social security (Arts. 12 and 39). The EC Treaty also invites the EU Council of Ministers to take measures necessary to ensure equality of treatment and opportunity between men and women and to combat discrimination based on, inter alia, race, ethnic origin, religion or belief, and sexual orientation. It affords migrant workers from EU member states a set of social rights unequalled in other regions of the world. Furthermore, the Council is also empowered to take measures in the field of asylum, immigration and safeguarding of the rights of nationals of third countries, although the measures adopted to date on legal migration have afforded third-country nationals lesser rights than those granted EU citizens.

Although not a legally binding instrument, the EU Charter of Fundamental Rights, adopted in 2000 is a major point of reference in this context as most of its provisions are applicable to all persons irrespective of their nationality. It sets out in a single text, for the first time in EU history, the whole range of civil, political, economic and social rights of EU citizens and all persons resident in the European Union.

IV. REALIZING RIGHTS: A POLICY AGENDA

The foundation for measures to ensure adequate protection for migrant workers is articulated in the international labour norms summarized above. However, realizing rights and dignity and obtaining decent work for migrant workers require a comprehensive set of actions to achieve. This is an agenda still far from completed, and one that requires further progress to ensure that the next 50 years of Turkish migration benefit the migrants as well as their homeland.

The social and labour conditions of migrant workers and the degree of migrants' integration determine the levels and degree of economic and social contributions they make to social and economic welfare in host countries and to their countries of origin. Specifically, the conditions of migrant workers directly affect both their abilities to remit part of their earnings and to acquire skills and knowledge which will be useful on their return or during permanent settlement elsewhere. Thus, these conditions have a direct bearing on the level and nature of migrant contributions to social welfare, human capital formation, and development, especially in their countries of origin. For example, the substantially reduced earnings of exploited migrants or earnings which deported migrants are unable to obtain prior to departure are economic resources not only stolen from the affected workers, but in effect expropriated from the countries of origin to which a significant part would have been remitted.

Protection of migrant workers in destination countries is best secured by adoption of international norms into legislation of those countries, including labour code, employment legislation, and other rules concerned with the regulation and protection of foreigners. Ratification of the relevant international standards is, of course, the essential and verifiable step. However, even if countries concerned are not yet prepared to adopt in full international standards, they can –and do-- utilize these as a model for the development of national legislation.

Realizing migrants rights and the benefits of migration requires, however, considerably more than adopting legislation. In fact, implementation of norms and legislation requires a comprehensive policy and practical agenda. Policy needs to cover administration of immigration, legal protection

measures, labour market regulation, labour inspection, social security, and much more. In short, an array of measures are needed to prevent abusive practices and promote decent and productive work for women and men migrants in conditions of freedom, equity, security, and human dignity.

Policy lines

The International Labour Organization has developed useful guidance for the development, strengthening, implementation and evaluation of national, regional and international labour migration policies and practices. This guidance for the implementation of international norms is contained in the ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration.¹² This guidance would be particularly relevant for Turkey today as it has become a country of immigration and transit migration as well as a country of continuing emigration.

While the ILO standards provide the international framework of minimum standards, the ILO Multilateral framework is formulated in accordance with the principles and rights embodied in these standards. It reaffirms their importance in terms of guidance for policy and legislation

The Framework –and other international guidance—highlights that policy should recognise the similarities and differences in the migration experiences of different categories of women and men and should aim to eradicate all forms of discrimination as well as gender inequality. Policies, legislation and programmes should also consider the fact that women migrants often find themselves in irregular situations, in unregulated sectors of the economy, or as victims of traffickers or smugglers and subject to many forms of violence and abuse.

Summarizing this framework and provisions of the complementary ICPD and Berne Initiative outcomes, echoed by the recent Global Commission on International Migration report, I highlight eight main components of the migration policy agenda required to ensure that migration benefits host and home countries and the migrants themselves:

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

As noted above, the three instruments comprising an *international charter on migration* provide the normative framework and specific model legislative language required to establish a basis for national policy. A major point of establishing legal rights and legislative policy standards is to ensure social legitimacy and accountability, only guaranteed by a policy foundation in the rule of law.

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.

¹² ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration, Geneva, International Labour Office, 2006.

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 require 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. The 2001 World Conference in Durban articulated a major component of national policy on migration by defining a comprehensive and viable model plan of action specifically to combat discrimination and xenophobia against migrants at national, regional and global levels, based on common experience from different regions.¹³

7) Linking Migration and Development in Policy and Practice

Migration has long been and continues to generate significant contributions to both development and social progress and welfare in home and host countries alike. However, such contributions will certainly be enhanced by a broad array of policy measures ranging from reducing costs and constraints on transfer of migrant remittances to providing accessible mechanisms for regular migration and recognition of employment contributions of all labour migrants.

8) International Consultation and Cooperation

Formalized mechanisms of regular dialogue and cooperation among States-- including participation of concerned stakeholders-- are essential in all regions. Of particular note are expanding legal and operational regimes for freer circulation of labour/persons across regional

¹³ Main elements were established in the *Declaration and Program of Action* adopted at the World Conference Against Racism and Xenophobia (WCAR) in Durban in 2001, which included 40 paragraphs on treatment of migrant workers, refugees and other non- nationals. The full text is available at: www.unhchr.ch/pdf/Durban.pdf See also www.unhchr.ch/html/racism/00-migra.html for related documents and links.

economic integration initiatives in several world regions, including for example the Andean Community, the Economic Community of West African States (ECOWAS), and the East Africa Community as well as the European Union.

Enforcement of labour protections

Equality of treatment in employment for authorized migrant workers is a central premise of international standards reflected in national law in many countries. Tolerance of inequalities in treatment between national and foreign workers will encourage exploitation of foreign workers and facilitate substitution of national workers by less protected non-national workers, thus contributing to expanding dual labour markets and informal employment, lowering of wages and conditions of work generally, and ultimately provoking conflict between national and foreign workers and their respective communities.

One of the most effective ways of preventing migrant workers from being exploited is to recognise their right to join a trade union without hindrance. Trade union rights comprise freedom of association and collective bargaining, and are recognised universally in the core international human rights instruments. Rights to freedom of association and collective bargaining as articulated in ILO Conventions Nos. 87 and 98 are fundamental rights which all countries are expected to uphold as per the 1998 Declaration on Fundamental Principles and Rights at Work. Both of these instruments have been ratified by Turkey.

Preventing exploitation of migrants requires enforcement of clear national minimum labour and human rights standards for protection of workers, whether nationals or migrants. As noted above, International Labour Standards on forced labour and child labour, freedom of association and non-discrimination, occupational safety and health, and the protection of wages provide minimum international norms for national legislation. A necessary complement is monitoring and inspection, particularly in such areas as agriculture, construction, domestic work, the sex industry, where migrants tend to be concentrated.

Labour Inspection is a key means of monitoring and enforcing equality of treatment and decent work conditions for migrant workers. Labour inspection is a 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 unauthorised 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.

Social cohesion

Social cohesion in destination countries will be facilitated considerably when discrimination against migrant workers and their families is eliminated. Moreover, appropriate measures assisting the integration of migrants in society and providing possibilities for family reunification play an important role in preventing the marginalisation of migrants and promoting social cohesion.

A comprehensive and effective agenda to prevent discrimination and ensure social cohesion must include the following policy elements:

- an explicit legal foundation based on relevant international standards;

- outlawing racist and xenophobic discrimination, behaviour and action;
- outlawing sex discrimination and gender inequalities in the labour market;
- administrative measures to ensure full implementation of legislation, and accountability for all government officials;
- an independent national human rights/anti-discrimination institution with powers to address discrimination against non-citizens;
- respect for diversity and multicultural interaction;
- emphasis on positive images of diversity and of migration in news and communications media;
- inclusion of multi-cultural and diversity training in educational curricula;
- co-operation with civil society and community groups.

ILO Activity

For the record, the International Labour Organization is the largest specialized agency of the United Nations system. It was established in 1919, with purposes of elaborating international labour standards, promoting employment and job creation, extending social protection and social security to all workers, and facilitating social dialogue between employers and worker organizations.

In the field of international migration, ILO efforts not only examine problems, they also identify and evaluate solutions. ILO activity on migration includes providing technical cooperation and capacity building in countries world-wide, providing advisory services to governments, promoting adoption of relevant legal standards, facilitating social dialogue, and encouraging international cooperation.

In the area of integration of migrants, ILO has not only conducted the discrimination situation testing referred to earlier; it has also studied effectiveness of anti-discrimination legislation and training in a number of countries in Europe and North America. Research findings¹⁴ indicated, for example, that comprehensive civil legislation appeared to establish far more effective mechanisms than criminal law for the identification, intervention, redress, and monitoring of discriminatory treatment. Experience in several countries showed that legal requirements for monitoring and reporting by employers on the diversity of their workforce are extremely useful tools. Findings clearly demonstrated that a specialized institution in the field of equality of treatment and non-discrimination provides the most effective way of guaranteeing effective enforcement and promotion of anti-discrimination legislation.

Though a regional project called “Promoting equality in diversity: integration in Europe” supported by the EU, ILO has recently:

- Expanded a website compendium data-base on anti-discrimination and integration activities to include some 160 practice profiles. See www.ilo.org/migrant click on *discrimination*.
- Determined evaluative indicators, methodology and tools to assess effectiveness of integration and anti-discrimination practices.

¹⁴ See R. Zegers de Beijl (1991); G. Rutherglen, (1993); C. Ventura (1995); R. Zegers de Beijl in W. R. Böhning and R. Zegers de Beijl (1995); U. Kulke in: A. Goldberg, D. Mourinho and U. Kulke (1996); R. Pérez Molina in Colectivo IOE and R. Pérez Molina (1996); K. Vuori (1996); D.N. Addy (1997); N.-E. Hansen and I. McClure (1998); J. Doomernik (1998); B. Smeesters and A. Nayer (1999).

- Studied experiences to identify key indicators of integration.
- Compiled a practitioners handbook on discrimination and integration
- Developed tool kits for social partners, particularly small enterprises and trade unionists
- Convened European social partner networking on integration and discrimination.

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 non-discrimination and equality of treatment of migrants is imperative to social cohesion worldwide, particularly in destination countries for Turkish migrants. It is also necessarily on the agenda in Turkey itself.

This requires advocacy and action --hard work—in promotion of human rights law, of labour standards, of equality of treatment and respect for diversity. These are the guarantors of democracy and social peace.

A next step could comprise ILO cooperation with Turkey to more precisely assess labour migration dynamics and issues; determine policy, institutional and practical needs; and work together to draw up a comprehensive national policy and plan of action on regulating labour migration to better benefit Turkey, its partners, and the migrants themselves.

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